PART 2: THE STRUCTURE OF REFORM AND ACCOUNTABILITY

Law Commission proposal/question	GOsC response
Provisional Proposal 2-1: All the existing governing legislation should be repealed and a single Act of Parliament introduced which would provide the legal framework for all the professional regulators.	Support.
Provisional Proposal 2-2: The new legal framework should impose consistency across the regulators where it is necessary in order to establish the same core functions, guarantee certain minimum procedural requirements and establish certain core requirements in the public interest. But otherwise the regulators should be given greater autonomy in the exercise of their statutory responsibilities and to adopt their own approach to regulation in the light of their circumstances and resources.	We support this proposal but think it is important to stress that consistency should not imply uniformity. Each regulated profession operates in different circumstances and at different stages of development that determine the most appropriate way for them to be regulated. It is also important to recognise that innovation in the field of regulation comes from regulators doing things differently, not working to a single set formula. We agree with the statement that 'regulators should be given greater autonomy in the exercise of their statutory responsibilities and to adopt their own approach to regulation in light of their circumstances and resources'
Provisional Proposal 2-3: The regulators should be given broad powers to make or amend rules concerning the exercise of their functions and governance without any direct oversight, including Privy Council approval and Government scrutiny (subject to certain safeguards).	We support this proposal but it may be worth exploring further what the required safeguards should be, for example specific requirements around consultation could deal with some of the concerns. Removing the requirement for Privy Council or Government scrutiny should not automatically imply that regulators couldn't or shouldn't work with the Government to ensure that new regulations, particularly where these are complex, are compatible with European or public law requirements. This is particularly important with regard to European law where recent legislation has transferred liability for infraction, in some circumstances, away from the Government and onto regulators. As a small regulator we have been held back in our evolution because of the difficulty in securing Department of Health resources or Parliamentary time for rule and legislative changes. The Law Commission's approach would allow us to 'catch up' and to innovate.

Question 2-4: Would the perceived status of legal rules be less clear or certain without Parliamentary approval? Should the CHRE be given an active role in scrutinising new rules, or should a limited number of the rules be subject to Secretary of State approval and contained in a statutory instrument?	We are unaware of any evidence that patients and registrants are clear on the legal status of, or Parliamentary involvement in, rules operated by regulators, so this matter of perception may be very minor. However, two things are important to support the authority of rules: clarity that they are derived from powers given to the regulators under statute; and clarity that changing rules is only done when there is a demonstrable need to do so and following rigorous scrutiny. CHRE has no greater expertise in this area than the regulators and, in the case of larger regulators, arguably less. However, CHRE might have a useful role in setting a standard for the development of new rules to underpin quality and transparency. We see no reason why a limited number of rules should not require the Secretary of State's approval but the criteria for which rules would need to be clear and also, as at present, the regime should be one where the approval process is about granting authority rather than exercising a veto.
Provisional Proposal 2-5: The power of the regulators to issue standing orders should be abolished.	Support.
Provisional Proposal 2-6: The regulators should have the ability to implement their statutory powers by making rules, instead of a mixture of rules and regulations.	Support.
Provisional Proposal 2-7: The statute should require the regulators to consult whenever issuing or varying anything which is binding, anything which sets a benchmark or standard, and a competency. The regulators should be required to consult such persons it considers appropriate, including: (1) members of the public, patients and service users; (2) registrants (including business registrants); (3) employers of registrants; (4) the other health and social care professional regulators, the CHRE, the health and social care inspectorates, the independent safeguarding authorities and any other regulatory bodies; (5) the Department of Health, Northern Ireland Executive,	We support this proposal but suggest the addition of those involved in the education and training of registrants as an additional category. We also assume that these consultation requirements would extend to the development of statutory rules.

Scottish Government and Welsh Government; (5) professional bodies that represent registrants; (6) persons or bodies commissioning or funding the services provided by registrants or at a registered premises/business.	
Provisional Proposal 2-8: The formal role of the Privy Council in relation to health and social care professional regulation should be removed entirely.	Support.
Provisional Proposal 2-9: The House of Commons Health Committee should consider holding annual accountability hearings with the regulators which should be coordinated with the CHRE's performance reviews. The Scottish Parliament, National Assembly for Wales and Northern Ireland Assembly should also consider instituting similar forms of accountability.	We support the objective behind this proposal and would welcome additional scrutiny of our work by the Parliaments and Assemblies.
Provisional Proposal 2-10: The Secretary of State should be given formal powers to make decisions on matters that require a political policy decision to be made, including matters where there is a sufficient public interest and matters that give rise to questions about the allocation of public resources.	We support this proposal in principle but believe it needs further elaboration. The examples given in the text of new professions being regulated, new protected titles or sanctions introduced appear entirely legitimate but the notion of this extending to all areas 'that give rise to questions about the allocation of resources' is concerning. Part of the raison d'être of independent regulation is to separate it from the dominant supplier of healthcare (i.e. the Government) and this proposal could undermine that principle if regulation simply becomes part of the health service funding/policy mix.
Provisional Proposal 2-11: The statute should place a duty on each regulator to provide information to the public and registrants about its work.	Support.
Provisional Proposal 2-12: Each regulator and the CHRE should be required to lay copies of their annual reports, statistical reports, strategic plans and accounts before Parliament and also in all cases the Scottish Parliament, the National Assembly for Wales and the Northern Ireland Assembly.	Support.
Provisional Proposal 2-13: The statute should not require the regulators to send a copy of their accounts to the Comptroller and Auditor General or to the Auditor General for Scotland.	Support.
Provisional Proposal 2-14: The order making power in section 60 of the Health Act 1999 should be repealed and instead the	We support this proposal but would like to see the requirement for affirmative resolution retained for the Government's

Government should be given regulation-making powers on certain issues.	regulation-making powers that take their place.
Provisional Proposal 2-15: The Government should be given a regulation-making power to abolish or merge any existing regulator, or to establish a new regulatory body. This power would also enable the Government to add new professional groups to, or remove professional groups from, statutory regulation.	We support this proposal on condition that the safeguards contained in paragraph 2.98 of the document are incorporated in the statute. This suggests that the power in this area should be in a separate clause of the Bill to the powers in Provisional Proposal 2-14 or elsewhere.
Question 2-16: Should the CHRE be given a power to recommend a profession for statutory regulation, or the removal of a profession from statutory regulation? If the Government decided not to comply, it would be required to issue a report setting out its reasons.	We agree that it is inappropriate for the HPC to have this power within the legislation but question the need for an express power to be given to the CHRE. Given the CHRE is to become an independent authority in its own right, it would be at liberty to make such recommendations to the Government in any case. We agree that the Government should be required to issue a report explaining reasons for complying or not complying with any such recommendation.
Provisional Proposal 2-17: The Government should be given powers to issue a direction in circumstances where a regulator has failed to perform any of its functions, and if the regulator fails to comply with the direction, the Government may itself give effect to the direction (see also provisional proposal 13-2).	We support this proposal but suggest that it might be a sensible safeguard to include a duty for the Government to take the advice of the CHRE before making such a direction.
Provisional Proposal 2-18: The Government should be given powers to take over a regulator which is failing to carry out its functions.	We support this proposal but suggest that it might be a sensible safeguard to include a duty for the Government to take the advice of the CHRE on how best to maintain the necessary public protection.
Provisional Proposal 2-19: The Government should not have express powers in the statute to initiate a public inquiry. This would continue to be provided for under other existing Government powers.	Support.
Provisional Proposal 2-20: If the Scotland Bill 2010 does not become law, any use of the proposed regulation-making power set out in provisional proposal 2-13 in respect of a profession for which the Scottish Parliament has legislative competence, must be consulted on by Scottish Ministers and laid before the Scottish Parliament as well as the UK Parliament.	No view.
Question 2-21: Should the Pharmacy (Northern Ireland) Order	No view.

