



Harmonising Fitness to Practise Sanctions across Regulators

A Consultation Paper

November 2007

Table of Contents

Introduction	3
Background Information	6
Consultation	10
a. Introductory questions	
b. Erasure/Striking off/Removal	
c. Restoration	
d. Suspension	
e. Undertakings	
f. Caution/Warning/Admonishment/Reprimand	
g. Fines	
h. Interim Orders	
i. Immediate Other powers and sanctions	
j. sanctions	
k. Registrant's right to appeal	
Annex A Consultation Questionnaire	20
Annex B Definitions of the main sanctions currently available to regulators	23
Annex C The fitness to practise procedures	24
Annex D Summary of sanctions currently available to each of the regulators	26
Annex E Contact details	27

Introduction

1. The Council for Healthcare Regulatory Excellence (CHRE) is consulting on harmonising the sanctions available to the regulators of healthcare professionals under their fitness to practise procedures.
2. The consultation has been developed with the co-operation of the nine healthcare regulators, listed below at paragraph 17.
3. The sanctions available to the nine healthcare regulators are central to their roles in protecting the public and in safeguarding the standards of the professions that they regulate. CHRE wishes to explore the possibility of increasing the level of consistency between the sanctions available for the regulation of the various healthcare professions. This consultation aims to help CHRE consider how further harmonisation can best be achieved. Definitions of the sanctions and information on the fitness to practise procedures can be found in Annexes B and C.
4. While this consultation is largely restricted to the question of the range of sanctions available for the regulation of healthcare professionals, it is recognised that sanctions form only part of the overall fitness to practise procedures. One reason for focusing this consultation on sanctions is the crucial part sanctions play in determining the outcome of the fitness to practise procedure. CHRE is also keen to ensure that the consultation is meaningful, and therefore focuses on crucial but specific issues. Other important features of the fitness to practise framework, that this document does not consider, include questions about the process itself: the guidance and training for panellists, the quality of decisions and the procedures operated by the regulators.
5. Harmonising the range of sanctions available to regulators, for regulating healthcare professionals under their Fitness to Practise (FTP) procedures, would be likely to bring a number of benefits which would strengthen public safety, in particular:
 - a. Harmonised sanctions would help ensure that a flexible and effective range of sanctions is available for the regulation of healthcare professionals, enabling regulators to respond proportionately and appropriately when they determine that a registrant's fitness to practise is impaired;
 - b. Greater consistency across the regulators in terms of legislation, available sanctions and terminology; the current variation does not maximise the potential for inter-regulator learning, benchmarking and other forms of collaboration;
 - c. Greater clarity for patients, the public and employers; the current variation both in the powers of regulators to impose sanctions and in the terminology they employ is potentially confusing to a range of stakeholders;

d. Greater fairness to registrants; the increased consistency and clarity outlined above would also be beneficial to the regulated professions and to registrants.

6. The suggestion of harmonising the range of sanctions available to regulators is consistent with the direction of travel of the recent White Paper *Trust, Assurance and Safety - the Regulation of Health Professionals in the 21st Century*.¹ One of the themes of the White Paper is the possibility of greater consistency between regulators.

The consultation process

7. The objective of this consultation is to seek views on the principle of harmonising sanctions across all the healthcare regulatory bodies and to identify the most appropriate range of sanctions to be available to regulators. We will report on the conclusions of the consultation to the Departments of Health, the individual regulators and the public. Any changes to the powers available to individual regulators would need to be taken forward by the regulators themselves, in collaboration with the Department of Health.

8. This consultation focuses on the question of harmonising fitness to practise sanctions across the regulators. It does not consider, to any significant degree, any other aspects of the regulators' fitness to practise procedures. It is recognised that there are significant variations between the fitness to practise procedures operated by the healthcare regulators. The consultation does not explore to any degree other mechanisms for responding to concerns about registrants' fitness to practise, such as mediation. Nor does the consultation consider the powers available to the regulators outside the context of their fitness to practise procedures, for example, in their registration processes.

9. CHRE is committed to a process of open and inclusive consultation before recommending changes. This involves listening to views from all those who may be affected by the changes to the sanctions available to regulators. This document will present questions for harmonised sanctions before a wide range of stakeholders. CHRE would like to invite individuals and organisations with an interest in these issues to respond to this consultation. This consultation will run until Friday 29 February 2008. If you have any questions about the consultation or the process, please contact: sanctions@chre.org.uk or 020 7389 8030.

10. If you would like to respond to this consultation, please answer our online questionnaire, available on our website and through the direct link below:

¹ The White Paper sets out a programme of reform to the United Kingdom's system for the regulation of health professionals, based on consultation on the two reviews of professional regulation published in July 2006: Good doctors, safer patients by the Chief Medical Officer (CMO) for England and the Department of Health's 'The regulation of the non-medical healthcare professions'. The White Paper can be viewed on the Department of Health's website on http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_065946 and can be purchased from The Stationery Office.

http://www.chre.org.uk/Website/our_work/policy/consultations_responses/ftp_consultation_page/view.

