DRIVING FORWARD PROFESSIONAL STANDARDS FOR TEACHERS

Fitness to Teach Process Consultation Information

September 2016

Table of Contents

1. Why are the changes proposed?

The Fitness to Teach and Appeals Rules that we currently have in place were written over five years ago. These Rules instituted the forward-looking fitness to teach procedures that are focused on protection that we now have in place; replacing the disciplinary regime that applied before 2012.

Inevitably, over the first five years of our fitness to teach procedures being in place, we have identified a number of requirements for change based on feedback from others as well as our own ongoing evaluation procedures. We would note our thanks to those who have provided their feedback to us as it is invaluable to us in seeking to continually improve how we work.

There are three key drivers that have led to the proposed changes: these are described below.

1.1 Changing case profile

Consistent with the trend that we observed in 2011 (as well as the recent experience of other professional regulators), we have identified that the number, type and complexity of fitness to teach cases that we deal with has changed.

- Since April 2012, we have observed a near doubling in the number of fitness to teach conduct matters referred to us: we received 64 such referrals in 2012/13 and 122 in 2015/16. The vast majority of these referrals were made by employers of teachers but there has also been a year on year increase in the number of conduct complaints that we have received from members of the public (we received 52 such complaints in 2015/16 as compared to 30 in 2012/13).

    - We currently project that this trend will continue with the number of conduct matters referred to us increasing by 10% each year up to 2019/20.

- We have seen an increase in the number of cases being considered by our Investigating Panels (IPs): 72 cases were considered in 2012/13 and 93 in 2015/16. We project that over 100 cases will be considered by our Investigating Panels this year and that there will be a 10% year on year increase in this context to 2019/20.

- Allied to the increases set out above, we are projecting an increase in the number of cases that will be referred by IPs to Fitness to Teach Panels for a hearing. On average, 35 cases per year have been so referred since April 2012; we project that this will increase to over 40 cases this year and that there will be a 10% year on year increase after that to 2019/20.

- The number of cases referred for a temporary restriction order (an interim order available to restrict a teacher pending conclusion of the fitness to teach investigation and hearing process) has increased significantly: 8 such referrals were made in 2012/13 as compared with 40 in 2015/16.

- The number of procedural issues (e.g. private hearing or anonymity applications or challenges to the admissibility of evidence) raised in Fitness to Teach Panel hearings has increased significantly. We held 3 procedural hearings in 2012/13 and 18 in 2015/16.

Our current fitness to teach process was not designed for the changing case profile and context that we are experiencing so we need to update it.

1.2 Efficiency and expediency demands

Given the changing case profile described above, it is becoming increasingly difficult to make our fitness to teach processes operate as quickly as we want them to: this situation will be compounded with increasing case volumes. We want our fitness to teach investigation and hearing procedures to happen as close in time as is practicable to the incidents or events in question. Not only is this in the best interests of everyone involved (including in seeking to manage stress and anxiety), it is also in the interests of ensuring that the process achieves its public protection objective with timely action being taken to address risks where these are identified.

We have received feedback from process users (including the teachers concerned, complainants and witnesses) as well as employers and the wider public, that supports our view that we need to do more to make our fitness to teach processes quicker.

- Stakeholder Engagement Research Project conducted by Why?Research

The changes that we propose have been designed not only to accommodate an increased case volume but also to make our end to end procedure move as quickly as we think it reasonably can. Our key objective has been to remove the barriers that can sometimes create inefficiency in our processes. We are not proposing any change in the rigour that we apply to our fitness to teach investigations and the fairness that we ensure throughout the process: we are simply removing some administrative hurdles to make our processes quicker and more agile.

1.3 Changing wider context and the future

In the last five years since we put our existing rules and procedures in place, the educational and professional regulatory contexts in which GTCS operates have changed.

GTCS is required (by its governing legislation) to perform its functions to a best regulatory practice standard. We are committed to remaining up to date on what that means and reflecting on whether we need to make any changes to how we work in order to continue to meet this standard.

