



Meeting of Council

Minutes of the 111th Private meeting of Council held on Thursday, 20th May 2021, hosted via Go-to-Meeting video conference

Unconfirmed

Chair: Dr Bill Gunnyeon

Present: Daniel Bailey
Sarah Botterill
Professor Deborah Bowman
Elizabeth Elander
Caroline Guy
Simeon London
Dr Denis Shaughnessy
Deborah Smith

Presenting: Fiona Browne, Director, Education, Standards and Development
Matthew Redford, Chief Executive and Registrar
Sheleen McCormack, Director of Fitness to Practise

In attendance: Marcia Scott, Council and Executive Support Officer

Item 1: Welcome and apologies

1. The Chair welcomed all to the meeting.
2. Apologies were received from Dr Joan Martin.

Item 2: Minutes

3. The minutes of the 110th meeting, 2 February 2021 were agreed as a correct record.

Item 3: Matters arising

4. Health Care Regulators Chairs' Meeting: A meeting of the Chairs of the Health Care regulators was held on 4 March 2021. Except the for the Chairs of the Health Care Professions Council (HCPC) and Social Work England (SWE), all other Chairs were present. The meeting was useful but disappointing in that it did not achieve any significant conclusions or agreement on approaches for working more collaboratively on issues of shared mutual interest. Although it was agreed that future meetings might be useful no immediate plans were made for when this might be arranged.

Item 4: Regulating healthcare professionals, protecting the public, consultation

5. The Chief Executive introduced the item concerning the Department of Health and Social Care (DHSC) consultation 'Regulating healthcare professionals, protecting the public' and the draft response by the General Osteopathic Council (GOsC) to the consultation.
6. Council's views were sought on any areas of the response developed to date which might require strengthening, additional clarity or require further consideration.
7. The following points were highlighted:
 - a. The period for the consultation is from 24 March to 16 June. The structure of the consultation proposals is as reflected in the paper's headlines and set out in four tables:
 - Governance and operating framework
 - Education and Training
 - Registration
 - Fitness to Practise
 - b. Additionally there was a question concerning reforms which impact on the General Medical Council (GMC) and the Executive was interested in Council's views on this and were asked to consider whether or not the GOsC wanted to respond to those questions or whether it would be appropriate not to respond.
 - c. Section 6 of the consultation document concerns the next steps of the reforms to professional regulation which currently has no questions but refers to the White Paper proposals to extend Section 60 powers. The proposals will allow for the removal of professions from regulation, the closing down and delegation of regulatory functions and to bring other groups into regulation.
 - d. An independent review is to take place to look at the number of regulators and propose options for the DHSC to consider. It is planned for the review to commence in June and conclude by the end of December 2021. The timetable is ambitious and there may be delays but it is important that the GOsC engage with this strand of activity constructively and positively when it does commence.
 - e. The Executive has tried to influence what the scope and deliverables will be and a number of points that have been made are reflected in the consultation document which the DHSC issued. In engaging with the process it will be important to show that the GOsC are prioritising public protection

and engaging with the independent review; talking about the principles that underpin what is considered to be good regulation; the innovative approach the GOsC has taken to good regulation; being open-minded and reflective about potential options, and engaging in work with fellow regulators within this area. A position of self-interest is not appropriate.