However we welcome your comments in any format. If you would like to write to us, fax us or email us your response, please contact us on:

Consultation on harmonising sanctions
Council for Healthcare Regulatory Excellence
Kierran Cross
11 Strand
London WC2N 5HR

Email: sanctions@chre.org.uk
Phone: 020 7389 8030
Fax: 020 7389 8040
website: www.chre.org.uk

11. If you would prefer your response not to be made public, please indicate this when you respond.
12. We will publish the report from this consultation in April 2008.

Background information

The Council for Healthcare Regulatory Excellence

13. CHRE was set up in April 2003 by the National Health Service Reform and Health Care Professions Act 2002². CHRE's mission is to protect the public interest, promote best practice and achieve excellence in the regulation of healthcare professionals.

14. CHRE's responsibilities, as set out in the Act, are to:

- a. promote the interests of the public and patients in relation to regulated healthcare professions;
- b. promote best practice in regulating healthcare professions;
- c. develop principles for good, professionally-led regulation of healthcare professions; and
- d. promote co-operation between regulators and other organisations.

15. CHRE can carry out these responsibilities in four main ways:

- a. monitoring how regulators operate (Section 26 of the Act);
- b. recommending changes to regulators' rules (Section 27);
- c. referring cases of 'undue leniency' to court (Section 29); and
- d. advising health ministers (Section 26(7))

16. Further information about the powers and responsibilities of CHRE is available on its website (www.chre.org.uk).

Regulating Professionals

17. Statutorily regulated healthcare professionals working in the UK must be registered with, and regulated by, one of nine statutory regulators. These organisations were created by separate legislation at different times. Their duties and processes are not identical, but they have generally similar functions. The nine statutory regulators are:

² Available at: www.opsi.gov.uk/acts/acts2002/20020017.htm

Regulator	Regulated
General Chiropractic Council (GCC),	Chiropractors
General Dental Council (GDC)	Dentists, dental hygienists, dental therapists, dental nurses, dental technicians, clinical dental technicians and orthodontic therapists
General Medical Council (GMC)	Doctors
General Optical Council (GOC)	Dispensing opticians and optometrists and bodies corporate
General Osteopathic Council (GOsC)	Osteopaths
Health Professions Council (HPC)	Arts therapists, biomedical scientists, chiropodists and podiatrists, clinical scientists, dieticians, occupational therapists, operating department practitioners, orthoptists, paramedics, physiotherapists, prosthetists and orthotists, radiographers, and speech and language therapists;
Nursing and Midwifery Council (NMC)	Nurses, midwives and specialist community public health nurses
Pharmaceutical Society of Northern Ireland (PSNI)	Pharmacists and has jurisdiction for the regulation of pharmacies in Northern Ireland.
Royal Pharmaceutical Society of Great Britain (RPSGB)	Pharmacists and pharmacies in Great Britain. Currently also regulates pharmaceutical technicians on a voluntary basis, and has jurisdiction for the regulation of pharmacies in Great Britain.

18. All of the regulators have public protection and patient safety as their key mission. Their specific functions include:

- to maintain a register of individuals (registrants) fit to practise in the UK;

- to set standards of behaviour and ethical guidelines for registrants;
 - to set educational standards and create systems to maintain registrants' skills;
- and
- to deal with concerns about the fitness to practise of their registrants³.

19. Each of the regulators was established with its own legal framework. This means that each regulator currently has its own fitness to practise rules and procedures. The main components of these procedures are:

- an initial decision as to whether a complaint should be investigated
- an investigation into the allegations about the registrant, and a decision as to whether an allegation should be heard by a fitness to practise panel
- a hearing to consider the evidence that has been collected and to determine whether a registrant's fitness to practise is impaired and, if so, which sanction (if any) should be applied.

20. There are some significant differences in the range of sanctions available to each of the regulators.

21. Further information about each of the regulators and their fitness to practise procedures is available on their websites. For an overview of the fitness to practise process, see Annex C. For the contact details of the regulators, see Annex E.

Available sanctions

22. Sanctions are available to each of the regulators, under their fitness to practise procedures, when they find that a registrant's fitness to practise is impaired. The purpose of sanctions is to protect patients and the public, although they may also have a punitive effect. The judgement in the High Court case between The Council for the Regulation of Healthcare Professionals⁴ and the General Dental Council and Mr Alexander Fleishmann⁵ makes clear that the protection of patients includes maintaining the reputation of the profession and that action is required to remove or restrict a registrant's right to practise. Some of the regulators also have the option of issuing a caution or warning or the equivalent, if there has been a significant departure from the standards expected of the registrant. The specific test applied to decide whether sanctions are required varies from regulator to regulator.

³ The GDC, GOC, RPSGB, PSNI also have the power to deal with sanctions on companies and organisations.