1976 be reconstituted and retained as a separate part of the new statute?	
Question 2-22: Should the proposed regulation-making power set out in provisional proposal 2-15 include a general provision to incorporate the Pharmaceutical Society of Northern Ireland into the main legal framework of the new statute (following approval by the Northern Ireland Assembly)?	No view.
Question 2-23: Which, if any, of the specific proposals which follow in this consultation paper should be applied to the Pharmaceutical Society of Northern Ireland?	No view.
Question 2-24: How should the new legal framework deal with cases left over from the previous legal regimes? What practical difficulties are likely to arise from the repeal of existing legislation and rules?	The GOsC has no direct experience of transitions between old and new rules and we would look to seek advice from other regulators that have managed such transitions in the past. There will need to be a considerable period of transition between Royal Assent and the switching on of new powers. Regulators will need time to: • Draft new rules and associated consultation documents, • Seek approval from their Council; • Consult; • Analyse consultations, redraft rules and undertake legal scrutiny; • Seek final approval from their Council and make rules; • Adapt IT and other administrative systems; • Train staff and panellists (where appropriate). As well as taking a considerable period of time there are likely to be a number of capacity issues, including: • 'Consultation fatigue' particularly among the patient representative community who are likely to be requested to respond to a high number of consultations in a short period of time; • Staff of regulators seeking to implement major changes as well as carrying out their ongoing duties; • External legal support, as there is a limited pool of expertise in this area.

PART 3: MAIN DUTY AND GENERAL FUNCTIONS OF THE REGULATORS

Question 3-1: Should the statute specify the paramount duty of the regulators and the CHRE is to: (1) protect, promote and maintain the health, safety and wellbeing of the public by ensuring proper standards for safe and effective practice; or (2) protect, promote and maintain the health, safety and well-being of the public and maintain confidence in the profession, by ensuring proper standards for safe and effective practice?	We support the inclusion of 'maintain confidence in the profession' within the paramount duty. While it is the case that maintenance of confidence is primarily the responsibility of individual regulated professionals and their representative bodies, we believe that regulators should share this duty with them. This is particularly important because regulation covers standards of professionalism that go beyond 'safe and effective practice' into wide areas of conduct and practice. There are many areas – cited in all the regulators' standards – concerned with registrants' fitness to practise, which, while having no direct bearing on patient safety, have a huge influence on patient confidence. We have addressed this point further in our response to Question 11-1 relating to regulation in a commercial context. It is also important not to focus simply on how the duty relates to fitness to practise complaints, investigation and adjudication. There remain considerable developmental needs within some of the more recently regulated professions to ensure that practice is of a uniformly high standard and that there is confidence in these professions not just from the public but also other professions and the commissioners of healthcare. However, we do think it might be helpful to look more carefully at the wording because, as we have said above, confidence is not just a consequence of safe and effective practice but of a wider set of professional behaviours.
Provisional Proposal 3-2: The statute should not include a statement setting out the general or principal function(s) of the regulators.	We support this proposal as long as the statute makes clear that the way in which the paramount duty is met is through the powers set out in the statute and there is no perceived disconnect.
Question 3-3: Should the statute include guiding principles which would apply to all decisions made by the regulators, and if so what should they be?	Including guiding principles in the statute might be helpful for the regulators, their registrants and the public. Guiding principles might include reference to:

	• The established principles of better regulation: proportionality; accountability; consistency; transparency and targeting; • The public/patient interest; • The differing circumstances of individual professions or classes of registrants. Within the context of a single Act the latter point is key to why individual regulators work in different ways in relation to their particular registrants or professions.
Question 3-4: Should the statute include a general power for the regulators to do anything which facilitates the proper discharge of their functions?	Without an express general power it is difficult to see how regulators can adapt how they operate to the individual circumstances of the professions that they regulate. All regulators carry out activities for which they have no specific powers in statute but which are a justifiable part of effective regulation (indeed some are required of them by the CHRE as part of their regulatory standards). A general power of this nature facilitates the work of the regulators, but also requires them to justify what they do as facilitating 'the proper discharge of their functions'. Therefore it is important for such a power to be clearly stated.

PART 4: GOVERNANCE

Question 4-1: Should the statute: (1) reform the existing structure to encourage Councils to become more board-like; *and/or* (2) reform the existing structure by establishing a statutory executive board consisting of the chief executive and senior directors; *and/or* (3) establish a unitary board structure which would move away from a two-tier approach based on a Council and officials?	The GOsC is undertaking a review of its governance structure in light of the requirements of *Enabling Excellence*. At this point we are not yet able to give a firm view on which of the three proposed models would be most suitable for our organisation. However we think that the statute should not be prescriptive in this area and should allow regulators to choose from one of these options, or make other arrangements if these can be identified. Each regulator will have management and governance requirements that are unique to it, based on size of the register, financial turnover and number/types of professions regulated.
Provisional Proposal 4-2: The statute should establish each Council as a body corporate. The regulators should continue to be able to apply to become registered with the Charity Commission if they wish to do so.	Support.

Provisional Proposal 4-3: The statute should require that each Council must be constituted by rules issued by the regulators.	Support.
Provisional Proposal 4-4: Each regulator should be required to issue rules on the appointment of Council members and chairs, terms of office, duration of membership, grounds for disqualification, quorum for meetings, circumstances in which members (including chairs) cease to hold office, are removed or are suspended, education and training of Council members, and attendance requirements of Council members.	We support this proposal but there may be some additional areas that need to be considered. First, it may be helpful to include a requirement for the rules to address interests/conflicts of interest. Second, the issue of national/regional representation should be addressed. Some regulators (such as the GOsC) have a requirement for at least one member of Council from Northern Ireland, Scotland and Wales. For a regulator the size of the GOsC this is difficult to justify but for a larger regulator may be an important component in effective regulation, particularly where national health services may differ considerably. It should also be noted that these requirements were introduced at a point when the Council consisted of 24 members, whereas it is suggested by the CHRE and the Department of Health (England) that it is appropriate to operate with as few as eight members.
Question 4-5: Is an additional form of oversight required over the appointment of the General Council members? For example, should the Government have powers to remove members in certain circumstances?	The CHRE's standards for appointments appear to be an appropriate way to manage the appointment process but it is important that the process – particularly for appointing chairs – does not become self-perpetuating and closed to change. The power to remove members appears to be available to the Government in Provisional Proposal 2-17 if the regulator fails in its duties by not adhering to CHRE standards. One aspect of the appointment process that needs to be considered further is the mechanism that would be used to appoint a new Council in the event that the Government removed all its members.
Question 4-6: Should: (1) the statute specify a ceiling for the size of the Councils of and the proportion of lay/registrant members; *or* (2) the Government be required to specify in regulations the size of Councils and the proportion of lay/registrant members; *or*	As indicated in our response to Question 4-1 we are undertaking a governance review at present and therefore it is difficult to answer this question although we support a continued requirement for there to be parity of numbers between lay and

