



BIOS | BRITISH AND IRISH
ORTHOPTIC SOCIETY

Regulating healthcare professionals, protecting the public

Consultation Response from the British and Irish Orthoptic Society

The British and Irish Orthoptic Society is the professional body for orthoptists and was founded in 1937. It is also a registered charity and a company limited by guarantee. BIOS is affiliated to the Allied Health Professionals Federation, a group made up of 12 bodies representing more than 158,000 workers in the UK. BIOS is also a member of the International Orthoptic Association and OCE. BIOS members in the UK are also automatically trade union members of the British Orthoptic Society Trade Union (BOSTU).

1. Do you agree or disagree that regulators should be under a duty to co-operate with the organisations set out above? Please give a reason for your answer.

Agree. We would support this as it ensures more consistent, high-quality regulation, and it should be strengthened to require regulators to proactively collaborate.

2. Do you agree or disagree that regulators should have an objective to be transparent when carrying out their functions and should have these related duties? Please give a reason for your answer.

Agree. Efforts should be made to ensure accessibility to all stakeholders, including use of different media formats, the publication of dates well in advance, and a geographical spread of meetings.

3. Do you agree or disagree that regulators should be required to assess the impact of proposed changes to their rules, processes and systems before they are introduced? Please give a reason for your answer

Agree. The impact of registrants should be fully explored, including an equality impact assessment.

4. Do you agree or disagree with the proposal for the constitution on appointment arrangements to the Board of the regulators? Please give a reason for your answer.

Agree. The regulator should ensure that there is sufficient external input into the governance structure, such as those not eligible to register and external experts brought in to advise when required.

5. Do you agree or disagree that regulators should be able to set their own fees in rules without Privy Council approval? Please give a reason for your answer

Disagree. Parliamentary oversight allows for a way for professional bodies and other stakeholders to challenge increases in fees that they see as disproportionate or unjustified, as was the case recently with the HCPC's proposed increase.

6. Do you agree or disagree that regulators should be able to set a longer-term approach to fees? Please give a reason for your answer.

Agree. A long-term approach to fees seems sensible and allows for a greater transparency. Fee income is relatively predictable, therefore there is no reason regulators should not be able to project the need for fee rises in advance.

7. Do you agree or disagree that regulators should be able to establish their own committees rather than this being set out in legislation? Please give a reason for your answer.

Agree. Regulators should be held accountable for robust and effective Governance through the PSA's oversight but how they address that should be decided within the organisation. Different regulators work in different environments, such as the size and nature of the professions they regulate, and will therefore need slightly different committee structures.

8. Do you agree or disagree that regulators should be able to charge for services undertaken on a cost recovery basis, and that this should extend to services undertaken outside of the geographical region in which they normally operate? Please give a reason for your answers.

Agree. Regulators have significant expertise and data which could contribute to the increased safety of the public and the development of safe and effective practice, but this cost should not be passed on to registrants.

Regulators should ensure that these charges are not high enough to become prohibitive. In particular, we would not like to see anything that would discourage Universities from starting up new courses where this is necessary, although we do not anticipate that this will be the case.

9. Do you agree or disagree that regulators should have the power to delegate the performance of a function to a third party including another regulator? Please give a reason for your answer.

Agree. This may be preferable to do this due to the size of a regulator or lack of sufficient expertise. They should be held accountable for the outcomes and impact of the activity and demonstrate robust oversight and quality assurance.

10. Do you agree or disagree that regulators should be able to require data from and share data with those groups listed above? Please give a reason for your answer.

Agree. Where this advances the regulator's work in ensuring public protection this is a positive step but any data sharing should comply with freedom of information legislation.

11. Do you agree or disagree that regulators should produce an annual report to the Parliament of each UK country in which they operate? Please give a reason for your answer.

Agree. As health systems differ across the four nations, and regulators will likely face different challenges, they should submit an annual report to the legislature of each country they work in.

12. Do you agree or disagree that the Privy Council's default powers should apply to the GDC and GPhC? Please give a reason for your answer.

Agree. Powers should be consistent across regulators.

13. Do you agree or disagree that all regulators should have the power to set: • standards for the outcomes of education and training which leads to registration or annotation of the register for individual learners; • standards for providers who deliver courses or programmes of training which lead to registration; • standards for specific courses or programmes of training which lead to registration; • additional standards for providers who deliver post-registration courses or programmes of training which lead to annotation of the register; and • additional standards for specific courses or programmes of training which lead to annotation of the register? Please give a reason for your answer.

Agree. Maintaining the minimum standard of registrants and ensuring their ongoing professional development should be a key tool used by regulators to ensure the maintenance of standards and public safety.

14. Do you agree or disagree that all regulators should have the power to approve, refuse, re-approve and withdraw approval of education and training providers, qualifications, courses or programmes of training which lead to registration or annotation of the register? Please give a reason for your answer.