⁴ The statutory name of CHRE

⁵ The judgment is available on the CHRE website on http://www.chre.org.uk/Website/our_work/practise/court_outcomes/Folder.2006-07-26.1207913517/Fleischmann%20Judgement%203%20Feb%2005.pdf

23. For most of the regulators, sanctions are available at the end of their fitness to practise procedures, following a hearing, when a formal judgment has been made (the adjudication stage). For the GMC and the RPSGB, limited sanctions are also available at the investigation stage without the need for a hearing. The focus of this consultation is the sanctions themselves, rather than the fitness to practise procedures.

24. In spite of significant differences between the fitness to practise procedures of the nine regulators, greater harmonisation of the sanctions available to them could be achieved.

25. Definitions of the range of sanctions that are currently available to regulators are provided at Annex B. Annex D sets out which of the sanctions are currently available to each of the individual regulators.

Key principles

26. CHRE and the regulators are committed to the Better Regulation Task Force principles. Regulators need to have a full and flexible range of sanctions and policies which give effect to these principles. One of the aims of the Task Force is that regulation and its enforcement are proportionate, accountable, consistent, transparent and targeted⁶.

⁶ The Better Regulation Task Force has now become the Better Regulation Commission (BRC). For more information, see <http://www.brc.gov.uk/downloads/pdf/principlesleaflet.pdf>

Consultation questions

Introductory questions

27. The following questions consider the general principles of harmonising the sanctions, explore individual sanctions and how they might most effectively be applied.

Questions 1 to 3: Common sanctions

Question 1: Should all regulators in FTP cases have available the same set of sanctions?

Question 2: If you believe that there should be a standard set of sanctions, which of the following existing sanctions should be available to all regulators: erasure from the register, suspension from practice, conditions on practice, cautions or warnings, fines?

Question 3: Are there any other sanctions that should be included in the standard set?

Substantive sanctions

28. This section considers the range of final sanctions that should be available to regulators, as a minimum, in their fitness to practise procedures.

Erasure/Striking off/Removal

29. A number of different terms are used across the regulators, in particular, 'erasure' 'removal' and 'striking off'. A single term, used consistently across the regulators, would clarify that this sanction has the same effect.

30. Erasure/striking off is the most severe sanction available to regulators. Erasure means that the registrant is removed (or struck off) from the register for that particular profession. The effect of erasure is that the registrant is not able to practise during the period that the registrant is erased.

31. There is also some inconsistency between the regulators as to the availability of erasure, when the allegations relate exclusively to the health or the performance of a registrant. Most of the regulators do not have the power to erase a registrant if the finding of impairment relates solely to the registrant's health⁷, though in some cases, the regulator has the power to suspend the registrant indefinitely, after two years of continuous suspension, which has the same practical effect. A number of the regulators have the power to erase a registrant when the allegations are

⁷ None of the regulators have this power, except that in Northern Ireland, the Department of Health, Social Services and Public Safety has the power to erase a pharmacist when the allegations relate solely to the health or performance of a registrant.

exclusively about the registrant's performance. However, other regulators are not able to erase a registrant in these circumstances.

Questions 4 and 5: Erasure / Striking off / Removal

Question 4: Should there be a common term for 'erasure'/ 'striking off'/'removal' across the regulators? If so, what is your preferred term?

Question 5: Should erasure be available to all regulators in cases in which allegations relate solely to health and/or performance?

Restoration

32. When a registrant is erased from a register there is a general expectation that it will normally be for life and that the registrant will not be able to practise again within the UK.

33. However, registrants are able to apply to be restored to a register once a minimum period of time has passed. The minimum periods after which restoration can be applied for varies across the regulators. This period of time can vary significantly between the regulators. For example, at the GMC, the NMC and the RPSGB it is 5 years, at the GOC it is 24 months and at the GCC it is 10 months (although the GCC has asked the Government to extend this period to three years).

Questions 6 to 8: Restoration

Question 6: Following erasure, should there be a standard minimum period that must expire before an individual can apply for restoration to the register?

Question 7: If so, what should it be?

Question 8: Should all regulators be able to specify to the registrant the kind of evidence the regulator would want to consider at a restoration hearing?

Suspension

34. Most regulators have suspension available as a sanction. The effect of suspension is that the registrant is not able to practise for a specified period of time. Normally, the regulator will have the option of extending the period of suspension at a review hearing. (Review Hearings enable regulators to consider whether registrants who are suspended or subject to restrictions on their practice are fit to return to unrestricted registration.)

35. Suspension can be used to send out a signal to the registrant, the profession and public about what is regarded as unacceptable behaviour. Suspension from the register also has a punitive effect, in that it prevents the registrant from practising

(and therefore from earning a living in that profession) during the period of suspension.

36. Suspension is also likely to be appropriate in a case of impairment by reason of ill-health or deficient performance, where the registrant currently poses a risk of harm to patients, but there is evidence that they have a degree of insight into their deficiencies and have the potential to be rehabilitated. This is providing that they are prepared to undergo a rehabilitation programme.