The Professional Standards Authority (PSA)(the body that oversees those that regulate health and social care professionals in the UK) has published two discussion papers over the last year aiming to provoke debate about what best regulatory practice means ("Re-thinking Regulation" and "Right-touch Regulation"). Whilst these papers are framed within the context of the regulation of health and social care which is quite different from

the GTCS context, some of the key messages conveyed are still of relevance. These include ensuring that regulatory procedures are:

- forward looking and adaptable to change;
- focused on addressing risk of harm; and
- targeted only where local (e.g. employer) processes cannot address sufficiently the particular risk that has arisen.

In April 2014 a report of the UK Law Commissions that reviewed the law on the regulation of health care professionals and (in England only) social workers was produced to the UK Parliament. Whilst this review obviously did not cover the work of GTCS, the report contained a number of recommendations and observations relevant to determining what current "best regulatory practice" means in framing a fitness to practise (or teach) process.

The Scottish Government recently published "Delivering Excellence and Equity in Scottish Education: A Delivery Plan for Scotland". This document emphasises the importance of the link between teacher professionalism and the improvement of pupil learning. It states: "*Ensuring the highest professional standards for all teachers in Scotland will help to ensure the highest standards and expectations for all children*." Our fitness to teach process is one mechanism that GTCS uses in seeking to ensure high professional standards by its registered teachers. Consistent with the other key themes set out in the document, we therefore think that it's important that our fitness to teach process is simple, clearly aligns with current practice and that we take steps to reduce any unnecessary bureaucracy that it may cause.

We know that the changes in context that we have identified will continue in future as we now live in a rapidly changing world: as the PSA highlights, our processes need to be forward looking and adaptable to change accordingly.

2. What changes are proposed?

Driven by all of the factors explained above and in line with best regulatory practice, the proposed Fitness to Teach Rules aim to introduce a more proportionate and efficient approach to how we determine whether an individual is fit to teach.

As you will see if you look back to the Rules currently in place (and available to download on the right), the proposed Rules look quite different.

We have tried to put in place a shorter, clearer, coherent and accessible set of rules which is divided into the following 4 sections:

- General
- Conduct cases
- Professional competence cases
- Subsequent registration applications

We think that this new structure makes it easier to see (and follow) how cases progress through the fitness to teach process from start to finish so it makes our Rules framework more coherent. We also think that this revised approach better addresses the quite different case types that the process covers: we talk more about this below. We have retained a "General" section because there would have to be a lot of duplication in each of the different sections without it which we think would make the Rules seem quite cluttered and long.

➢ ***Consultation questions:***

a) Do you have any comments on how we have structured the Rules?
b) Do you have any comments on the factors that we have taken into account in proposing changes?

2.1 Competence v conduct cases

By "**competence case**" we mean a case referred to us by an employer of a fully registered teacher where the teacher has been dismissed (or has resigned where such dismissal was likely) on the grounds of a lack of competence. Competence of fully registered teachers is judged with reference to our Standard for Full Registration (the SFR). Employers follow our Framework on Teacher Competence in the process culminating in any such referral.

The competence case category also covers employer referrals where a provisionally registered teacher is considered to lack competence at the end (or exceptionally, during) the course of completion of the required probationary service period. When a teacher first seeks registration with GTCS, he/she is required to meet (as a minimum and as a baseline for registration) the Standard for Provisional Registration (the SPR). This standard is what is expected in order to successfully complete an initial teacher education programme in Scotland. Having gained provisional registration, a teacher is required to complete a period of probationary service and (whilst still continuing to maintain the SPR) demonstrate at the end of that period that he/she meets the SFR in order to then achieve full registration. Competence in the provisionally registered context is therefore judged with reference to both the SPR and SFR (which together make up our Standards for Registration).

We only accept competence case referrals from employers. This is because the employer is essential in providing monitoring and support to the teacher through a fair performance management process that focuses first on restoring the teacher's practice. If the teacher's practice is not ultimately restored, the process will have gathered evidence about the teacher's practice that can then be passed to GTCS as part of a referral. Any concerns about professional competence in respect of registrants by a member of the public or a body other than an employer must therefore be addressed through the employer rather than coming direct to GTCS.

A **conduct case** means a case opened as a result of criminal offence information, an employer referral or any other information that may be received (including from members of the public) in relation to the conduct of a registered teacher or applicant for registration.

