GMC consultation on the future of adjudication: making changes to our fitness to practise rules and to our constitution of panels and Investigation Committee rules

1. I write with regard to the GMC consultation on the future of adjudication: making changes to our fitness to practise rules and to our constitution of panels and Investigation Committee rules.

2. The Royal College of General Practitioners is the largest membership organisation in the United Kingdom solely for GPs. Founded in 1952, it has over 44,000 members who are committed to improving patient care, developing their own skills and promoting general practice as a discipline. We are an independent professional body with enormous expertise in patient–centred generalist clinical care. Through our General Practice Foundation, established by the RCGP in 2009, we maintain close links with other professionals working in General Practice, such as practice managers, nurses and physician assistants.

3. The College welcomes the opportunity to respond to this consultation. As in previous consultation on related matters, we recognise that efforts to speed up fitness to practise procedures are desirable, and can be beneficial both to patients and to doctors who find themselves subject to procedures. That said, we are concerned that a few of the changes proposed tip the balance too far away from the doctor, and may
leave them over-exposed to unfair complaints. In particular, there is a risk that efforts to reduce the use of oral as opposed to written evidence may give undue influence to advocates skilled at shaping an argument.

4. We provide views on many of the specific questions below:

Question 1: Do you agree with our proposal to ensure that witnesses who need to come to a hearing to give oral evidence are told in advance?

Yes.

Question 2: Do you agree with our proposal to remove the need for written allegations to be read out at the start of a hearing?

Yes, but we would suggest that the doctor should have the right to request that the allegations be read out.

Question 3: Do you agree with our proposal to routinely accept written witness statements as evidence-in-chief?

This may be appropriate in many cases, but we have some doubts – defaulting to written evidence-in-chief may allow complaints that have been crafted by an advocate to gain initial purchase at a hearing, and may mean that cross-examination is later less likely to identify discrepancies. There should be an assumption that, if the doctor applies to the panel for oral evidence-in-chief to be considered, this application will generally be accepted.

Question 4: Do you agree with our proposal to allow applications to a committee or panel for witnesses to give evidence by video or telephone when both parties agree?

Yes, though there should be acknowledgement of the drawback that witnesses who are giving evidence by telephone or video may be less aware of the context of the hearing and their evidence. And there would need to be provision to avoid witnesses being kept waiting for extended periods in non-GMC premises before giving their evidence.

Question 5: Do you agree with our proposal for substituting panellists if they are unavailable to continue the hearing?
Yes, we agree.

**Question 6:** Do you agree with our proposal to give a doctor all the relevant information we have gathered so far for an interim orders panel hearing?

Yes, but this needs to be monitored very closely – the risk is that this simplified approach could be manipulated as an excuse to delay investigations, leaving doctors on restricted practice with very little information as to what they are thought to have done.

**Question 7:** Do you agree with our proposal to make a single case examiner responsible for deciding whether all or part of an allegation that has been referred to a hearing should be cancelled?

Yes, though we would argue that these decisions should be reviewed by another GMC officer in the interest of public transparency.

**Question 8:** Do you agree with our proposal to make decisions on preliminary legal arguments binding unless the circumstances of a case have materially changed?

We are not clear what the implications of preliminary legal arguments are, so cannot comment.

**Question 9:** Do you agree with our proposal that submissions about impairment should be made at the impairment stage of a hearing after the panel has decided which facts are proven?

Yes, we agree.

**Question 10:** Do you agree with our proposal to remove the current requirement for the Investigation Committee to consider desirability when receiving written evidence and to clarify that it will only receive oral evidence if this is necessary to make a decision?

We partially agree – certainly the Committee should be able to receive written evidence without having to consider its desirability. However, in our view the doctor
should retain the right to request to give oral evidence. Otherwise this risks being insufficiently transparent, and unfair to doctors.

**Question 11:** Do you agree with our proposal to clarify that we won’t disclose complaints that we have closed following our initial assessment because we have decided they do not raise a fitness to practise concern?

Yes, we agree that this makes sense.

**Question 12:** Do you agree with our proposal for chairs to be involved in case management of hearings?

If, as suggested, pre-hearing case management is only involved with administrative matters, rather than reviewing the facts of the case, then this is fine. Otherwise, as a principle, we would want the Chair of a panel to be as new to the facts of a case as other panellists.

**Question 13:** Do you agree with our proposal to allow case managers to issue a direction on joinder to strengthen pre-hearing case management?

Yes, we agree with this.

**Question 14:** Do you agree with our proposal to make case managers responsible for deciding when to postpone a fitness to practise panel hearing when the MPTS has been established?

Yes, we agree.

**Question 15:** Do you agree that our committees and panels should admit evidence that is fair and relevant to the case?

It is not clear how, if removing reference to criminal proceedings, it is to be determined which evidence is fair and relevant. Surely there is a need for some clear criteria, or for all chairs to have legal training so that they can make a judgement on this issue – otherwise there is a risk that evidence will be heard that, even if later withdrawn, may unfairly prejudice the committee or panel. On the whole, we would like to see more detail in this section.

5. We gratefully acknowledge the contributions of ….. in formulating this response
Yours sincerely

Professor Amanda Howe MA Med MD FRCGP
Honorary Secretary of Council