37. In many cases when a registrant is suspended, there will be a requirement for a review hearing before the period of suspension ends. (This is always the case for chiropractors.) This will allow the panel to determine whether the registrant is fit to return to practise. In some cases, at the original hearing, the panel will outline the measures that the registrant should undertake during his or her period of suspension, in order to address the areas of impairment. In other cases, when a very short period of suspension is imposed, there is less likely to be a requirement for a review hearing.

38. One concern about suspension, when not combined with a review hearing, is that it is primarily punitive in its effect and that it may potentially lead to registrant becoming de-skilled during the period of suspension.

39. One suggestion is that there could be provisions for combining suspension with conditions (see paragraphs 41-45). This would ensure that suspended registrants are required to take steps to address those areas where their fitness to practise has been found to be impaired, for example by undergoing additional training or remediation. None of the regulators can currently impose conditions on registrants who are suspended.

40. In practice, however, a number of regulators achieve the same end, by setting out to the registrant at the initial hearing, the measures that should be undertaken during the registrant's period of suspension, in order to demonstrate, at a review hearing, that they have addressed those areas in which their fitness to practise was found to be impaired.

Questions 9: Suspension

Question 9: What powers/ recommendations can regulators have/ make when imposing and reviewing suspension orders?

Conditions

41. Conditional registration or a conditions of practice order allows a registrant to practise under certain restrictions. The primary purpose of the imposition of conditions is the protection of the public; they enable registrants to take steps to remedy any deficiencies in their practice while placing restrictions on the types of work that the registrant may undertake. Conditions might be appropriate when there

is evidence of incompetence or significant shortcomings in a registrant's practice, but the panel is satisfied that there is potential for the registrant to respond positively to retraining and supervision. Conditions are also likely to be appropriate when a registrant's fitness to practise is impaired by ill health, but they demonstrate sufficient insight to comply with conditions.

42. Conditions may restrict the types of work that the registrant is able to undertake, or set out requirements for further training and other programmes to support the rehabilitation of the registrant.

43. As with suspension, there will normally be a review hearing before the period of conditions comes to an end, to consider whether the registrant is fit to return to unrestricted practice.

44. A number of regulators have developed arrangements to monitor a registrant's compliance with conditions. They are able to order an early resumed hearing in advance of the end of period of conditions, if there is evidence that the registrant has failed, without good reason, to comply with the conditions.

45. It is important to ensure that any package of conditions provides adequate safeguards and that they fully address any concerns that have been highlighted about the registrant's practice. It is also important that conditions should be drafted in such a way that it will be practicable for the registrant to comply with them. It may be necessary to seek specialist advice to ensure that conditions are constructed effectively.

Questions 10 and 11: Conditions

Question 10: Should all the regulators be able to review a case early if the registrant does not comply with conditions?

Question 11: Should the regulators be able to restrict a registrant's practice by imposing conditions on restoration to the register?

Undertakings

46. Undertakings are an agreement between the regulator and the registrant. They have the same effect as conditions in restricting a registrant's practice, but are agreed between the regulator and the registrant. Undertakings are not appropriate for all types of concern, particularly those that need to proceed to a hearing.

47. Undertakings may be appropriate following a finding of impairment at a hearing, provided the panel is satisfied that they provide sufficient safeguards for patients and the public, that they cover all the conditions that they would otherwise impose and that the registrant has shown sufficient insight to comply with the undertakings.

48. There are some significant differences between the powers of regulators to accept undertakings. Some regulators can accept undertakings given at a hearing, while others can agree undertakings at the investigation stage as an alternative to proceeding to a full hearing.

49. The agreement of undertakings at the investigation stage allows the registrant to acknowledge that he or she has a serious impairment of one kind or another and to enter into an agreement with the regulator as an alternative to being referred to a Fitness to Practise Panel. Undertakings are monitored and disclosed in the same way as are conditions. Regulators have the same powers to take action following a failure to comply with undertakings as they do for breaches of conditions. The benefit of undertakings is that they allow the regulator to agree undertakings with the registrant, without referring the registrant to a Fitness to Practise panel. They can offer an effective, timely and proportionate way of resolving certain types of concern.

50. The GMC has the statutory power to take account of written undertakings given by the registrant at a hearing, following a finding that the registrant's fitness to practise is impaired. The panel may take account of any written undertakings provided in deciding what other sanction, if any, is required. Other regulators have accepted undertakings on a non-statutory basis. The NMC does not have any powers to agree undertakings with a registrant.

51. The GMC also has the power to agree undertakings at the investigation stage of their procedures, when the concerns relate to the doctor's health or performance, as an alternative to referral to a hearing, when the registrant shows insight and acknowledges his or her impairment and there is no realistic prospect of the doctor being erased if the case were referred to a hearing. Similarly, the RPSGB's Investigating Committee has the power to agree undertakings in health and performance cases and where the registrant concerned admits that fitness to practise is impaired. Its Disciplinary Committee can accept written undertakings from companies in disqualification cases. The GOsC are proposing to acquire a power to dispose of complaints by 'orders by agreement' at the Investigation Committee stage of their procedures.