In our current Rules, competence case hearings related to fully registered teachers follow the same process as conduct cases (known as an "adversarial" process where the emphasis is on each party to draw out and present to the Panel the information they think should be considered) while competence cases related to provisionally registered teachers are dealt with differently (following an "inquisitorial" hearing process where the emphasis is on a Fitness to Teach Panel to find the information that it thinks it needs to make a decision).

2.1.1 Proposal

We think that no matter where in the teacher journey a competence case arises, the process should be the same. We are also aware that managing fully registered competence cases in the same way as conduct cases is not currently providing the most efficient or effective end-to-end process because competence and conduct cases are quite different. Conduct cases centre on establishing facts: did X happen on X date(s)? If any of the alleged facts are proved, the process then moves on to consider whether this means that the individual's fitness to teach is impaired. Whilst facts are also important in competence cases, there is a much more central focus in these cases on what the facts mean with reference to the Standards for Registration. For this reason, in competence cases it is almost impossible to separate determining the facts from determining the individual's fitness to teach. The process of evaluating whether an individual is falling short of the SFR is also a very expert task: it requires in-depth knowledge and understanding of the SFR and what competent teaching practice looks like.

We do not think that the adversarial process is adding value in the context of competence cases: we think it is making the process more legally complex, inaccessible and lengthy. We know that there is a better way of managing these cases because of our experience of how the process works in the provisional registration context. We think that by aligning our competence processes we can speed up how long these cases take to conclude (bringing the turnaround time down from approximately one year to three months). The proposed changes therefore provide for this alignment: proposing that all competence cases follow the same more streamlined inquisitorial model.

We are proposing that the Panel considering the competence case at a hearing will have the option to impose a temporary restriction order in order to restrict the teacher to his/her existing teaching post until the fitness to teach process has concluded. This option is available to Panels currently in competence cases related to fully registered teachers but not those who are provisionally registered: we think this is an anomaly that needs addressed given the same potential risk of harm applies no matter whether the registration status is provisional or full.

➢ ***Consultation questions:***

a) Do you agree that we should align how we manage competence cases throughout the teacher journey?
b) Do you agree that it should be possible for a temporary restriction order to be imposed in a provisional registration competence case (i.e. at the probationary service stage)?

2.2 Streamlining and clarifying the investigating process in conduct cases

Currently, we have an investigating process that involves two stages: initial consideration (which is sometimes known as "screening" or an "initial sift") and full investigation (which culminates in consideration of the case by an Investigating Panel).

The purpose of the initial consideration stage is to determine whether investigating the individual's fitness to teach is justified with reference to the allegation identified. It therefore allows a case to be closed at the earliest possible opportunity where the allegation is found not to have a bearing on fitness to teach or to be frivolous, vexatious or malicious. The decisions made at this stage have been delegated to GTCS staff which is consistent with the approach of other professional regulators.

Under the current Rules, once a case is referred on from the initial consideration stage, any investigations considered necessary should be carried out and it must be referred on to an Investigating Panel (IP). The IP considers whether there is a "case to answer" which broadly involves considering whether there is: (i) a reasonable body of evidence in support of the allegation; and (ii) a realistic prospect that a Fitness to Teach Panel would find at a hearing that fitness to teach is impaired. The IP meets in private and makes its decision based on the papers or written submissions before it: it does not hold hearings. Where the IP decides that there is a case to answer, its options are to either: (i) refer the case to a Fitness to Teach Panel; or (ii) offer the individual concerned a reprimand with consent order (this requires the individual to admit the allegations and that his/her fitness to teach is impaired. If the order is not accepted then the case is referred on to a Fitness to Teach Panel).

2.2.1 Proposal

There are a number of ways in which we want to improve this process (which would apply to conduct cases only given our proposal to manage competence cases differently; as explained above):

- We want our resources targeted towards thoroughly (and expeditiously) investigating cases where there is a public interest in the fitness to teach process being followed because the teacher or applicant concerned presents a risk of harm.

- We want the framework to be more flexible to allow cases to be closed as soon as it is identified that there is not a public interest in the investigation process continuing; for example where it transpires that there is insufficient evidence available to prove the allegations. We also want this flexibility so that we can ensure fairness and proportionality in how we handle cases throughout.

- We want the investigating and hearing stages to be more joined up to create more efficiency and make it easier for those involved to understand (and participate in) the process.