(3) the regulators be given general powers to set the size and composition of their Councils and the Government be given default powers to intervene if this is necessary in the public interest?	registrant members. In general terms, it would seem that Option 3 would be the option that was least resource intensive for the Government. Government would retain the power to intervene should circumstances require it. The differences between the size and turnover in organisations would probably suggest that the best option is for the regulators to be given general powers. This then allows, for example, for mandatory representation from the four countries to be retained for large professions working in the NHS in all four countries but for different, proportionate arrangements to be in place for other regulators. However, it is important that there is a not a contradiction between the options considered in Question 4-1 and the options in this question. For example, how might the size/balance issue be resolved within a mixed executive/non-executive board? If the conclusion to Question 4-1 is that there should be maximum flexibility then, logically, option 3 in Question 4-6 must follow. The Osteopaths Act requires that there should be one member of Council who lives or works in each of England, Northern Ireland, Scotland and Wales. Such a requirement would be inappropriate in the context of a small board.
Provisional Proposal 4-7: The statute should define a lay member of the Council as any person who is not and has not been entered in the register of that particular regulatory body, and a registrant member as any person who is entered in the register of that particular regulatory body.	We support this proposal. We would question the suggestion in the report that the pool of lay members is potentially too narrow. Given the size of the potential population of lay members, this would suggest an overly narrow view of what is required to become a Council member. We also support the definition of lay incorporating other health professionals as for a small, developing profession their input – particularly in areas such as education and training – can be

	extremely valuable.
Question 4-8: Should Council members be prohibited from concurrent membership of another Council?	There should be no absolute prohibition on members sitting on more than one Council but it is important that regulators are clear why it is in their interests to appoint such members, rather than expand the pool of external expertise supporting the regulators. While it is helpful for any regulator to be able to draw on expertise and experience from other regulators it is not clear that using Council members to do so is the most appropriate method. There is also a danger that the regulators' Councils (and fitness to practise panels) become comprised of an overly-narrow group of individuals who circulate from one body to another. It is important that regulators draw the net widely in seeking non-executives and that the selection processes do not overly favour those with pre-existing knowledge and experience of healthcare professional regulation.
Provisional Proposal 4-9: The regulators should be given broad rule-making powers to determine their own governance arrangements, including the ability to establish committees if they wish to do so.	Support.
Provisional Proposal 4-10: The regulators should be able to make rules for committees or any other internal groups it establishes, including their size and membership.	Support.
Provisional Proposal 4-11: Each Council should be given powers to delegate any of its functions to any Council member, officer or internal body. Any delegations must be recorded in publicly available scheme of delegation. There should continue to be a prohibition on delegating any power to make rules.	While we support this proposal in general there are potential difficulties in delegating functions to any officer that perhaps need more consideration. This proposal goes to the heart of the more fundamental question of who is responsible for exercising the powers and duties of the regulator. The de facto position in most regulators is that the Council delegates the work of the organisation (confusingly also called the Council) to the Chief Executive who is then accountable to the Council (i.e. the lay/registrant members) for delivering that work. In turn the Chief Executive then delegates that work to

	others under normal managerial arrangements. If the Council has the ability to delegate its functions to individuals outside of the line management structure, except in very limited circumstances, there is considerable potential for both conflict and loss of effective accountability. Exceptional circumstances might be in relation to matters directly related to the Chief Executive such as appointment, remuneration or disciplinary action. We have made a further suggestion in relation to this matter in response to Provisional Proposal 5-2 below.

PART 5: REGISTERS

Provisional Proposal 5-1: The statute should set out a core duty on all the regulators to establish and maintain a professional register.	Support.
Provisional Proposal 5-2: The regulators should have the ability but not a duty to appoint a Registrar.	We support the proposal that it should be a matter for the regulators to determine whether to appoint a Registrar with specific responsibilities around the register. However, we believe that it is important that the statute recognises the notion of an accountable officer within each regulator as is the case, for example, with local authorities, civil service departments and their executive agencies.
Provisional Proposal 5-3: The statute should specify which registers must be established by the regulators, including any different parts and specialist lists. The Government would be given a regulation-making power to add, remove or alter the parts of the register and specialist lists.	This proposal seems to be overly prescriptive. While we acknowledge that some specialist registers – such as the GMC's GP register – are defined in other legislation, it is not obvious why this should prevent another regulator from creating a new specialist register, particularly in those professions where scope of practice is still evolving. Rather than give this regulation-making power to the Government, it would be more appropriate to include it in the list of areas under Provisional Proposal 2-14. While we recognise the findings in the 2009 CHRE Report on Advanced Practice, we do not believe the CHRE report

	recognises the point outlined in the consultation paper that 'For members of the public seeking professional support, registers can play a useful role in providing additional information to inform their choice' (paragraph 5.5). In order to deal with this point, it might be possible to annotate a register with 'additional information', should the regulator consider it appropriate, rather than necessarily giving it the status of a specialist register.
Provisional Proposal 5-4: The Government should be given a regulation-making power to introduce compulsory student registration in relation to any of the regulated professions.	Support.
Question 5-5: Should student registration be retained in the new legal framework, and/or how can the legal framework help to ensure that the principles and practices of professionalism are embedded in pre-registration training?	We see no reason why student registration shouldn't be maintained in the legal framework for those regulators who consider it an important requirement. However, we believe that in the case of osteopathy issues of professionalism are best embedded in pre-registration training through appropriate educational standards and their quality assurance.
Question 5-6: Should the regulators be given powers to introduce voluntary registers?	There appears to be no reason to unpick the new powers that have been agreed by Parliament recently in the Health and Social Care Act 2012.
Question 5-7: If the regulators are given powers to introduce voluntary registers, should the CHRE be given a formal power to recommend to the regulator in question that a group should become or cease to be voluntarily registered? If the regulator decided not to comply, it would be required to issue a report setting out its reasons.	This question appears to be the wrong way round. If the powers sit with the regulator to establish a voluntary register, then it would be more appropriate for there to be a duty on the regulator to consult CHRE on the establishment of a voluntary register. Also, as the CHRE will accredit voluntary registers, it appears that by having power to withdraw accreditation it would not need an additional power to recommend that a profession should cease to be voluntarily registered.
Question 5-8: Should non-practising registers be retained or abolished?	The GOsC does not hold a separate register for those who are non-practising but there is a category of non-practising status on the register (at a lower fee) which we would wish to maintain, along with the ability to make rules to test competence before restoration to the 'practising register. We would also seek a power within rules to be able to precisely define non-practising status as the current definition is not precise.

	The majority of our registrants who become non-practising do so for a short period of time, typically for up to two years, and they do so for reasons of maternity/paternity, ill-health and career breaks for further training or other purposes. While they are non-practising they are required to maintain in good standing with the GOsC including continuing their CPD activities.
Provisional Proposal 5-9: The regulators will be required to register applicants on a full, conditional or temporary basis. In addition, the regulators will be given powers to introduce provisional registration if they wish to do so.	We believe that the categories of registration may require some further thought. The Osteopaths Act contains provisions for full, conditional, provisional and temporary registration. The conditional and provisional registration categories currently are dormant. There may be circumstances in future under which we would wish to use provisional registration and would welcome the retention of such powers. We do not support the notion of conditional registration as we believe that it is important for transparency and public protection that all registrants are fit to practise at the point of registration. All our registrants are required to act within the limits of their own competence and if they fail to do so this should tested through the fitness to practise process. Conditions of practice should be a matter to be determined by a fitness to practise panel rather than as a function of the registration process. The GOsC also has a category of full and non-practising registrants who are based outside of the United Kingdom (this includes Channel Islands and Isle of Man registrants – see response to Questions 13-4 and 13-5). The GOsC continues to be a pioneer of osteopathic regulation (only six countries in Europe and a handful elsewhere have statutory regulation) and many overseas registrants use GOsC registration as a badge of quality in their own countries. While this is not directly related to patient protection in the UK, many of these registrants are

	involved in driving up standards in their own countries which in turn supports high standards among overseas osteopaths, some of whom seek to work in the UK. It also brings benefits to patients who may move across borders, particularly within Europe.
Provisional Proposal 5-10: The statute will provide that if the Secretary of State advises that an emergency has occurred, a regulator can make certain temporary changes to the register.	Support.
Provisional Proposal 5-11: The statute should specify that in order to be registered on a full or temporary basis the applicant must be appropriately qualified, be fit to practise, have adequate insurance or indemnity arrangements (except for social workers), and have paid a prescribed fee. The regulators should have broad rule-making powers to specify the precise detail under each of these requirements.	Support.
Provisional Proposal 5-12: The regulators should be given powers to establish separate criteria for the renewal of registration and for registrants proceeding from provisional to full registration.	Support.
Question 5-13: Should the statute provide that in order to be registered an applicant must demonstrate that they are a "fit and proper person" to exercise the responsibilities of their profession.	It is not clear as to the purpose of an additional test of whether an individual is a 'fit and proper person' as this would appear to be covered by the requirement in Provisional Proposal 5-11 that a registrant must be fit to practise. If a regulator has a code or standards that inform decisions on fitness to practise an additional set of 'fit and proper person' rules may result in a double jeopardy situation.
Question 5-14: Should the legislation state that applicants are entitled to be registered provided that they satisfy the relevant criteria or that the regulator must register the applicant provided that they satisfy the relevant criteria? Does either formulation make any difference in practice?	This is an important issue and more than a matter of symbolism but the emphasis is perhaps on the wrong aspect of either formulation. The important point is that the regulator (or in most cases the Registrar) must be satisfied that the applicant meets the criteria at the point of first registration. In the majority of registration applications there are no concerns but what is important is that the regulator has the ability to explore and test the applicant's fitness to practise at the point of registration and may refuse an application (with subsequent appeal rights for the applicant).