8. In discussion the following points were made and responded to:
- a. Members noted the CE's comments and agreed the approach should not be about self-interest but demonstrate the GOsC to be a constructive organisation, engaging and thinking collaboratively and systemically.
 - b. It was suggested that as part of the consultation response a statement based on the CE's comments should be included emphasising the way in which the GOsC wishes to engage with the consultation and that what follows matters as much as the response to the questions as, for both strategic and ethical reasons, it is the correct approach and way forward.
 - c. It was suggested that, taking into consideration the current issues relating to COVID, registrants might not recognise or acknowledge the impact that the DHSC reform agenda might have on the profession and may not consider the reforms as a priority. It was stressed that to highlight the issues to the profession the most helpful approach would be to continue good communications, disseminating clear and concise information on specific areas of the reform agenda demonstrating the implications for the profession and day-to-day practice.
 - d. It was suggested that the main impact for the profession would be the reforms that might be introduced by the White Paper and where, for example, there could be a significant impact on the 'protection of title'. This would be a concern for stakeholders, including the osteopathic education institutions (OEs), and where their input would be of importance and highlighting what is at stake to the wider profession.
 - e. It was suggested that the link to patient safety should be emphasised in all sections of the consultation document as it is central to all the work undertaken by the regulator.
 - f. It was suggested that when the consultation is submitted and is published on the GOsC website a statement should also be published setting out the context and importance of the consultation response so that registrants can be made aware of the reform agenda and the benefits for the profession in achieving a positive outcome. It was agreed that good communications would be key to ensuring the profession's awareness of the reform agenda and that as well as using the website to disseminate information other communication tools including webinars should be employed.

- g. It was confirmed that the Professional Standards team are having regular conversations with Patient groups which include issues relating to regulatory reforms as well as a number of other issues.
- h. It was explained that in relation to the reforms for Fitness to Practise that the current proposal is to reduce the categories of action to two areas which are:
 - Misconduct
 - Lack of Competence

It is considered that this is too narrow and does not, for example, mirror the powers prescribed to Social Work for England (the newest regulator where the regulations used as a template mapped by the DHSC). There are a number of other issues which require further reflection but the DHSC are listening to the concerns.

Governance and operating frameworks

- i. Unitary Boards: It was suggested that the response could be strengthened and that it might be preferable for our response to articulate and engage more in the arguments for and against unitary boards in the health professional regulatory context and to argue our conclusion from this.
- j. It was explained and noted that the constitution of Council did not equate to a unitary board as the Executive team are not Council members. The role of Executive at meetings of Council is to advise Members in the decision-making process for the GOsC.
- k. Members wondered if the move to a unitary board would have a greater impact on the HCPC or other multi-profession regulators as this could result in a lesser voice for the professions at Board level. It was asked if this could be raised as a concern for the HCPC. The Executive suggested that specific responses to questions where the outcome might have a greater impact would be addressed as a concept rather than focusing on specific regulators and professions. It was noted that the concept of unitary boards raised issues of legitimacy and if in removing the registrant voice does this introduce a disconnect between a profession and its regulator.
- l. It was agreed that Deborah Bowman and Elizabeth Elander would work with the Executive to shape an appropriate response.

Education and Training

- m. It was considered that the consultation in relation to education and training is generally positive as it provides options for the assurance of standards in the future.

- n. The Chair of the Policy and Education Committee agreed that the consultation responses to the education and training section of the consultation were good. It was suggested that where the response states 'different models of quality assurance in the future' this could be clarified by specifying the flexibility and adaptability to context and the impact on the future of the profession.
- o. The risk that the Osteopathic Educational Institutions might be very concerned by powers to set and administer exams for any training institution was noted.

Registration

- p. It was considered that the current registration legislation is at present very detailed, and that the proposals set out in the consultation allow for the potential removal of some aspects of the process that would be helpful.
- q. Members raised a concern regarding the consultation proposal for a single register and the potential risk of sharing specific types of data. It was pointed out that much of the information relating to registrants in the consultation document is already publicly available and required by our current legislation. But the issue of the possible sharing of protected characteristics by implication was recognised.
- r. It was suggested and agreed that the response to the question relating to 'suspension from the register' should be to request further clarification and that developing an appropriate response would require further exploration. It was agreed that Denis Shaughnessy and Sarah Botterill would assist the Executive in developing the response.
- s. It was agreed that the wording to the response relating to the General Medical Council and all registrars being granted power of discretion (page 28) would be made clearer.

Fitness to Practise

- t. It was considered that overall, the consultation proposals would be beneficial in the area of Fitness to Practise, increasing efficiency, and enabling resolution of cases earlier in the FtP process. The issues of concern are:
 - Registrar review powers
 - Non-compliance
 - PSA section 29 powers in relation to accepted outcomes
 - Categories of impairment
- u. The initial consultation proposal of a three-stage initial stages process is agreed but it was noted that there are areas which require further

consideration and development. It was agreed that Denis Shaughnessy would review the Executive response to this question.