- We want the determinations made throughout the investigation process (and the language we use) to be easier to understand and more aligned to the forward-looking, protective nature of the fitness to teach process; moving away from the "case to answer" and "complaint" model in place currently.

- To explain our rationale here further, our view is that the term "complaint" is better suited to a process that looks back at what happened to identify what went wrong and then tries to put things right for the complainant (ie. offer redress). Our fitness to teach process is not about offering redress and it is not intended to be punitive, it is about: identifying what has happened, identifying what (if any) risk of future harm there is with reference to the fitness to teach of the teacher/applicant concerned and then managing that risk by taking the appropriate protective steps in relation to the registration of the teacher/applicant concerned. We think that using the term "complaint" is therefore causing confusion about what our process is all about and the outcomes it delivers, particularly for members of the public.

- We want to offer greater opportunities for a wider range of consensual orders to be issued at an early stage in the process.

In seeking to achieve the above, we are proposing that we make a number of changes to the process set out in the current Rules. These proposals are summarised below.

- We have removed the term "complaint" from the Rules. We have proposed that we adopt the more generic concept of "referrals of information" (which could come from any source) and the term "allegation(s)".

- As soon as practicable after we receive information about the conduct of a teacher/applicant, a determination will be made (by a GTCS member of staff or appointed individual(s)) about whether it:

  a) is Relevant Misconduct (which will include an assessment of whether there is, based on the allegation(s) and on the face of it, a real prospect of a Panel ultimately finding an impairment of fitness to teach);

  b) relates to events that occurred 5 or more years ago and it is not in the public interest for the allegation(s) to be investigated;

  c) is frivolous or vexatious; or

  d) cannot be verified or the teacher concerned is not identifiable.

  Where it is determined that the matter is not Relevant Misconduct or the answer to any of points b) to d) is "yes" then it will proceed no further (i.e. no investigation will

be carried out) and the teacher will be notified accordingly. Otherwise the case will be referred on for investigation and the teacher will be notified accordingly.

This broadly aligns with the process that the Law Commissions recommended in their review referred to above.

- The notice that tells the teacher that an investigation is to take place will state the allegation(s) made. It will also invite (but not require) the teacher to provide any information that he/she thinks is relevant to the investigation process and the enquiries that should be made; bearing in mind that the purpose of the investigation is to try to find all of the facts relevant to what happened, not only to look for information that supports the allegation(s).

- A case will be closed if at any stage in the process of investigation it is determined (by a GTCS member of staff or appointed individual(s)) that:

a) The case should not in fact have been referred on for investigation because it is not Relevant Misconduct or it has subsequently transpired that the answer to any of points b) to d) listed above is “yes”;

b) The referral is malicious; or

c) There is insufficient evidence reasonably available to prove the allegation(s).

This seeks to maximise flexibility within the process and ensure that cases are closed where it is determined that an investigation is not required or that the case cannot proceed further (i.e. where the allegation(s) cannot be proved).

- Once the person carrying out the investigation determines that his/her investigation is complete, a notice will be issued to the respondent to disclose all of the information that has been gathered and to state that the next step is that the case will be referred to a Panel for consideration. The respondent will be informed that he/she has 28 days from receiving that notice to provide anything else that he/she considers relevant to the case with reference to what the Panel will consider and a form will be provided for use for this purpose. It will be explained that the options open to the Panel at this stage in the process are to determine:

a) That the case should be closed on the basis that it should not have been referred on to it because:

    - The matter referred does not constitute Relevant Misconduct;
    - The referral is frivolous, vexatious or malicious;
    - It relates to events that occurred 5 or more years ago and it is not in the public interest for the matter to be investigated; or
    - There is insufficient evidence reasonably available to prove the allegation(s).

b) That further information is required and therefore additional investigations should be carried out. The case would be referred to a Panel again once such investigations

had been completed (with the respondent being given a further 28 day period to respond in view of this additional information).

c) His/her fitness to teach is not impaired and that no further action should be taken.

d) That the matter should be referred on for hearing proceedings.

e) That a consent order be issued to the respondent.