	In relation to the renewal of registration, the situation is slightly different and varies between regulators. Where there is a regular renewal, as at the GOsC, then satisfying the Registrar that they continue to meet the criteria on an administrative basis should lead to an entitlement to remain on the register.
Provisional Proposal 5-15: The statute should require the regulators to communicate expeditiously with registrants and potential registrants. The regulators would be given broad rule-making powers concerning the processing of registration applications.	Support.
Provisional Proposal 5-16: The statute should require each regulator to establish an appeals process for when registration applications are refused. The regulators would have broad powers to decide the precise process it wants to introduce.	We support this proposal but suggest that in the same way as it is now deemed to be inappropriate for Council members to hear fitness to practise cases, so too is it inappropriate for them to hear registration appeals and that these processes also require a degree of independence.
Provisional Proposal 5-17: The statute should provide a right of appeal when registration applications are refused, to the High Court in England and Wales, the Court of Session in Scotland, and the High Court in Northern Ireland.	We have no experience to support the assertion by the Law Commission that the County Court has insufficient experience to deal with these matters and would defer to those regulators who have dealt with the County Court on such matters. For the applicant an appeal to the County Court is likely to be much cheaper than having to apply to the High Court. We do not have the knowledge or expertise to take a view on the appropriateness of using the Unified Tribunal Service for these appeals or those described in Provisional Proposals 5-20 and 5-22.
Provisional Proposal 5-18: The regulators should have broad powers to establish rules concerning the upkeep and publication of the register.	Support.
Provisional Proposal 5-19: The statute should require each regulator to establish process for dealing with fraudulently procured or incorrectly made entries. The regulators would have broad powers to decide the precise process it wishes to introduce.	Support.
Provisional Proposal 5-20: The statute should provide a right to appeal against registration decisions relating to fraudulently procured or incorrectly made entries, to the High Court in England and Wales, the Court of Session in Scotland, and the	Support.

High Court in Northern Ireland.	
Provisional Proposal 5-21: The statute should provide that applications for restoration in cases where a registrant's entry has been erased following fitness to practise proceedings must be referred to a Fitness to Practise Panel or similar committee.	We support this proposal but also believe that it would be helpful for any new application following removal for a fraudulently procured entry to be treated in the same way.
Provisional Proposal 5-22: The statute should provide a right to appeal against restoration decisions by a Fitness to Practise Panel to the High Court in England and Wales, the Court of Session in Scotland, and the High Court in Northern Ireland.	Support.
Question 5-23: Should the statute set a consistent time period before which applications for restoration cannot be made (in cases where a registrant's entry has been erased following fitness to practise proceedings), or should this matter be left to the regulators to determine?	We believe that public confidence would be enhanced through the application of a consistent time period before such applications can be made. We consider that the time limit for such applications to the GOsC, of just ten months, is inadequate although we have no fixed view on the appropriate length of time.
Provisional Proposal 5-24: The statute should require each regulator to establish in rules a process for considering applications for restoration in cases which are not related to fitness to practise proceedings. The regulators would be given broad discretion to determine the precise process it wishes to adopt.	We support this proposal but see response to Provisional Proposal 5-21 above.
Provisional Proposal 5-25: The regulators should have broad powers to make rules concerning the content of the registers. The only exception to this approach would be that set out in provisional proposal 5-27.	We support this proposal but it would be helpful for a minimum published data set to be agreed across the regulators to underpin public confidence in registers.
Question 5-26: Should the regulators be given broad powers to annotate their registers to indicate additional qualifications or should this power be subject to certain restrictions?	This proposal needs to be considered along with Provisional Proposal 5-3 as it may be desirable, in some circumstances, to annotate a register with details of specialist practice or extended scope of practice. An example of this in relation to osteopathy might be in relation to prescribing or injecting rights should these be acquired at some point in the future. Any such information should be restricted to those circumstances where the additional information supports public protection. In response to Provisional Proposal 5-3/2-14 we suggested that exercising powers in this area should not be restricted to the

	Government but might require the Government's consent.
Provisional Proposal 5-27: The statute should require all current fitness to practise sanctions to appear in the public register.	Support.
Provisional Proposal 5-28: The regulators should have discretion to include details of undertakings, warnings and interim orders in the public register (subject to the main duty of the regulators to protect the public by ensuring proper standards).	Support.
Question 5-29: Should the regulators be required to publish information about professionals who have been struck off, for at least 5 years after they have been struck off?	We believe that in the case of osteopathy, where a practitioner may choose to undertake similar practice using a non-protected title this could be an important public safeguard. It is important that any such requirement is set out in the statute rather than simply being seen by CHRE as a matter of best practice, as without statutory underpinning it may be open to challenge by an ex-registrant.
Question 5-30: Should the regulators be required to include in their registers details of all previous sanctions?	It is not clear to us under what circumstances it would be fair and appropriate to publish such information where the sanction is time-expired and it has been determined that a registrant is fit to practise without conditions. As is made clear in paragraph 5.114 of the report, it would be inappropriate for a register to indicate in this way that perhaps some practitioners were more fit to practise than others.
Provisional Proposal 5-31: All the existing protected titles and functions that are contained currently in the governing legislation should be specified in the new statute.	Support.
Provisional Proposal 5-32: Government should be given a regulation-making power to add to or remove any of the protected titles and functions.	Support.
Question 5-33: How appropriate are the existing protected titles and functions?	The existing protected titles appear, at present, to be appropriate although we may wish to consult on whether the list might be expanded before providing a definitive response. At present we only have a list of protected titles whereas problems leading to public confusion often arise around functions described as 'osteopathic'. It is important that protection of title laws are drafted for the

	maximum effect. The formulation in the Health Professions Order 2001 appears to be stronger than that in the Osteopaths Act 1993 as it extends into those areas where an individual doesn't use a title but 'he causes or permits another person to make any representation about himself [to the effect that he is on the HPC register].'
Provisional Proposal 5-34: The regulators will have powers to bring prosecutions and will be required to set out in a publicly available document their policy on bringing prosecutions (except in Scotland).	We support this proposal but it is important to note that the GOsC brought a private case in Scotland – *General Osteopathic Council against Richard Sobande* in the Court of Session (see: http://www.scotcourts.gov.uk/opinions/2011CSOH39.html). We have provided further details of how this was done to the Law Commission separately to this response.