Questions 12 and 13: Undertakings

Question 12: At a hearing, should there be provision in the rules of all regulators for panels to accept written undertakings from the registrant?

Question 13: Should all regulators have a power to agree undertakings at the investigation stage, in appropriate circumstances, as an alternative to referral to a hearing?

Caution⁸/Warning/Admonishment/Reprimand

52. There is no common term among regulators. The terms ‘caution’ ‘warning’ ‘admonishment’ and ‘reprimand’ are all used.

53. A number of regulators also have the power to issue a caution, warning or admonishment. Cautions, or their equivalent, are likely to be appropriate in cases in which there is a need to indicate to a registrant (and possibly more widely to the profession) that their conduct or behaviour fell below acceptable standards, but when there is no need to take action to remove or restrict a registrant’s right to practise.

54. This consultation focuses on cautions and warnings given either because the registrant’s fitness to practise has been found to be impaired or there has been a significant departure from the standards expected of the practitioner.

55. They can be distinguished from the kind of ‘advice’ that might be appropriate to respond to an isolated minor concern and which would not appear on the registrant’s registration. This document does not consider this category of response.

56. There is currently, however, a considerable degree of variance between regulators in respect of issuing cautions or their equivalent.

57. Firstly, there is no common term among regulators. The terms ‘caution’ ‘warning’ ‘admonishment’ and ‘reprimand’ are all used. Sometimes some of these sanctions are used by the same regulator, which could be confusing to the public and registrant, if the differences between them are not clear.

58. There is no regular standard among regulators for issuing a caution or its equivalent. For the majority of regulators cautions (or equivalent) are available following a finding of impairment. However, for the GMC, warnings are only available once a Fitness to Practise panel (or case examiners at the investigation stage) has concluded that the doctor’s fitness to practise is not impaired. Similarly, the RPSGB’s Disciplinary and Health Committees have the power to issue warnings and advice, even though the registrant’s fitness to practise is not found to be impaired. The GOC can also issue warnings where there is no finding of impairment.

59. Cautions or warnings of this nature normally appear on the registrant’s registration for a set period of time. However, the period of time is dependent on the regulator. For example, GMC warnings remain in place for a period of five years, the NMC has the power to issue a caution for a period between one and five years, depending on the seriousness of the allegations, and the HPC can specify how long the caution applies, for instance two or three years. Other regulators do not have a time limit for how long a caution applies and would be disclosed on the register.

⁸ In this context we are talking about cautions issued by the regulator rather than Police cautions.

60. Warnings published by the GMC appear on the registration of the registrant during the period they remain valid and will be disclosed to any enquirer during that time. Question 18 considers whether warnings should be published on the register of the regulator in question and disclosed to enquirers.

61. The publication of cautions or warnings underlines their seriousness. Although warnings do not restrict the registrant's practice, they indicate publicly that the registrant's conduct or behaviour fell below acceptable standards and must not be repeated. The disclosure of cautions or warnings to employers and prospective employers also ensures that they have a complete picture of any concerns regarding the registrant's fitness to practise and can take steps to monitor whether the registrant has responded effectively to the caution or warning.

62. There is likely to be concern about the indefinite publication of cautions. Registrants may argue that it would be disproportionate to continue to publish cautions, for example, after the caution has expired. If there are no further concerns during the period of the caution, it could be argued that it has served its purpose and that the registrant's record should be wiped clean.

63. Question 19 considers whether there should be provisions in the rules of each regulator to reconsider, or at least take note of the concerns that led to an earlier caution, if the registrant subsequently appears before a FTP hearing. This might be appropriate, for example, if the registrant's fitness to practise history suggests that he or she has not responded appropriately to the warning or has failed to show sufficient insight into the concerns about his or her fitness to practise.

64. It might be considered excessive or unfair, however, to reconsider or take account of an earlier caution in all cases. It could be seen as excessive, for example, to reconsider the concerns that led to a warning, after a gap of many years or if the original caution related to a very specific issue which does not have any relevance whatsoever to the subsequent issue.

Questions 14 to 19: Cautions

Question 14: Should there be a single common sanction of warnings or cautions? If so, what should it be called? Currently, caution, warning, reprimand or admonishment are used.

Question 15: Should cautions remain in place for a single fixed period of time? If so, for how many years?

Question 16: Would it be helpful if FTP panels had the option of issuing cautions for different lengths of time (e.g. five years, three years, one year) to take account of the particular circumstances?

Question 17: Should cautions be available in cases in which the registrant's fitness to practise is found:

- not to be impaired
- to be impaired?

Question 18: Should all cautions be required by law to appear on the relevant public register? Should all cautions be disclosed to enquirers?