[Note: consent orders would be available across the full disposal range: reprimand, conditional registration order, reprimand and conditional registration order as well as removal. Consistent with our existing consent order process, the respondent would be required to admit the allegation(s) in full and the terms of the order would be made publicly available via the GTCS website. If the consent order was not accepted, the case would be automatically referred on for hearing proceedings.]

Whilst it is likely to be exceptional for a Panel to make a determination with reference to points a) or b) given that these are considered at the earlier stages, the intention underlying including these options is to continue to maximise flexibility throughout the process to cater for all eventualities and ensure that cases only ever progress where this is in the public interest.

As explained above, we think that streamlining our processes in this way will allow us to target our resources more effectively and conclude cases more quickly. We think that this will benefit everyone involved; as we noted earlier.

- ***Consultation questions:***

  a) Do you agree with our proposals to move away from the use of the term "complaint" in the context of our fitness to teach process?
  b) Do you agree with our proposals to streamline the process we use to investigate conduct cases?
  c) Do you think there are other aspects of the process that we should change?

2.3 Making conduct hearings more efficient

We are not proposing that we change the fundamental elements of our current hearings framework (e.g. the types of hearings, the various hearing stages, the rules of evidence and the standard of proof). The changes proposed seek simply to enhance the flexibility in the process and to streamline some quite specific aspects of how hearings operate in practice (including the case management process followed in the lead up to a hearing). The changes proposed are summarised below.

2.3.1 Proposal

- We are proposing that there would no longer be a burden of proof placed upon the Presenting Officer to prove an impairment of fitness to teach. We do not think placing

a burden on a party is in the interests of a fair determination being made about impairment as this should be informed by both parties. Determining fitness to teach means assessing where the respondent is now with reference to the professional standards: this places a particular focus on what remediation and insight is shown by the respondent. We think that removing this burden also better reflects current practice in hearings.

- We are proposing that a Panel may impose reasonable time limits on the time that a party may take at hearing in presenting evidence, questioning witnesses or making submissions. Obviously this provision would need to be interpreted and applied by a Panel in compliance with the law (including natural justice principles and human rights provisions) and it would likely only be used in exceptional cases. We think, however, it is a helpful provision for a Panel to have in order to ensure that hearing time is used and managed appropriately and proportionately.

- We are proposing clearer provisions to enable Panels more easily to dispense with the requirement to read aloud witness statements (which stand as the evidence-in-chief for that witness). Where the witness statement was not read aloud, and in the interests of transparency, it would be made available for inspection during the course of the hearing to any members of the public in attendance.

- Throughout the case management and hearings sections, we have set out clearer explanations about the various process types to try to help make the processes set out in the Rules easier to follow, particularly for unrepresented respondents. We have also removed unnecessary detail about how hearings will be conducted in seeking to ensure that the Panel has discretion to appropriately tailor the order of proceedings to what is appropriate in the circumstances of the case (in line with the General Objective of the Rules; which includes seeking informality and flexibility in proceedings).

- We are proposing that case management discussions may be conducted by a Servicing Officer or Convener and that the provisions in the Rules about case management generally be shortened. No decisions are taken through the case management process: it is about facilitating the exchange of information between the parties, identifying with parties the issues that are in dispute and aiming generally to achieve “no surprises” at hearings. By making the changes proposed, we are removing some detail in the Rules that is unnecessary and also making the process more flexible. Servicing Officers already take a significant (but informal) role in managing cases and encouraging parties to work together to identify the issues in dispute and focus hearing preparations accordingly: the proposed changes aim to formalise this role in the interests of the smooth-running and clarity of the process.

- We are proposing that the default position for procedural and preliminary matters (covering issues like applications for private hearings and challenges to the admissibility of evidence) will be that these will be considered by a Panel based on the written material submitted rather than at an oral hearing. An oral hearing will take place if this is requested by either party or the Panel thinks an oral hearing is necessary. Through existing processes we have (where parties have agreed) already

had procedural and preliminary matters determined without a formal oral hearing and this has worked well. Allowing such matters to be determined on the papers as the default position brings a number of practical benefits; not least in saving the effort (and expense) associated with parties having to attend a hearing. In the context of the rising number of procedural hearings that we have experienced, the savings made will bring about quite significant efficiencies.