PART 6: EDUCATION, CONDUCT AND PRACTICE

Question 6-1: Should our proposals go further in encouraging a more streamlined and coordinated approach to regulation in the areas of education, conduct and practice? If so, how could this be achieved?	The Law Commission has rightly identified that a multitude of organisations are involved in ensuring that there are proper standards in education, conduct and practice for healthcare professionals. However, the position is not consistent across all professions, for example in osteopathy there is no other body than the GOsC that, at present, has a remit for these issues. Given the diversity of the professions under regulation, the history of their development and the variety of institutions involved, it is not obvious that this statute would be the place to seek to introduce a more streamlined approach beyond the general duty of cooperation in Provisional Proposal 12-6. It is also important to ensure that accountability for the quality of clinical education which involves direct patient care is clear. This must remain with the regulator.
Provisional Proposal 6-2: The statute should require the regulators to make rules on: (1) which qualifications are approved qualifications for the purposes of preregistration and post-registration qualifications; (2) the approval of education institutions, courses, programmes and/or environments leading to an award of approved	We support this proposal but think it might also be helpful to include powers: • to set and enforce conditions/require action to remediate (something akin to Ofsted's 'special measures') • to charge for inspection activity – particularly as in the case of osteopathy, most osteopathic education is delivered in the

qualifications and the withdrawal of approval; (3) rights of appeals to an individual or a panel against the decision of the regulator to refuse or withdraw approval from an institution, course or programme; (4) the quality assurance, monitoring and review of institutions, courses, programmes and/or environments; and (5) the appointment of visitors and establishment of a system of inspection of all relevant education institutions.	independent sector and not in the traditional university sector. • To restrict the extent of the approval to education and training delivered in the UK should the regulator so wish. We also think that point (5) could be included as part of point (4). The additional point that is missing is the setting of standards leading to qualifications, rather than simply the approval of those qualifications (see response to Provisional Proposal 6-9)
Provisional Proposal 6-3: The statute should require the regulators to establish and maintain a published list of approved institutions and/or courses and programmes, and publish information on any decisions regarding approvals.	Support.
Provisional Proposal 6-4: The statute should require education institutions to pass on to the regulator in question information about student fitness to practise sanctions.	Support.
Question 6-5: Should the powers of the regulators extend to matters such as a national assessment of students?	We are not in favour of national assessment of students. That said, it may be helpful for the statute to allow for powers in this area so that the option is not prohibited at a later date.
Question 6-6: Should the regulators be given powers over the selection of those entering education?	We are not in favour of such an approach.
Question 6-7: Could our proposals go further in providing a framework for the approval of multi-disciplinary education and training and if so how?	We would support any moves to improve interprofessional learning for healthcare professionals. However, it is not clear that this is something that could be incorporated effectively in statute particularly for those professions where education and training is delivered independently.
Question 6-8: Is too much guidance being issued by the regulators and how useful is the guidance in practice?	The answer to this question will depend on the profession concerned. While some professionals may receive many pieces of guidance from many different sources, osteopaths receive one piece of guidance (the Osteopathic Practice Standards) from one organisation (the GOsC) and we are not aware of others providing such guidance. The usefulness of this guidance to the individual registrant may depend on the nature of their practice, their experience and a range of other factors. However, it is clear from the complaints

	that we receive that even in areas where many might consider good or effective behaviour simply to be 'common sense', such guidance remains necessary. This issue of guidance also goes to the heart of whether fitness to practise should be based on a rules-based or principles-based approach. The general move among the regulators to a more principles-based approach suggests that the status of guidance from regulators is becoming more and not less important.
Provisional Proposal 6-9: The statute should require the regulators to issue guidance for professional conduct and practice.	We support this proposal but we also issue guidance about professional competence standards and would wish to retain this as part of a new statutory framework. Standards for education and training and registration are an important aspect of setting appropriate requirements for entry to the register (see response to Provisional Proposal 6-2)
Provisional Proposal 6-10: The statute should provide for two separate types of guidance: *tier one guidance* which must be complied with unless there are good reasons for not doing so, and *tier two guidance* which must be taken into account and given due weight. The regulators would be required to state in the document whether it is tier one guidance or tier two guidance.	The approach that we take in the *Osteopathic Practice Standards* (which is a combined document incorporating the Code of Practice and the Standard of Proficiency) differentiates between standards that must be complied with and associated guidance. This appears at first reading to be similar to the two tier approach proposed. However, the reality of professional practice may be much more finely nuanced than this. In the *Osteopathic Practice Standards* we draw a distinction between 'must', 'may' or 'should' to guide and support osteopaths in their professional decision-making. This immediately suggests that more than two tiers may be required. We believe that this is an area where it would be better for the regulators to continue to evolve individual approaches and for best practice and innovation to emerge without a single prescribed approach.
Question 6-11: How should the legal framework deal with the regulators' responsibilities in relation to professional ethics?	We do not believe that ethical standards should be treated separately from standards of conduct and performance. Together they provide a framework for professional behaviours to be

	exercised and within which fitness to practise is a requirement.
Provisional Proposal 6-12: The statute will require the regulators to ensure ongoing standards of conduct and practice through continuing professional development (including the ability to make rules on revalidation).	We support this proposal but we prefer the concept of continuing fitness to practise. Regulators may use different terminology to describe this e.g. CPD, continued education and training or revalidation. But given that there is no single definition of revalidation, we would not recommend that this term is enshrined in statute.

PART 7: FITNESS TO PRACTISE: IMPAIRMENT

Question 7-1: Should the statute: (1) retain the existing two-stage approach for determining impaired fitness to practise; *or* (2) implement the recommendations of the Shipman report; *or* (3) remove the current statutory grounds which form the basis of an impairment and introduce a new test of impaired fitness to practise based on whether the registrant poses a risk to the public (and that confidence in the profession has been or will be undermined)?	We see considerable merit in the introduction of a new test of impairment that is related to the overarching purpose of regulation which is the protection of the public (and maintaining confidence). However, from the point of view of clarity for patients and registrants a defined list of grounds for impairment may be preferable. It must be the objective of regulators to promote and maintain confidence in regulation among their key stakeholders and this can be undermined by complexity or concepts that are difficult to explain to those affected.
Question 7-2: If a list of statutory grounds of impaired fitness to practise is retained, should it refer to a broader range of non-conviction disposals?	We are content with the categories as described and would support a uniform approach to categories of impairment across the regulators.
Question 7-3: How adequate are the powers of the regulators to require disclosures from the Independent Safeguarding Authority and Disclosure Scotland? What practical difficulties, if any, arise as a result of differences between the protection of vulnerable groups schemes in England, Wales, Northern Ireland and Scotland?	It is and should remain possible for regulators to bring fitness to practise proceedings against a registrant who has been barred. It would be very helpful, therefore, to have clear powers that enable a regulator to obtain and use information that has led to a barring decision by either the ISA or Disclosure Scotland. The current powers are not clearly defined and there is confusion about what can be disclosed and used. It would be helpful if the referral duties on regulators were consistent across the UK as it can be necessary to disclose to two organisations when a registrant lives/works in different countries.

PART 8: FITNESS TO PRACTISE: INVESTIGATION

Question 8-1: Should the new legal framework remove the concept of an allegation entirely and instead give the regulators broad powers to deal with all information and complaints in such manner as they consider just (subject to a requirement that cases where there are reasonable prospects of proving impairment must be referred for fitness to practise proceedings)?	We support this approach as it makes the status of a 'Registrar's complaint' much clearer where there is no complainant/patient involved. An important safeguard here is the use of independent case examiners or an investigating committee to determine whether the investigation should proceed.
Provisional Proposal 8-2: The statute should provide that all the regulators will be able to consider any information which comes to their attention as an allegation and not just formal complaints.	Support.
Provisional Proposal 8-3: The statute should contain a clear statement that there is no set format for allegations.	Support.
Question 8-4: Should the statute prohibit the regulators from setting a time limit for bringing an allegation against a registrant or should there be a consistent time limit for allegations across the regulators (and if so, what should it be)?	If there is to be a set time limit (and the one most usually suggested appears to be five years) there should also be scope for a test of exceptionality in the event that there are valid reasons why a complaint was not brought within the required timeframe.
Provisional Proposal 8-5: All the regulators should have the power to establish a formal process for the initial consideration of allegations (such as screeners).	Support.
Provisional Proposal 8-6: The regulators should have the power to prohibit certain people from undertaking the initial consideration of allegations and specify that only certain people can undertake this task.	Support.
Provisional Proposal 8-7: The regulators should have powers to establish referral criteria for an investigation and specify cases which must be referred directly to a Fitness to Practise Panel.	Support.
Question 8-8: Should the statute impose more consistency in relation to the criteria used by regulators to refer cases for an investigation or the cases that must be referred directly to a Fitness to Practise Panel?	We would support consistency in relation to the types of cases, e.g. convictions for serious criminal offences, which should go direct to an ftp panel.
Provisional Proposal 8-9: The statute should enable but not require the regulators to establish an Investigation Committee.	Support.
Provisional Proposal 8-10: The regulators should be given	Support.