Agree. This ensures that HEIs comply with the education standards set out by the regulator, and provides reassurance to the public and to prospective students and employers in the standard of these courses.

15. Do you agree that all regulators should have the power to issue warnings and impose conditions? Please give a reason for your answer.

Agree. This enables the regulator to support HEIs to improve the quality of the courses they deliver.

16. Do you agree or disagree with the proposal that education and training providers have a right to submit observations and that this should be taken into account in the decisionmaking process? Please provide a reason for your answer.

Agree. Regulators should draw on all available sources of information to form assessments on the quality of education being provided. An interactive process also enables both sides to learn and develop.

17. Do you agree that: • education and training providers should have the right to appeal approval decisions; • that this appeal right should not apply when conditions are attached to an approval; • that regulators should be required to set out the grounds for appeals and appeals processes in rules? Please provide a reason for your answer.

Agree. For reasons given in question 16.

18. Do you agree or disagree that regulators should retain all existing approval and standard setting powers? Please provide a reason for your answer.

Agree. These standards should remain, but only where this provides consistency across regulators. There may be some need for change where there are inconsistencies between the powers of different regulators.

19. Do you agree or disagree that all regulators should have the power to set and administer exams or other assessments for applications to join the register or to have annotations on the register? Please provide a reason for your answer.

Agree. For the reasons set out in 18.

20. Do you agree or disagree that this power to set and administer exams or other assessments should not apply to approved courses or programmes of training which lead to registration or annotation of the register? Please provide a reason for your answer.

Agree. Different professions are educated in a variety of ways and, particularly with the recent pandemic, education has been delivered very differently. A regulator should assess in the most appropriate and effective way. However, regulators should be held accountable in defending their decisions, in the interests of transparency.

21. Do you agree or disagree that regulators should be able to assess education and training providers, courses or programmes of training conducted in a range of ways? Please provide a reason for your answer.

N/A

22. Do you agree or disagree that the GMC's duty to award CCTs should be replaced with a power to make rules setting out the procedure in relation to, and evidence required in support of, CCTs? Please give a reason for your answer.

N/A

23. Do you agree or disagree that regulators should be able to set out in rules and guidance their CPD and revalidation requirements? Please give a reason for your answer.

Agree. Regulators should be able to set out CPD requirements in order to ensure effective regulation, so long as the rules are clear and understandable for registrants.

24. Do you agree or disagree that the regulators should hold a single register which can be divided into parts for each profession they regulate? Please give a reason for your answer.

Agree. This is dependent upon the professions that are regulated and, since this varies across regulators, this seems like a sensible approach.

25. Do you agree or disagree that all regulators should be required to publish the following information about their registrants: • Name; • Profession; • Qualification (this will only be published if the regulator holds this information. For historical reasons not all regulators hold this information about all of their registrants); • Registration number or personal identification number (PIN); • Registration status (any measures in relation to fitness to practise on a registrant's registration should be published in accordance with the rules/policy made by a regulator); • Registration history. Please provide a reason for your answer.

Agree. However, information should be kept to a minimum to ensure accuracy and currency and supply the public and employers with assurance that the practitioner is currently a member of the register.

26. Do you agree or disagree that all regulators, in line with their statutory objectives, should be given a power allowing them to collect, hold and process data? Please give a reason for your answer.

Agree. So long as this is done in line with relevant legislation and only for the purpose of fulfilling their primary objectives.

27. Should they be given a discretionary power allowing them to publish specific data about their registrants? Please give a reason for your answer.

Agree. This needs to be treated with caution and should only be allowed if it can be demonstrated that it is in line with the regulator fulfilling their primary objectives.

28. Do you agree or disagree that all regulators should be able to annotate their register and that annotations should only be made where they are necessary for the purpose of public protection? Please give a reason for your answer.

Agree. With the development of advanced clinical roles over time it will be necessary to ensure practitioners are appropriately trained to fulfil these roles.

29. Do you agree or disagree that all of the regulators should be given a permanent emergency registration power? Please give a reason for your answer.

Agree. This may be a necessary power in the future, as it has been during the COVID-19 pandemic. However, the definition of emergency would need to be very clearly defined.

30. Do you agree or disagree that all regulators should have the same offences in relation to protection of title and registration within their governing legislation?

Agree. This would ensure consistency across professions, and maintain public confidence.

31. Do you agree or disagree that the protection of title offences should be intent offences or do you think some offences should be non-intent offences (these are offences where an intent to commit the offence does not have to be proven or demonstrated)? Please give a reason for your answer.

Agree. Making all protection of title offences, intent offences, would ensure clarity and consistency.