- Similar to what we are proposing in relation to procedural and preliminary matters, we are proposing that temporary restriction hearings will only take place where a hearing is requested by a party or a Panel considers a hearing necessary. On average, over 60% of cases where a temporary restriction order (TRO) is sought, it is consented to and the current process allows the TRO to be imposed without a hearing. There are an increasing number of cases each year where no consent is given to a TRO being imposed but no challenge is provided either. Under the current process, a hearing must take place in this circumstance regardless: we are proposing under the new Rules that it would not. A registrant may ask for a review of a TRO at any time under the Rules so we are confident that no unfairness would arise.

- We have proposed that it will be possible for a consent order to be issued covering the complete range of Panel disposals even after the case has been referred for a hearing. We want to ensure that consent orders remain an option throughout and that hearings only take place where issues are in dispute and need determined.

- We have proposed removing the provision that currently enables a Presenting Officer to present to a Panel a reasoned opinion for a case to be cancelled. We have instead introduced an option for a Panel to cancel a case. We think this makes the Rules fairer in that both parties are therefore in the same position. We envisage that a Panel would cancel a case where, for example, evidence is no longer available to prove the allegation or an error of law has been made and the only fair remedy is that the case be cancelled (e.g. where undue delay is shown). We would introduce guidance (via a Practice Statement) to seek to ensure consistent application of this provision.

- We have made some other small tidying changes to the drafting in the Rules to ensure clarity and alignment with practice: these do not change the underlying policy.

- ***Consultation questions:***

  a) ***Do you agree with the proposals that we have made to try to make our fitness to teach conduct hearings process more efficient?***
  b) ***Do you think there are other aspects of the hearings process that we should change?***

3. Appeal process

Under the current Rules, there is an internal route of appeal to the GTCS Appeals Board in a small spectrum of cases. Internal appeals may be made: in fitness to teach cases with no fitness to teach impairment finding/no order/reprimand/conditional registration order outcomes and in probationary service hearing (or provisional registration stage competence) cases (this provides an extra appeal route which may be exercised before going to the Court of Session). There has never been an appeal of a fitness to teach case final outcome to the Appeals Board: the only appeal that has even been made was of a procedural hearing decision and this was found to be legally incompetent so it proceeded no further. There have been just three appeals of probationary service hearing outcomes since 1 April 2012 (which were all refused).

Maintaining an internal route of appeal is creating quite significant issues: there are conflicts of interest that arise in the servicing and support of such hearings and we think that the low volume of cases may make it difficult for Appeals Board members to continue to maintain the level of experience and expertise required. It is consistent with the practice of other professional regulators that for fitness to practise outcomes other than removal/refusal, judicial review (at Court of Session) is the route for applicants/registrants to follow should they wish the outcome reviewed. There is already a statutory right of appeal to the Court of Session in probationary service hearing cases and we have proposed in the Rules that we provide a simpler right of review (which would be considered by a fresh Panel based on the written submissions made) in this context (which is consistent with our governing legislation).

- ***Consultation questions:***

    a) ***Do you agree that we should remove our internal appeals process as proposed?***
    b) ***Do you have any comments on the proposed right of review that would apply in provisional registration competence cases?***

4. General changes

Finally, we would highlight some changes that we are proposing to the general section of the Rules that sets out provisions that apply throughout. We have proposed:

- That this section is made more comprehensive to reduce duplication and repetition within the other three sections. For example, we have brought the witness and evidence provisions into this section and ensured that the definitions are comprehensive and coherent.

- That we refer generally to “Panels” (composed of independent members and subject to the quorum provisions that require them to be comprised of a minimum of three members including a majority of registered teachers and at least one lay person). This leaves GTCS with the flexibility to decide what (if any) specific name to use for Panels determining matters at a specific stage (e.g. Investigating Panel, Fitness to Teach Panel, Registration Panel etc): we do not think this needs to be specified in the Rules.

- That the concept of a “Nominated Address” will apply as a way of tidying up where party notices will be sent to, particularly where the respondent is represented.

- A provision requiring parties and Panels to have regard to any guidance published by GTCS as to matters of practice and as to how the powers under the Rules should be exercised. This acknowledges and confirms the positive role that our Practice Statements (including the Indicative Outcomes Guidance) now play in the fitness to teach process; particularly in seeking to ensure a level of consistency in Panel decision-making.