broad rule and regulation-making powers concerning how and by whom an investigation is carried out.	
Provisional Proposal 8-11: The statute should give all the regulators a general power to require the disclosure of information where the fitness to practise of a registrant is in question.	Support.
Question 8-12: Are the existing formulations of the power to require disclosure of information useful and clear in practice?	Generally, yes.
Provisional Proposal 8-13: The power to require information should be extended to include the registrant in question.	Support.
Question 8-14: Should any enforcement powers be attached to the power to require information?	We would support the introduction of enforcement powers but have no particular view of what form these should take.
Provisional Proposal 8-15: The statute should provide that the test for all referrals to a Fitness to Practise Panel across the regulators is the real prospect test.	Support.
Provisional Proposal 8-16: The regulators should have powers to issue or agree the following at the investigation stage: (1) warnings; (2) undertakings; (3) voluntary erasure; and (4) advice to any person with an interest in the case. The regulators would be given broad powers to make rules governing the use of such powers. This would include rules governing who or which body can issue them and the circumstances in which the powers can be agreed or imposed.	Support.
Question 8-17: Should the statute require that any decision to use any power listed in provisional proposal 8-16 at the investigation stage must be made or approved by a formal committee or Fitness to Practise Panel? Alternatively, should the powers of the CHRE to refer decisions of Fitness to Practise Panels to the High Court be extended to cover consensual disposals?	Introducing a requirement for the involvement of a fitness to practice panel in consensual disposal would negate some of the purpose of consensual disposal, i.e. to shorten, simplify and make cheaper the fitness to practise process. Rather than giving power to the CHRE to refer such cases to the High Court would it not be more appropriate to include any 'undue lenience' concerns around consensual disposals within the rights to initiate a review? It should also be noted that CHRE undertakes regular audits of cases closed at the investigation stage and we assume that this would include consensual disposal cases.

Provisional Proposal 8-18: The Government should be given a regulation-making power to add new powers to those listed in provisional proposal 8-16, and to remove any powers.	Support.
Question 8-19: Does the language used in the proposed list of powers contained in provisional proposal 8-16 convey accurately their purpose?	We are content with the categories as described.
Question 8-20: Is the use of mediation appropriate in the context of fitness to practise procedures?	In the context of determining an individual's fitness to practise, mediation should be restricted to the investigation stage to clearly determine the nature of the allegations rather than for there to be a mediated outcome to a panel decision on impairment.
Provisional Proposal 8-21: All regulators should be given rule and regulation-making powers to introduce a system of mediation if they wish to do so.	Support (n.b. Provisional Proposal 2-6 suggests the abolition of a separate category of 'regulations')
Provisional Proposal 8-22: The statute should provide for a right to initiate a review of an investigation decision in relation to decisions: (1) not to refer a case for an investigation following initial consideration; (2) not to refer the case to a Fitness to Practise Panel; (3) to issue a warning; or (4) to cease consideration of a case where undertakings are agreed.	Support.
Provisional Proposal 8-23: Anyone who has an interest in the decision should be able to initiate a review of an investigation decision, including but not limited to the Registrar, registrant, complainant and the CHRE.	We support this proposal subject to safeguards to prevent vexatious requests from complainants (which may be addressed by Provisional Proposal 8-24), and unmeritorious attempts by registrants to stall the progress to the PCC of cases against them.
Provisional Proposal 8-24: The grounds for a review of an investigation decision should be that new evidence has come to light which makes review necessary for the protection of the public or the regulator has erred in its administrative handling of the case and a review is necessary in the public interest.	We support this proposal but think that it may be appropriate to consider the grounds for review alongside Question 8-17 above.
Provisional Proposal 8-25: The statute should give the regulators broad rule and regulation-making powers on all aspects of the process for the review of an investigation decision, except those matters specified in provisional proposals 8-22, 8-23 and 8-24.	Support.

PART 9: FITNESS TO PRACTISE: ADJUDICATION

Question 9-1: Should the statute require the regulators to ensure that they establish a structure which is compliant with Article 6 of the European Convention on Human Rights without taking into account the role of the higher courts?	Including this requirement in the statute would be acceptable as long as regulators do not find themselves in a position whereby the statute required higher standards than required under case law given that the higher courts would still have a role.
Question 9-2: Should the new legal framework ensure the separation of investigation and adjudication, and if so how?	There does not appear to be any legal reason why further separation is required, nevertheless we agree that further separation will enhance confidence in the decisions of the adjudicator. However, there should be flexibility for the regulators to determine how this separation is achieved in practice.
Question 9-3: Should the statute allow for the option of the regulators' adjudication systems joining the Unified Tribunals Service?	We see no reason why the statute should not allow this option, but we would need to be convinced that using the Unified Tribunals Service would be a cost-effective alternative to current arrangements.
Provisional Proposal 9-4: The statute should give all the regulators a broad power to establish rules for case management.	Support.
Provisional Proposal 9-5: The statute should provide that the overriding objective of the Civil Procedure Rules – that cases must be dealt with justly – is made part of the regulators' fitness to practise procedures.	Support.
Provisional Proposal 9-6: The statute should require each regulator to establish Fitness to Practise Panels of at least three members for the purpose of adjudication.	Support.
Provisional Proposal 9-7: The statute should: (1) require the regulators to establish a body which is responsible for all aspects of the Fitness to Practise Panel appointment process and which is separate from the Council; *and* (2) prohibit Council members and investigators from membership of Fitness to Practise Panels; *and* (3) require that each Fitness to Practise Panel must have a lay member.	We support this proposal but think that there needs to be greater flexibility in the way it is applied, for example for a small regulator it may be appropriate to appoint an individual to carry out this process or to be able to commission the work from another organisation. Therefore it would be preferable for the statute to require a regulator to 'make arrangements' for an independent process rather than a specific duty to 'establish a body'.
Provisional Proposal 9-8: Other than on those matters specified in provisional proposals 9-6 and 9-7, the regulators should have broad powers to make rules on the constitution of their Fitness to	Support.

Practise Panels.	
Provisional Proposal 9-9: All regulators should be given broad rule-making powers on most procedural aspects of fitness to practise hearings.	Support.
Question 9-10: Should the statute require that fitness to practise hearings must take place in the UK country in which the registrant is situated or resides?	We do not believe this would not be a proportionate or cost-effective requirement on a small regulator.
Provisional Proposal 9-11: The statute should apply the civil rules of evidence to fitness to practise hearings. The relevant rules should be those that apply in the part of the UK in which a hearing takes place.	Support.
Provisional Proposal 9-12: Fitness to Practise Panels should be able to admit evidence which would not be admissible in court proceedings if the admission of such evidence is fair and relevant to the case.	Support.
Provisional Proposal 9-13: The statute should require the civil standard of proof in fitness to practise hearings.	Support.
Provisional Proposal 9-14: The statute should require that all fitness to practise hearings must be held in public unless one or more of the exceptions in the Civil Procedure Rules apply.	Support.
Provisional Proposal 9-15: The statute should provide that a witness is eligible for assistance if under 17 at the time of the hearing if the Panel considers that the quality of evidence given by the witness is likely to be diminished as a result of mental disorder, significant impairment of intelligence and social functioning, physical disability or physical disorder. In addition, a witness is should be eligible for assistance if the Panel is satisfied that the quality of the evidence given by the witness is likely to be diminished by reason of fear or distress in connection with testifying in the proceedings.	Support.
Question 9-16: Should the statute provide for special measures that can be directed by the Panel in relation to witnesses eligible for assistance, such as screening witnesses from the accused, evidence by live link, evidence in private, video recoded evidence, video cross examination, examination through intermediary, and aids to communication?	While we support Provisional Proposal 9-15 around eligibility for assistance where appropriate, the actual measures appear to us to be matters of good practice which may be best dealt with in guidance rather than needing to appear in statute.