Question 19: Should there be a standard procedure across regulators to take into account a previous caution, if a registrant appears before a FTP hearing at a future date?

Fines

65. Fines are not commonly available to the regulators. Currently, only the GOC and, recently, the GDC (in relation to dental companies) have the power to impose fines. The GOC has found fines to be a useful sanction, particularly against business registrants. The RPSGB, which also regulates corporate bodies, does not have the power to issue fines. Fines may also be a useful tool in relation to individual registrants, for example, in fraud cases, or where sight has been tested whilst the practitioner is unregistered (for example due to an administrative error). They may be appropriate in specific circumstances (for instance self-employment) if a short-term suspension might otherwise be appropriate, as a deterrent against a repetition of the registrant's action.

66. On the other hand, the introduction of financial penalties could be seen as introducing more of a punitive (as well as deterrent) element that is not consistent with the emphasis on public protection. Financial penalties may not be appropriate in many cases in which a registrant's fitness to practise is found to be impaired. Panels may already, in some circumstances, suspend a registrant for a fairly short period, such as a month, which is already similar to a fine (see above).

Question 20: Fines

Question 20: Should financial penalties be made available to all regulators?

Interim Orders

67. Interim orders (suspensions and conditions) are available to regulators. These are available when it is necessary to take action to suspend or restrict a registrant's registration before a final decision is taken, for example, while investigations are taking place. They allow regulators to act if a registrant faces allegations of such a nature that it may be necessary for the protection of the public, is in the public interest or in the interests of the registrant, for their registration to be restricted while the allegations are investigated.

Question 21: Interim orders

Question 21: Should all regulators have a power to impose interim suspension and conditions?

Immediate sanctions

68. Registrants are entitled to appeal to the High Courts (Northern Ireland, England and Wales) and the Court of Session in Scotland against any decision that affects their registration. Therefore, no such decision takes effect until either the appeal period (28 days for most regulators but three months in the case of PSNI; under its new legislation, the RPSGB appeal period is also 28 days) expires, or any appeal is determined. During this time, registration remains fully effective, unless the panel also imposes an immediate order. An immediate order means that the sanction will take place immediately following the panel's decision.

69. GMC FTP panels have the power to impose an immediate order if they are satisfied that it is necessary for the protection of the public, is in the public interest, or is in the interests of the registrant. In contrast, the NMC does not have the power to make immediate orders and will make an interim order to cover the appeal period, where it is considered necessary to do so.

70. Another option to consider would be for all sanctions to have immediate effect. This option is available to the General Social Care Council (GSCC). Its rules provide for all sanctions to have immediate effect, in spite of the appeal period.

Question 22: Immediate sanctions

Question 22: Should all sanctions imposed by FTP panels come into force immediately and/ or should all panels have the power to impose an immediate order?

Registrant's right to appeal

71. Registrants are entitled to appeal to the High Courts (in Northern Ireland, England and Wales) and the Court of Session in Scotland against any decision to affect his or her registration. However, in relation to some regulatory bodies, registrants do not have a right of appeal following the issuing of a caution or warning. They may seek leave for a judicial review of a decision to issue a caution or warning. A registrant will, however, have a right of appeal against a warning that follows a finding of impairment.

Question 23: Registrant's right to appeal

Question 23: Should registrants have a right of appeal against all decisions that affect their registration, including cautions?

Other powers and sanctions

72. The consultation paper focuses on the range of sanctions currently available in the regulation of healthcare professionals. We would also welcome your views on whether there are any additional powers or sanctions that might be made available to regulators to enhance patient safety.

Question 24: Other powers

Question 24: Are there any other sanctions for regulators to consider?

Other comments**Question 25: Other comments**

Question 25: Are there any other comments or suggestions that you would like to make regarding this consultation?

Annex A Consultation Questions

Please help us reporting on the consultation by identifying the category that most closely matches your profile:

- Individual patient or member of the public
- Organisation representing patients or the public
- Regulator of health professionals
- Employer of or contractor with health professional (e.g. PCT)
- Professional body
- Health professional
- Publicly-funded body
- Individual academic or tutor
- Education provider/royal college
- Defence organisation
- Legal professional or organisation

Questions 1 to 3: Common sanctions

Question 1: Should all regulators in FTP cases have available the same set of sanctions?

Question 2: If you believe that there should be a standard set of sanctions, which of the following existing sanctions should be available to all regulators: erasure from the register, suspension from practice, conditions on practice, cautions or warnings, fines?

Question 3: Are there any other sanctions that should be included in the standard set?

Questions 4 and 5: Erasure / Striking off / Removal

Question 4: Should there be a common term for 'erasure'/ 'striking off'/ 'removal' across the regulators? If so, what is your preferred term?

Question 5: Should erasure be available to all regulators in cases in which allegations relate solely to health and/or performance?

Questions 6 to 8: Restoration

Question 6: Following erasure, should there be a standard minimum period that must expire before an individual can apply for restoration to the register?