- v. It was explained that in relation to the FtP Panel Stage the question suggested a broader discretion to each of the regulators to set out in rules how to dispose of cases which would allow less prescriptive rules to be developed with the expectation that there should be broad consensus amongst the regulators as to what the process should look like. Currently there are model rules being developed amongst all the regulators which deal with these aspects and fits in with the larger issue that there should be greater consensus and cohesiveness amongst regulators to interact and is a general principle for panels.
- w. It was suggested that the response given to the question in relation to 'Restoration to the Register' be broadened to give the reason why this is agreed.
- x. It was explained that non-compliance is used by other regulators (but included within the current GMC rules) and is the ability to, amongst other things, draw adverse inferences and conclusions from the non-engaging registrant in the fitness to practise process. The Executive want to learn how this works in practice before a drafting a more nuanced response to the question.
- y. It was explained that the consultation proposals relating to including health as a separate category of action/impairment FtP are not straightforward. At first glance, it seems disproportionate to bring an FtP investigation against a registrant on purely health grounds. However, not having health as a ground of action prevents the regulator dealing with future risk to the public where the registrant is not demonstrating insight because of their health condition. The GOsC currently do consider health issues and these are often linked (but not always) to competency/misconduct issues. The new proposals would not provide a framework to manage health concerns that are episodic/recurring where the competence or misconduct issue has fallen away or been adjudicated, and the regulator will have effectively then 'lost' jurisdiction. Experience demonstrates that registrants do find structure and support through the review mechanism and are encouraged to comply with conditions. Deborah Bowman and Caroline Guy would act as a sounding board for the Executive on this question.
- z. It was suggested that the Executive 'sound out' the GMC about the GOsC responding to the consultation questions which refer to them. It was also suggested that it might be helpful to find a middle way in the responses referencing other regulators and position the GOsC as an outward looking organisation.

Noted: Council considered and noted the draft GOsC response to the consultation which is due for submission by 16 June 2021.

Item 5: Minutes of the Policy and Education Committee (PEC), 29 March 2021

9. There were no additional comments from the Chair of the Policy and Education Committee in relation to the private meeting of the Committee.

Noted: Council noted the minutes of the Policy and Education Committee, 29 March 2021.

Item 6: Any other business

10. The GOsC v Wray - Appeal: Simeon London declared an interest and did not participate in the discussion.
11. The Chief Executive thanked members for their responses to the briefing note. In response to the two main points which were highlighted:
- a. Cost incurred: It was confirmed that there was interest and moral support from other regulators, but it was not thought there would be support for assistance with the sharing cost. Any cost incurred would be met solely by the GOsC.
 - b. The Executive is very aware of the impact that the appeal may have on the registrant, but the issue is one of principle and not about the individual. It is important for the challenge to be made due to the risk posed to the regulatory disciplinary process and panel hearings where an individual who has had a judgement or criminal conviction made against them through the justice system is able to state that the judgement has no grounds as part of a disciplinary panel, meaning that the facts have to be found again, therefore undermining the criminal justice system and the fitness to practise approach.
 - c. Once a decision has been reached the communication of the judgement will be critically important in giving the reasons for taking the appeal forward and demonstrating the process undertaken has been based on a matter of principle.
 - d. Members were advised that although the process has commenced there is no commitment to go through with the appeal and that the situation could change as the case is not scheduled to be heard until October 2021.
 - e. Members were advised that the GOsC has written to all the Health professional regulators and prepared a detailed briefing note about the case and the grounds for appeal. The Professional Standards Authority (PSA) have also been informed and have been asked to be interveners at the Court of Appeal. The PSA are seeking legal advice as to whether they will intervene in the appeal and will highlight the point of principle. It was confirmed that no public comment can be made about the case at this stage.

Date of the next meeting: Thursday 20 July 2021