Provisional Proposal 9-17: The statute should require the regulators to establish a system for imposing and reviewing Interim Orders.	Support.
Provisional Proposal 9-18: The statute should require each regulator to establish panels of at least three members for interim order hearings (including a lay member). In addition, Interim Order panels must be appointed by a body which is separate to the Council and there would be a prohibition of Council members and investigators from sitting on such Panels.	Support.
Question 9-19: Should the statute prohibit Interim Order Panellists sitting on a Fitness to Practise Panel (either in relation to the same case or more generally)?	For a small regulator, with only a small number of interim order hearings in any one year, maintaining a separate pool of panellists would not be economic or practical. We would prefer to maintain a single pool of panellists and to call upon them as required. However, we would support a requirement that interim order panellists and fitness to practise panellists should not sit on the same case. The need to manage conflicts of interest between registrant panellists and parties to a complaint is also more difficult within a small profession and supports the need for a single larger pool of panellists rather than separate pools.
Provisional Proposal 9-20: The test for imposing an Interim Order should be that it is necessary to protect, promote and maintain the health, safety and wellbeing of the public (and maintain confidence in the profession).	We support this proposal but the types of issues that require an interim order are such that they are solely about public protection rather than maintaining confidence.
Provisional Proposal 9-21: On all procedural matters in relation to Interim Order hearings (except for those specified in provisional proposal 9-18) the regulators should have broad rule-making powers.	Support.
Question 9-22: Should the statute guarantee the right of registrants to give evidence at Interim Order hearings?	Our current procedures allow for registrants to give evidence at Interim Order hearings and we would support this continuing.
Provisional Proposal 9-23: The right of appeal against an Interim Order should continue to be to the High Court in England and Wales, the Court of Session in Scotland and the High Court in Northern Ireland.	Support.
Provisional Proposal 9-24: All Fitness to Practise Panels should	Support.

have powers to impose the following: (1) erasure from the register; (2) suspension; (3) conditions; and (4) warnings.	
Provisional proposal 9-25: The Government should be given a regulation-making power to introduce systems of financial penalties and cost awards.	We do not support the introduction of financial penalties and cost awards which could provide an additional burden that resulted in more problems than it solved. With regard to wasted costs we note that often problems occur because of delays on behalf of registrants' legal representatives rather than the registrants themselves. However, this appears to be a matter that would fall within Provisional Proposal 2-10 and the exercise of powers under Provisional 2-14 and it is not clear that a separate regulation-making power is necessary.
Provisional Proposal 9-26: All Fitness to Practise Panels should have powers to agree undertakings and voluntary erasure.	Support.
Provisional Proposal 9-27: The regulators should have powers to introduce immediate orders (or use Interim Orders for this purpose).	Support.
Provisional Proposal 9-28: The test for imposing any of the sanctions listed in provisional proposal 9-24 and consensual disposals in 9-26 should be to protect, promote and maintain the health, safety and well-being of the public (and maintain confidence in the profession).	Support.
Provisional Proposal 9-29: The regulators should be given broad powers to make rules in relation to the sanctions listed in provisional proposal 9-24 and consensual disposals in provisional proposal 9-26.	Support.
Provisional Proposal 9-30: The Government should be given a regulation-making power to add new sanctions and consensual disposals to those listed in provisional proposals 9-24 and 9-26, and to remove any sanctions and consensual disposals.	Support.
Question 9-31: Does the language used in the proposed list of sanctions and consensual disposals contained in provisional proposals 9-24 and 9-26 convey accurately their purpose?	We are content with the categories as described.
Provisional Proposal 9-32: The statute should require all the regulators to establish a system of review hearings for conditions	Support.

of practise and suspension orders. In addition, the regulators should have powers but would not be required to establish review hearings for warnings and undertakings.	
Provisional Proposal 9-33: The regulators should have broad rule-making powers to establish the procedures for review hearings.	Support.
Question 9-34: Should the regulators be given an express power to quash or review the decision of a Fitness to Practise Panel where the regulator and the relevant parties agree that the decision was unlawful? If so, should complainants and other interested parties be able to prevent or contribute to any decision to use this power?	We support the introduction of such a power but believe it would require the consent of the regulator, registrant and complainant to be exercised. While it might be appropriate for the panel to seek the use of these powers it would not be appropriate for the panel to be able to prevent their use.
Provisional Proposal 9-35: All professionals should continue to have a right of appeal against the decision of a Fitness to Practise Panel to the High Court in England and Wales, the Court of Session in Scotland and the High Court in Northern Ireland.	Support.

PART 10: THE COUNCIL FOR HEALTHCARE REGULATORY EXCELLENCE

Question 10-1: How effective is the CHRE in performing the role of scrutinizing and overseeing the work of the regulators?	We believe that the way in which the current legislation regarding the CHRE is formulated (and perhaps interpreted) based on an 'annual report' is not conducive to best practice in the scrutiny of the regulators. The current Performance Review means that every regulator is scrutinised in the same way in every year. We believe it would be more useful to take a risk-based approach to individual regulators and a more targeted or thematic approach to key areas of performance.
Provisional Proposal 10-2: The current powers and roles of the CHRE (including those introduced by the Health and Social Care Bill 2011) should be maintained in as far as possible.	Support.
Provisional Proposal 10-3: Appointments to the CHRE's General Council should be made by the Government and by the devolved administrations. Appointments would be made in accordance with the standards for appointments to the health and social care regulators made by the CHRE.	Support.
Provisional Proposal 10-4: The CHRE's general functions	Support.

should be retained, but modernised and reworded where appropriate.	
Question 10-5: Is the CHRE's power to give directions still necessary?	As this power has not been switched on it is not clear that it is required. We believe that the power to give directions should rest with the Secretary of State as set out in Provisional Proposal 2-17 where we have suggested that the Secretary of State should seek the advice of the CHRE being making a direction. In any case, we envisage that in most circumstances where the Secretary of State considers giving a direction it is likely to be at the prompting of the CHRE.
Provisional Proposal 10-6: The existing power for Government to make regulations for the investigation by the CHRE into complaints made to it about the way in which a regulator has exercised its functions should be retained.	Support.
Question 10-7: Should the CHRE's power to refer cases to the High Court in England and Wales, the Court of Session in Scotland and the High Court in Northern Ireland: (1) be retained and exercised alongside a regulator's right of appeal, in cases when the regulator's adjudication procedure is considered to be sufficiently independent; *or* (2) be removed when a regulator's right of appeal is granted in such circumstances; *or* (3) be retained and rights of appeal should not be granted to regulators, although regulators should have a power to formally request the CHRE to exercise its power?	The logical extension of the further separation of adjudication from the regulators is that they should be granted rights to appeal decisions in their own right and that this right should not be limited to the CHRE. Equally we see no compelling reason why both bodies should not share appellant rights. If the preferred approach is to be option 3, then it would be sensible for there to be a requirement for the CHRE to have to justify why it chose not to exercise its right of appeal following a request from a regulator.

PART 11: BUSINESS REGULATION

Question 11-1: To what extent does regulation in a commercial context make a difference to how the regulators approach the task of professional regulation and does the law provide adequately for professional regulation in a commercial context?	There may be different aspects to what is seen to be a commercial context depending on the profession concerned. The majority of osteopaths work in private practice and rely on a steady flow of new and returning patients for their income. In addition some osteopaths may sell various items to patients to support rehabilitation or management of a condition. While this is a commercial environment it differs markedly from that of 'high street' opticians or pharmacists.