- In line with the recommended approach identified by the review of the Law Commissions noted earlier, that we amend the “Overarching Objectives” to “General Objective” to clarify the language. We have also added to these objectives with a view to ensuring that parties co-operate with each other and with Panels in the interests of the process.

- That the current provisions on public/private hearings be clarified and expanded in line with current practice; including to reflect restrictions on disclosure (or anonymity requests) and build in a default position that the names of vulnerable witnesses (including children) will not be publicly disclosed through the process.

- That the provision about who may be excluded from proceedings be made more comprehensive so that it catches all stages of the process (not just hearings) and may only be done where that person is preventing achievement of the General Objective.

- That the decision and reasons provision be amended to better reflect practice and also to provide more flexibility as to when written decisions will be issued for use in longer, more complex cases. In these cases, the current 14 day timeframe proves extremely challenging.

- We have added to the “non-compliance” provision in order to ensure that the consequences of not complying with the Rules (or any direction given) are clearer and carry more force. We think this is particularly important in seeking to make the case management process more effective.

In addition to the above, we have also been reflecting on who should be eligible to be defined as a “vulnerable witness” in our fitness to teach hearings. In the current Rules we mirror the approach taken in Scottish criminal court proceedings. This means, in summary, that someone is eligible to be treated as a vulnerable witness if:

- They are a child at the time of the hearing (i.e. under 18).
- There is a significant risk that the quality of the evidence to be given by the person will be diminished because of:
    - mental disorder; or
    - fear or distress in connection with giving evidence at the hearing.
- The witness is the victim of an offence:

- listed in any of paragraphs 36 to 59ZL of Schedule 3 to the Sexual Offences Act 2003,
- under section 22 of the Criminal Justice (Scotland) Act 2003 (traffic in prostitution etc.),
- under section 4 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (trafficking people for exploitation),
- the commission of which involves domestic abuse, or
- of stalking.

❖ There is considered to be a significant risk of harm to the person by reason only of the fact that the person is giving or is to give evidence at the hearing.

A vulnerable witness is potentially eligible for various special measures to help support them give evidence; for example, giving their evidence by video link or from behind a screen. It also means (where the allegation is sexual in nature and the vulnerable witness is the alleged victim) that the Respondent may not him/herself examine or cross-examine (i.e. question at a hearing) the witness.

We could amend the definition we use and widen who would be eligible to be treated as a "vulnerable witness" by including, for example:

❖ Physical disabilities and physical disorders.
❖ Impairments of intelligence and/or social functioning (which may not be classified as a mental disorder).
❖ Victims of a wider range of offences (e.g. hate crime, attempted murder etc)

➢ ***Consultation questions:***

a) Do you have any comments on the changes that we have proposed to the "General" section of the Rules?
b) Do you think we should change who we define as a "vulnerable witness" in our fitness to teach hearings? If so, please tell us what you think should change.
c) Do you have any other comments on the Rules (or our fitness to teach process more generally) that you think we should consider as part of this review exercise?

5. Equality and Diversity

GTC Scotland promotes equality and diversity because we respect and value difference. We want everything that we do to be fair to all individuals and groups.

We want to ensure that all of our policies and services are free from discrimination. For this reason, we are carring out an equality and diversity impact assessment on the changes that we are proposing to the Rules (as detailed above). We are interested in receiving feedback as part of this consultation exercise to help us carry out our impact assessment.

➢ ***Consultation question:***

Do you think that any of the changes we are proposing will have an impact on any group of people in terms of the protected characteristics (i.e. age, disability, gender reassignment, pregnancy/maternity, race, religion or belief, sex, sexual orientation and marriage/civil partnership)?

6. When would the proposed changes take effect?

The Rules will require to be approved by the Lord President of the Court of Session before they can come into effect. Our aim is to have them in place by mid-2017 but this will be contingent on the timing of this approval process.

Once the Rules come into effect, cases will be determined under the new Rules as we think this is what is in the best interests of the process and everyone involved.

Where a case has been part heard at a hearing or is caught part way through the process falling under the existing arrangements, particular transitional provisions will apply but we will be trying as best as we can to avoid this situation arising.

7. Got any questions?

If you would like to clarify any aspect of this consultation, please contact us consultations@gtcs.org.uk.