32. Do you agree or disagree with our proposal that regulators should be able to appoint a deputy registrar and/or assistant registrar, where this power does not already exist? Please give a reason for your answer.

Agree. This power would make sure that accountability was maintained.

33. Do you agree or disagree with our proposal that regulators should be able to set out their registration processes in rules and guidance? Please give a reason for your answer.

Agree. This is proportionate, given the variation between professions, however there should be mechanisms to ensure these are proportionate and inclusive and do not inadvertently disadvantage groups of prospective registrants.

34. Should all registrars be given a discretion to turn down an applicant for registration or should applicants be only turned down because they have failed to meet the new criteria for registration? Please give a reason for your answer.

Applicants should be assessed against clearly defined and objective criteria, to full transparency for the applicant. It is difficult to see why there would be an advantage in giving any element of discretion to registrars.

35. Do you agree or disagree that the GMC's provisions relating to the licence to practise should be removed from primary legislation and that any requirements to hold a licence to practise and the procedure for granting or refusing a licence to practise should instead be set out in rules and guidance? Please give a reason for your answer.

N/A

36. Do you agree or disagree that in specific circumstances regulators should be able to suspend registrants from their registers rather than remove them? Please give a reason for your answer.

Agree. For specific administrative reasons, it seems proportionate that registrants can be suspended rather than removed. These circumstances should be clearly defined, along with the period of the suspension and the conditions for readmission.

37. Do you agree or disagree that the regulators should be able to set out their removal and readmittance processes to the register for administrative reasons in rules, rather than having these set out in primary legislation? Please give a reason for your answer.

Agree. We would welcome changes that enable regulators to better adapt so long as this is done following sufficient consultation and in via a transparent process.

38. Do you think any additional appealable decisions should be included within legislation? Please give a reason for your answer.

N/A

39. Do you agree or disagree that regulators should set out their registration appeals procedures in rules or should these be set out in their governing legislation? Please give a reason for your answer.

Agree. For reasons given in question 37.

40. Do you agree or disagree with our proposal that the regulators should not have discretionary powers to establish student registers? Please give a reason for your answer.

Agree. Students have not achieved the minimum standards required to practise and therefore it is unclear what a regulator would hold them to. Instead, it is the responsibility of the HEI to ensure that they are supervised and public safety is maintained.

41. Do you agree or disagree with our proposal that the regulators should not have discretionary powers to establish non-practising registers? Please give a reason for your answer.

Agree. A register of non-practising professionals has the potential to cause confusion for the public and potentially undermine confidence.

42. Do you agree or disagree that the prescriptive detail on international registration requirements should be removed from legislation? Please give a reason for your answer.

Agree. Regulators should be able to tailor their processes to support overseas recruitment, particularly where there are shortages. This process needs to be transparent and robust in order to ensure confidence however it should be proportionate so as to ensure certain groups are not excluded.

43. Do you agree or disagree with our proposal that regulators should be given powers to operate a three-step fitness to practise process, covering: • 1: initial assessment • 2: case examiner stage • 3: fitness to practise panel stage? Please give a reason for your answer.

Agree. This would help to process cases more quickly and proportionately, for the benefit of the claimant and the registrant.

44. Do you agree or disagree that: • All regulators should be provided with two grounds for action – lack of competence, and misconduct? • Lack of competence and misconduct are the most appropriate terminology for these grounds for action? • Any separate grounds for action relating to health and English language should be removed from the legislation, and concerns of this kind investigated under the ground of lack of competence? • This proposal provides sufficient scope for regulators to investigate concerns about registrants and ensure public protection? Please give a reason for your answers.

Agree. These proposals should make it clearer for registrants and ensure that the focus of fitness to practise process is reserved for cases where it is proportionate and necessary. Cases involving health or language requirements should be covered by competence where necessary.

45. Do you agree or disagree that: • all measures (warnings, conditions, suspension orders and removal orders) should be made available to both Case Examiners and Fitness to Practise panels; and • automatic removal orders should be made available to a regulator following conviction for a listed offence? Please give a reason for your answers.

Agree. This would ensure consistency in how registrants are treated.

46. Do you agree or disagree with the proposed powers for reviewing measures? Please give a reason for your answer.

N/A

47. Do you agree or disagree with our proposal on notification provisions, including the duty to keep the person(s) who raised the concern informed at key points during the fitness to practise process? Please give a reason for your answer.

Agree. However, these should be regularly reviewed and monitored.

48. Do you agree or disagree with our proposal that regulators should have discretion to decide whether to investigate, and if so, how best to investigate a fitness to practise concern? Please give a reason for your answer.

Agree. This will speed up cases and ensure the regulator has the opportunity to focus on the more severe cases.

49. Do you agree or disagree that the current restrictions on regulators being able to consider concerns more than five years after they came to light should be removed? Please give a reason for your answer.