	The commercial context of both 'sales' and 'promotion' is reflected in the *Osteopathic Practice Standards*. While not a major part of our fitness to practice work, it is nevertheless important. Over the past few years in osteopathy (albeit to a lesser extent than chiropractic) there has been intense scrutiny of advertising and promotion issues. This is a good example of an area where the duty of regulators should go beyond 'safe and effective practice' and hence a broader duty to 'maintain confidence' is required. We have not identified any specific gaps in legislation that hinder our regulatory role as it applies to commercial matters.
Provisional Proposal 11-2: The statute should retain the existing premises regulation regimes of both the General Pharmaceutical Council and the Pharmaceutical Society of Northern Ireland.	No view.
Question 11-3: Are any further reforms needed to the premises regulation regimes of the General Pharmaceutical Council and the Pharmaceutical Society of Northern Ireland?	No view.
Question 11-4: Should the statute retain the existing systems for the regulation of bodies corporate?	No view.
Question 11-5: Should the regulators have powers to finance or establish a complaints service?	The GOsC has no desire to fund or establish a separate consumer complaints service. However, it is important to recognise that it is not always clear where the boundary is between a complaint and a fitness to practise matter. In addition, the proposals in Chapter 8 change the context of regulation to introduce concepts of 'mediation' and 'disputes' that are more consumer-oriented than fitness to practise-oriented. Given that different regulators will want to approach mediation in different ways it will be appropriate to ensure that this can be financed and managed appropriately.
Provisional Proposal 11-6: The Government should be given a regulation-making power to extend to any regulator the powers given to the General Pharmaceutical Council or the General Optical Council to regulate businesses.	We support this proposal. In England, osteopathy falls outside the remit of the Care Quality Commission and, while at present we have no desire to extend our role into premises regulation, it may be that, in the context of osteopathic practices, premises

	regulation undertaken by the GOsC would be a more proportionate approach than regulation by the CQC if, at some point in the future, it is seen as desirable.

PART 12: OVERLAP ISSUES

Question 12-1: How could the legal framework establish clearer interfaces between the various regulatory systems?	It is not obvious that the legal framework is the best way to improve cooperation and interface between regulatory systems; many of the problems appear to derive from professional, organisational and individual, cultures and behaviours. While some of these problems may be a hangover from when Councils were dominated by professional interests, our sense is that cooperation is improving although there is still far more that could be done. Ultimately, this depends on effective leadership of organisations resulting in cultures where there is a clear understanding of how problems that arise with individual professionals relate to healthcare systems/institutions and vice-versa.
Question 12-2: What practical difficulties arise as a result of parallel criminal and fitness to practise proceedings?	Any FtP proceedings which we undertake involving a criminal offence are nearly always stayed until the criminal proceedings are concluded. Therefore such cases take longer than usual to conclude. It's also likely that an interim suspension order will have been imposed on the registrant, which helps to protect the public but does – especially where the registrant is self employed – result in a loss of livelihood for the duration of the suspension order and there could in theory (though it doesn't happen often) be no conviction at the end of the process.
Question 12-3: What are the practical and legal difficulties associated with joint working?	There are a wide range of difficulties associated with joint working ranging from the straightforward, for example financial years that are not coterminous, to the complex, such as the difficulties of integration of IT systems. A major disincentive appears to be that that the marginal gains in cost savings often appear to be outweighed by the upheaval involved in securing those gains.

	Another significant reason why we think that it has been difficult to secure effective joint working is around governance and the focus in legislation on the role of the Council and its duties. The built in ambiguity in legislation between the Council as an organisation doing things and the Council as a board overseeing those things, combined with lack of clarity as to whom functions are delegated inhibits all concerned from relinquishing immediate control of activities. Any proposals around cooperation must be supported by the governance arrangements proposed in Part 4.
Provisional Proposal 12-4: The statute should include a permissive statement to the effect that each regulator may carry out any of its functions in partnership with another organisation.	Support.
Provisional Proposal 12-5: The statute should enable formal partnership arrangements to be entered into between any regulator and one or more other organisations (including the other professional regulators) in relation to the exercise of their statutory functions. The statute should provide that any such arrangements do not affect the liability of the regulator for the exercise of any of its statutory functions.	Support.
Provisional Proposal 12-6: The statute should impose a general duty on each regulator to make arrangements to promote cooperation with other relevant organisations or other persons, including those concerned with the: (1) employment of registrants; (2) education and training of registrants; (3) regulation of other health or social care professionals; (4) regulation of health or social care services; and (5) provision/supervision/management of health or social care services.	Support.
Question 12-7: Should the statute specify or give examples of the types of arrangements that could be made under provisional proposal 12-6?	It would be possible to list a number of ways in which regulators might be expected to cooperate but it is important that such an approach does not become exclusive and inhibit the development of new forms of cooperation. It may be preferable for the regulators to be given a duty to publish an up-to-date scheme which sets out with whom and how they cooperate.
Provisional Proposal 12-8: The statute should impose a specific	Support.

duty to cooperate, which would apply when the regulator in question is: (1) considering registration applications and renewals; (2) undertaking the approval of education and training; (3) ensuring proper standards of practice and conduct; and (4) undertaking an investigation into a registrant's fitness to practise. This duty would apply to the same list of organisations and persons contained in provisional proposal 12-6. The requested authority would be required to give due consideration to any such request made by the regulator, and if it refuses to cooperate, must give written reasons.	
Question 12-9: Are there any other circumstances in which the specific duty to cooperate contained in provisional proposal 12-8 should apply?	One area that generates significant problems is the sharing of fitness to practise findings among regulators and others. This is not specifically about the consideration of applications or undertaking of investigations. Another area where cooperation is required is in the investigation and prosecution of breaches of protected titles.

PART 13: CROSS BORDER ISSUES

Provisional Proposal 13-1: The statute should require the regulators to specify in rules which qualifications would entitle an applicant to be registered, including overseas qualifications.	Support.
Provisional Proposal 13-2: The default powers of the Government should include the ability to intervene in cases where there is likely to be or has been a failure to implement the Qualifications Directive properly.	We support this proposal but think it would be helpful for there to be clarification about how it might apply in practice. As with Provisional Proposal 2-17 we suggest that it might be a sensible safeguard to include a duty for the Government to take the advice of the CHRE before making such a direction.
Provisional Proposal 13-3: The statute should include broad powers for the regulators to register those from non-EEA countries, including powers to set requirements as to the language, practice and education requirements.	Support.
Question 13-4: Would there be benefits in the same regulatory arrangements applying in the Channel Islands and the Isle of	The GOsC has a number of registrants who live and/or work in the Channel Islands and the Isle of Man. If there are also

Man? If so, would the best way to achieve this be parallel legislation or a single statute?	unregistered practitioners in those territories there would be obvious benefits to the same regulatory arrangements applying. In the case of osteopathy, the simplest way for this to be achieved would be for the respective Channel Islands and Isle of Man jurisdictions to formally require practitioners to register with the GOsC to practise, this is probably best done through parallel legislation or even administratively. We would also welcome clarification of the regulatory arrangements as they might apply to the British Overseas Territories.
Question 13-5: How could the new legal framework address the interface between the regulatory systems in the UK and the Channel Islands and the Isle of Man?	There is no existing regulatory system for osteopathy in the Channel Islands and the Isle of Man, so interface issues do not arise.
Provisional Proposal 13-6: The regulators should be given an express power to approve and accredit overseas education institutions and courses and issue rules and guidance for the purpose of such activity.	We support this proposal. However, this must be supported by a power to charge for this activity.
Question 13-7: What are the practical difficulties which arise as a result of the requirement to quality assure UK qualifications which are awarded by institutions based overseas?	There are many practical difficulties involved including: • Language differences; • Ethical and legal differences; • Cultural contexts of healthcare delivery; • Cost of QA activities and cost recovery. However, it should be for each individual regulator to determine whether these issues can be satisfactorily resolved.
Question 13-8: How might our statute enable the regulators to manage the issues that arise from distance service provision?	Osteopathy is primarily focused on manual diagnosis and treatment and we are not aware of any distance service provision at present. In the event that any such service was established – for example a telephone advice line – we would be concerned if this emanated from a jurisdiction without regulation of osteopathy.