Question 7: If so, what should it be?

Question 8: Should all regulators be able to specify to the registrant the kind of evidence the regulator would want to consider at a restoration hearing?

Questions 9: Suspension

Question 9: What powers/ recommendations can regulators have/ make when imposing and reviewing suspension orders?

Questions 10 and 11: Conditions

Question 10: Should all the regulators be able to review a case early if the registrant does not comply with conditions?

Question 11: Should the regulators be able to restrict a registrant's practice by imposing conditions on restoration to the register?

Questions 12 and 13: Undertakings

Question 12: At a hearing, should there be provision in the rules of all regulators for panels to accept written undertakings from the registrant?

Question 13: Should all regulators have a power to agree undertakings at the investigation stage, in appropriate circumstances, as an alternative to referral to a hearing?

Questions 14 to 19: Cautions

Question 14: Should there be a single common sanction of warnings or cautions? If so, what should it be called? Currently, caution, warning, reprimand or admonishment are used.

Question 15: Should cautions remain in place for a single fixed period of time? If so, for how many years?

Question 16: Would it be helpful if FTP panels had the option of issuing cautions for different lengths of time (e.g. five years, three years, one year) to take account of the particular circumstances?

Question 17: Should cautions be available in cases in which the registrant's fitness to practise is found:

- not to be impaired
- to be impaired?

Question 18: Should all cautions be required by law to appear on the relevant public register? Should all cautions be disclosed to enquirers?

Question 19: Should there be a standard procedure across regulators to take into account a previous caution, if a registrant appears before a FTP hearing at a future date?

Question 20: Fines

Question 20: Should financial penalties be made available to all regulators?

Question 21: Interim orders

Question 21: Should all regulators have a power to impose interim suspension and conditions?

Question 22: Immediate sanctions

Question 22: Should all sanctions imposed by FTP panels come into force immediately and/ or should all panels have the power to impose an immediate order?

Question 23: Registrant's right to appeal

Question 23: Should registrants have a right of appeal against all decisions that affect their registration, including cautions?

Question 24: Other powers

Question 24: Are there any other sanctions for regulators to consider?

Question 25: Other comments

Question 25: Are there any other comments or suggestions that you would like to make regarding this consultation?

Annex B Definitions of the main sanctions currently available to regulators

Erasure/Striking off/Removal	Erasure is the most severe sanction available to regulators. Erasure means that the registrant is removed (or struck off) from the register for that particular profession. The effect of erasure is that the registrant is not able to practise during the period for which their details remain erased from a register.
Suspension	Suspension allows regulators to prevent a registrant from practising in their particular profession for a set period of time. In many cases, there will be a review hearing before the period of suspension comes to an end, to determine whether the registrant is fit to resume practising in the particular profession or whether there should be a further period of suspension.
Conditions	Conditions enable the regulator to place restrictions on the registrants practice. They may limit the range of functions that the registrant is able to undertake or set out requirements for the registrant to undergo further training or remediation.
Undertakings	Undertakings have the same effect as conditions in restricting a registrant's practice. However, they are reached consensually.
Caution/Warning/Admonishment	Cautions, or their equivalent, are likely to be appropriate in cases in which there is a need to indicate to a registrant (and possibly more widely to the profession) that their conduct or behaviour fell below acceptable standards but when there is no need to take action to remove or restrict a registrant's right to practise.
Interim Orders	Interim Orders (for suspension or conditions) allow regulators to take action to restrict a registrant's right to practise before a final decision is taken
Immediate Orders	Immediate Orders allow regulators at a final hearing to implement sanctions with immediate effect, when they are satisfied that it is necessary for the protection of members of the public, or it is in the public interest, or is in the best interests of the registrant. (If an immediate order is not made the sanctions will come into play at then end of the 28 day appeal period, or if the registrant appeals, at the end of the appeal process).

Annex C The fitness to practise procedures

Why do regulators have fitness to practise procedures?

All regulators have processes to deal with serious concerns about the fitness to practise of their registrants. The objective of these procedures is to make sure that, if registrants are found not to be fit to practise, then the regulator can remove or restrict their right to practise. As regulated healthcare practitioners can only practise their profession if they are registered with the regulator, removal or restriction of their right to practise means that they cannot treat patients, or can only treat patients under certain conditions, as a member of this regulated profession.

What do we mean by fitness to practise?

- **Fitness to practise:** there is no single definition of fitness to practise which applies to all regulators. In general, a healthcare practitioner who is fit to practise is safe and competent to treat patients. For a specific example, the GMC discusses fitness to practise in its leaflet *The Meaning of Fitness to Practise*, available from the GMC website⁹.
- **Impairment of fitness to practise:** there is no overall legal definition of impaired fitness to practise. However it is clear that impaired fitness to practise is related to serious breaches of the standards of competence and behaviour set by the regulators. Regulators of healthcare professionals have a mission to protect patients and the public, they usually are focused on very serious concerns about a professional's practice. Serious concerns raise a question as to whether a professional should be able to treat patients at all, or should only treat patients with restrictions on what they can do.