Agree. This could increase public confidence in serious cases, but there needs to be clear justification on behalf of the regulator.

50. Do you think that regulators should be provided with a separate power to address non-compliance, or should non-compliance be managed using existing powers such as “adverse inferences”? Please give a reason for your answer.

Non-compliance is professional misconduct so could be dealt with as fitness to practice. However effort should be made to engage with the registrant and should be dealt with in this way where there is evidence of a risk to the public.

51. Do you agree or disagree with our proposed approach for onward referral of a case at the end of the initial assessment stage? Please give a reason for your answer.

Agree. As long as the process is clearly defined and registrants are kept informed, this would seem sensible to enable flexibility in the process.

52. Do you agree or disagree with our proposal that regulators should be given a new power to automatically remove a registrant from the Register, if they have been convicted of a listed offence, in line with the powers set out in the Social Workers Regulations? Please give a reason for your answer.

Agree. However, registrants should have a clear and accessible right to appeal.

53. Do you agree or disagree with our proposals that case examiners should: • have the full suite of measures available to them, including removal from the register? • make final decisions on impairment if they have sufficient written evidence and the registrant has had the opportunity to make representations? • be able to conclude such a case through an accepted outcome, where the registrant must accept both the finding of impairment and the proposed measure? • be able to impose a decision if a registrant does not respond to an accepted outcomes proposal within 28 days? Please give a reason for your answers

Agree. This will speed the process up in the case of straightforward cases, which would be of benefit for both the complainant and the registrant. However, this needs to be audited carefully to ensure that decisions are made consistently and in line with the regulator's standards. There is a risk of lack of impartiality and unconscious bias when decisions are made by one person.

54. Do you agree or disagree with our proposed powers for Interim Measures, set out above? Please give a reason for your answer.

Agree. The measures seem proportionate to the aim of protecting the public, but have sufficient safeguards from the perspective of the registrant.

55. Do you agree or disagree that regulators should be able to determine in rules the details of how the Fitness to Practise panel stage operates? Please give a reason for your answer.

Agree. The legislation seems to be sufficiently comprehensive to ensure consistency across regulators but regulators must ensure their processes are clear and transparent.

56. Do you agree or disagree that a registrant should have a right of appeal against a decision by a case examiner, Fitness to Practise panel or Interim Measures panel? Please give a reason for your answer.

Agree. Where there are clear ground given by a registrant, the right to appeal must be kept open.

57. Should this be a right of appeal to the High Court in England and Wales, the Court of Session in Scotland, or the High Court in Northern Ireland? Please give a reason for your answer.

Agree. The process should be open to challenge to ensure that there is full confidence in the final decision but we would need to be confident that registrants are not prevented or deterred from appealing, due to a lack of access to legal advice.

58. Do you agree or disagree that regulators should be able to set out in Rules their own restoration to the register processes in relation to fitness to practise cases? Please give a reason for your answer.

Agree. However, there needs to be some degree of oversight to ensure they are consistent across regulators. Due to the development extended roles, two professionals may be carrying out similar interventions within the multi-disciplinary team, therefore it is essential they are treated equitably.

59. Do you agree or disagree that a registrant should have a further onward right of appeal against a decision not to permit restoration to the register? Please give a reason for your answer.

Agree, A further right of appeal will ensure confidence in the final decision.

60. Should this be a right of appeal to the High Court in England and Wales, the Court of Session in Scotland, or the High Court in Northern Ireland? Please give a reason for your answer.

Agree. However, with caveat in answer 57.

61. Do you agree or disagree that the proposed Registrar Review power provides sufficient oversight of decisions made by case examiners (including accepted outcome decisions) to protect the public? Please provide any reasons for your answer.

Agree.

62. Under our proposals, the PSA will not have a right to refer decisions made by case examiners (including accepted outcome decisions) to court, but they will have the right to request a registrar review. Do you agree or disagree with this proposed mechanism? Please provide any reasons for your answer.

Agree. However, this process needs to be proportionate and avoid additional distress for complaints and registrants by reopening cases unnecessarily, therefore the criteria need to be clear and robust.

68. Do you agree or disagree with the benefits identified in the table above? Please set out why you've selected your answer and any alternative benefits you consider to be relevant and any evidence to support your views.

Agree. While we would expect an ongoing assessment of these benefits and costs to be needed, this seems like a realistic initial summary of the potential costs and benefits.

70. Do you think any of the proposals in this consultation could impact (positively or negatively) on any persons with protected characteristics covered by the general equality duty that is set out in the Equality Act 2010, or by Section 75 of the Northern Ireland Act 1998? • Yes – positively • Yes - negatively • No • Don't know Please provide further information to support your answer.

We would expect the impact of regulation on persons with these protected characteristics to continue to be assessed for unforeseen impacts.