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Dear Kisha

Amendments to Fitness to Practise Rules: Consultation

I write on behalf of the Board of the Office of the Health Professions Adjudicator (OHPA), in response to the above consultation.

The Board welcome the proposals contained within the consultation paper, which broadly align with the approach OHPA had aspired to assume. It is heartening to see so many rule changes mirror those intended by OHPA through its own adoption of, and adaptations to, GMC FtP rules and procedures.

Rather than comment upon each consultation question in detail, the OHPA Board will restrict itself to comments relevant to the final stage of FtP i.e. adjudication.

1. All Interim Orders to be held in private: you propose to move from all IO in public, to all to be held in private. We accept that many IO hearings consider the physical or mental health of a practitioner or third party. The circumstances therefore should outweigh the public interest, and, we believe, a private hearing is appropriate. However, not every application for an Interim Order will relate to matters of health. Transparency, proportionality and public interest may be better served if the rules provided an option for a hearing in public. This option would also afford the practitioner a choice, should they wish for their IO hearing to be in public. We suggest this addition would bring the GOC into closer alignment with other health profession regulators.
2. OHPA supports the use of case management and standard directions. The consultation describes this change to assist in disposal of cases without referral to the FtP Committee. The changes proposed are positive in terms of procedural clarity, but we would urge the GOC to be more courageous in developing this aspect, perhaps in line with proposed changes currently consulted upon by the GMC? In particular, to consider the types of cases appropriate for consensual disposal; without this definition there could be a perception of a return to pre-Shipman adjudication, of decisions made behind closed doors.
3. We do not see any benefit in moving to a 4-stage decision-making process. This proposal appears to be at odds with procedural changes and modernisation of all other forms of administrative justice. OHPA, and its legal Challenge & Confirm group, remain firmly of the belief that there are two stages of decision-making; whether FtP impairment has been established and found, and appropriate sanction.
4. The draft rules provide for a registrant to submit a 'no case to answer' at close of the GOC case presentation, which we support. However, the draft is silent on guidance to

the FtP Committee should the registrant (or their representative) not avail themselves of this opportunity when the FtP Committee itself believes that impairment has not been proven and found. As drafted, it would appear that the Committee is required to pursue each procedure (46(11)-(17)). We therefore suggest that it might be beneficial to either provide such guidance or to re-craft the specific rule to provide greater clarity on when and how the defined procedure may be departed from.

We would be happy to discuss this response further.

Yours sincerely

Wendy Harris
Policy Director, signing on behalf of the OHPA Board