There can be impaired fitness to practise because of poor standards of conduct (including being convicted for breaching the law), lack of competence, or an issue relating to the health of the registrant, which means that they are not fit to treat patients without restrictions.

Regulators sometimes use different terms to indicate impaired fitness to practise, depending on the laws and rules made by Parliament about their work, e.g. misconduct or lack of competence.

- **Fitness to practise panel:** a panel of people organised by the regulator which decides whether a registrant is fit to practise and, if not, what sanctions should be imposed.

⁹ http://www.gmc-uk.org/concerns/the_investigation_process/The_Meaning_of_Fitness_to_Practise.pdf

What are the different stages of the fitness to practise procedures?

Each of the regulators has its own fitness to practise procedures and they vary depending on the regulator. However, in general, there are three main stages to the fitness to practise procedures:

Regulator receives a complaint/allegation about a registrant



Stage 1 – the regulator considers whether it can deal with a complaint/allegation and whether it should be investigated



Stage 2 – the regulator investigates the complaint/allegations about the registrant. From the evidence gathered so far, the regulator decides whether an allegation should be heard by a fitness to practise panel. Most of the time, the decision to refer a case onwards to a fitness to practise panel is made by an Investigating or Investigation Committee.



Stage 3 – a fitness to practise panel holds a hearing to consider the evidence that has been collected and to determine whether a registrant's fitness to practise is impaired and, if so, which sanction (if any) should be applied. In most cases, hearings are held in public.



In most cases, the registrant can choose to appeal the decision of the fitness to practise panel if they believe that the decision is unduly harsh, or CHRE can appeal the decision if they believe that the decision is unduly lenient and that it is necessary for the protection of the public.

Annex D Summary of sanctions currently available to each of the regulators.

[✓] = currently being introduced

(✓) = to be removed

✓ = custom without statutory basis

	Erasure / Striking Off	Suspension	Immediate Suspension	Conditions	Immediate conditions	Postponed Judgment	Removal of Specialty or Proficiency from	Caution (appearing on Register)	Admonishment	Reprimand	Accept Undertakings	Fine (companies)	Warning (where no impairment except RPSGB*)	Mediation
GCC	✓	✓	✓	✓					✓					
GDC	✓	✓	✓	[✓]	[✓]	(✓)			<u>✓</u>	[✓]		[✓]	<u>✓</u>	
GMC	✓	✓	✓	✓	✓					(✓)	✓		✓	
GOC	✓	✓	✓	✓	✓		✓					✓	✓	
GOsC	✓	✓	✓	✓					✓		<u>✓</u>			
HPC	✓	✓	✓	✓	✓			✓						✓
NMC	✓	✓	✓	✓	✓			✓						✓
PSNI	✓							<u>✓</u>		<u>✓</u>				
RPSGB (under the new scheme from 31 March 2007)	✓	✓	✓	✓	✓	✓	✓				✓		✓	

*RPSGB can impose warnings whether or not FTP was found impaired. Also RPSGB can issue advice

Annex E Contact details

Organisation	Address	Phone, fax and website
Council for Healthcare Regulatory Excellence	Kierran Cross 11 Strand London WC2N 5HR	Phone: 020 7389 8030 / Fax 020 7389 8040 Website: www.chre.org.uk
General Chiropractic Council	44 Wicklow Street London WC1X 9HL	Phone: 020 7713 5155 / Fax: 020 7713 5844 Website: www.gcc-uk.org
General Dental Council	37 Wimpole Street London W1G 8DQ	Phone: 020 7887 3800 / Fax: 020 7224 3294 Website: www.gdc-uk.org
General Medical Council	Regent's Place 350 Euston Road London NW1 3JN	Phone: 0845 357 8001 Website: www.gmc-uk.org
General Optical Council	41 Harley Street London W1G 8DJ	Phone: 020 7580 3898 / Fax: 020 7436 3525 Website: www.optical.org
General Osteopathic Council	176 Tower Bridge Road London SE1 3LU	Phone: 020 7357 6655 / Fax: 020 7357 0011 Website: www.osteopathy.org.uk
Health Professions Council	Park House 184 Kennington Park Road London SE11 4BU	Phone: 020 7840 9806 / Fax: 020 7840 9805 Website: www.hpc-uk.org
Nursing and Midwifery Council	23 Portland Place London W1B 1PZ	Phone: 020 7637 7181 / Fax: 020 7436 2924 Website: www.nmc-uk.org
Pharmaceutical Society of Northern Ireland	73 University Street Belfast BT7 1HL	Phone: 028 9032 6927 / Fax: 028 9043 9919 Website: www.psni.org.uk
Royal Pharmaceutical Society of Great Britain	1 Lambeth High Street London SE1 7JN	Phone: 020 7735 9141 / Fax: 020 7735 7629 Website: www.rpsgb.org.uk