

# New healthcare regulations:

implications for general practice

### A NEW ERA OF REGULATION

The regulation of health and social care professionals has entered a new era. On 2 April 2014, the joint Law Commission of England and Wales, the Scottish Law Commission, and the Northern Irish Law Commission published their long awaited final report and draft bill on the future regulation of healthcare professionals, and in England only, the regulation of social workers.<sup>1</sup> The report is the culmination of more than 3 years work to review the UK's legislation for the nine regulatory bodies governed by the Professional Standards Authority (PSA).

The General Medical Council (GMC) is one of the nine regulatory bodies within the remit of the project. The GMC currently operates under the Medical Act 1983 with each of the other regulatory bodies also operating using their own specific legal framework. The Draft Regulation of Health and Social Care Professionals etc Bill 2014 will provide a more flexible and consistent framework for all regulators of health and social care professionals. The draft bill will replace the current separate legislation with a single statutory framework for all regulatory bodies. This will give regulators greater operational autonomy and impose greater consistency between the regulators in certain key areas where it is in the public interest to do so, such as fitness to practise adjudication.

### CHANGES THAT COULD AFFECT GPs

The draft bill introduces a number of changes that will potentially affect all practising GPs. Every GP in the UK is aware of the need to be registered with the GMC, by submitting the appropriate forms and fees, but beyond that, fortunately, most GPs will never have first-hand experience of their regulator. The draft bill introduces the establishment of separate parts of the GMC's register for GPs and specialist medical practitioners. The GMC's professionals register would be divided into three parts: a part for medical practitioners (to be known as the principal list); a part for medical practitioners who are GPs (to be known as the GPs' list); and a part for specialist medical practitioners (to be known as the specialists' list). The intention is simply to establish consistency for the registers of regulated professionals.

The draft bill further provides that a barring scheme can be introduced by a

---

*"The draft Bill introduces a number of changes that will potentially affect all practising GPs."*

---

regulatory body in respect of a profession prescribed in the regulations, a specified field of activity and/or a specified occupational group. Under the proposed barring scheme, the GMC could potentially bar a practitioner from practising orthopaedics; nevertheless the same practitioner would be entitled to practise in general practice. Pursuant to paragraphs 2 and 2A of Schedule 3A of the Medical Act 1983 (as amended), a medical practitioner refused entry onto the Specialist Register or GP Register is entitled to appeal the Registrar's decision before a Registrations Appeal Committee followed by a right of appeal to the County Court or the Sheriff in Scotland. The draft bill supplements a prescribed right of appeal from the Registrations Appeal Committee to the High Court in England and Wales, the Court of Session in Scotland, and the High Court in Northern Ireland.

The three Law Commissions of the UK recommended reforms to the role of government in professional regulation. Currently, the government plays an active role in overseeing all aspects of the regulator's functions, mainly through its capacity as Privy Council adviser. The draft bill therefore targets government oversight on key areas where there is sufficient public interest and matters that give rise to questions about the allocation of public resources. Examples include the extension of statutory regulation to new professions or extending revalidation. The draft bill further gives the government default powers to intervene in cases of regulatory failure. The report and draft bill does not make any specific proposals regarding general practice as part of the

consultation process; however, a number of responses were received commenting on general practice-specific aspects of the current legal framework. The Royal College of General Practitioners (RCGP) considered that the Government would not have the expertise required to directly take over the regulator and suggested instead that parliament should be given power to take over a regulator that is failing, for example, to transfer the authority of the regulator to an alternative body.

### FITNESS TO PRACTISE

Fitness to practise is one of the primary areas for any regulatory body to ensure that its registrants are safe to practise and therefore appear on the register without any restrictions on their practice. Where concerns are raised, the regulator investigates and, if there is a realistic finding of the practitioner's fitness to practise being found to be impaired, then a hearing is held to determine whether the facts alleged have been found proven. If the alleged facts are found proven, the Committee then considers whether the practitioner's fitness to practise is impaired and, if so, whether any action should be taken against the practitioner's registration.

The three Law Commissions of the UK have proposed that the existing legal framework is consolidated and rationalised, introducing a single list of statutory grounds of impaired fitness to practise to apply across the regulators. The recommendation within the draft bill that the definition of deficient professional performance (DPP) should be extended to include 'an instance of negligence' hones the relationship

---

*"The GMC has heralded the publication of the draft bill as a 'once in a generation' opportunity for future-proof medical regulation in the UK..."*

---

between the grounds of misconduct and DPP. Historically, DPP connotes a standard of professional performance that is unacceptably low and which has been demonstrated by reference to a fair sample of the practitioner's work. A single instance of negligent treatment, unless very serious indeed, would be unlikely to constitute DPP. Under the draft bill, the DPP ground is far wider, encompassing situations that would include many allegations that currently constitute misconduct such as a single instance of negligent treatment. The report further recommends that the current ground of misconduct be narrowed and elevated to a new ground of 'disgraceful misconduct'. This ground would capture allegations where the practitioner's conduct is not necessarily directly clinically based, but which brings disgrace upon the practitioner, thereby prejudicing the reputation of the profession. The draft bill additionally specifies that a ground for a finding of impairment could be made if a practitioner's knowledge and use of the English language is insufficient.

### A FAIR HEARING

The report has made substantial recommendations in an attempt to perfect the efficiency of fitness to practise investigations. The draft bill further introduces certain procedural elements to ensure compliance with article 6 of the European Convention on Human Rights, namely the right to a fair and public hearing. The draft bill provides that each fitness to

practise panel will be given the general objective of dealing fairly and justly with cases. Currently, the Medical Practitioner Tribunal Service (MPTS) hearing centre is situated in Manchester; the draft bill however specifies a duty on regulators to comply with a request that a hearing takes place in the UK country where the practitioner resides or incident took place, unless there are reasons that justify refusing the request.

The GMC has heralded the publication of the draft bill as a 'once in a generation' opportunity for future-proof medical regulation in the UK, providing simplification and flexibility to healthcare regulators. The long awaited final report and draft bill will take the regulation of health and social care professionals forward into a new era.

#### Jamie Hunt,

Barrister, Professional Regulatory Team, Blake Morgan LLP, London, UK.

#### Provenance

Commissioned; not externally peer reviewed.

DOI: 10.3399/bjgp14X682093

### REFERENCE

1. Law Commission. *Regulation of health and social care professionals*. [http://lawcommission.justice.gov.uk/areas/Healthcare\\_professions.htm](http://lawcommission.justice.gov.uk/areas/Healthcare_professions.htm) (accessed 10 Oct 2014).

### ADDRESS FOR CORRESPONDENCE

#### Jamie Hunt

Professional Regulatory Team, Blake Morgan LLP, Watchmaker Court, 33 St John's Lane, London, EC1M 4DB, UK.

E-mail: [Jamie.Hunt@blakemorgan.co.uk](mailto:Jamie.Hunt@blakemorgan.co.uk)