

Give doctors the regulatory regime they deserve

A radical overhaul of the regulatory regime for health professionals is both necessary and long overdue, so it is important to seize this chance to get it right and get it done.

After waiting many years for the government to grasp this nettle, it felt like a significant step when the Department of Health and Social Care (2021) published proposals and a timetable for reforming the regulation of doctors and other healthcare professionals.

The Medical Defence Union has long encouraged the General Medical Council to make its fitness to practise procedures faster, fairer, less adversarial and more proportionate, but the General Medical Council itself has been constrained by outdated legislation. *Regulating healthcare professionals, protecting the public* (Department of Health and Social Care, 2021) proposes a new approach which aims to give the regulators greater autonomy to set out their operating processes within a framework of rules, guidance and safeguards. In its own words, it seeks to ‘modernise the regulators’ fitness to practise processes, which will enable the safe and quick conclusion of many cases without the need for expensive and lengthy panel hearings.’

The Medical Defence Union agrees with these principles and there is much in the consultation that they broadly support, such as the creation of a three-tier fitness to practise process covering initial assessment, case examiner stage and panel hearing. The Medical Defence Union believes that this should allow more cases to be appropriately resolved at an earlier stage, minimising the stress for doctors.

But the devil will be in the detail. With greater autonomy, regulators also need to ensure greater transparency and accountability. It is important to ensure that these much-anticipated reforms lead to a regulatory regime which protects patients and which investigates concerns about doctors in a fair, proportionate and timely way. There is much to applaud but the Medical Defence Union is concerned about two proposals which have the potential to undermine this objective.

Doctors with health concerns

The government proposes to remove health as a category of impairment in fitness to practise cases. Instead, it proposes two grounds for action: lack of competence and misconduct. The motives for this, which the Medical Defence Union support, are that such concerns should usually be dealt with outside a fitness to practise process. However, there will inevitably be some cases where health concerns lead to a formal process and removing this route is a retrograde step, resulting in cases falling under the ‘lack of competence’ ground for action.

In recent years, the General Medical Council (2021a) has established measures for sensitively managing these concerns, such as ensuring details about a doctor’s health are separated from other publicly available content about fitness to practise matters.

Removing the health category for fitness to practise cases risks undoing the many advances the General Medical Council has made in establishing separate and supportive procedures for dealing with unwell doctors. And the terminology will surely add to the distress for any doctor who is struggling with their physical or mental health under the strain of an investigation. The practical effect of this will be to penalise the most vulnerable doctors.

Investigating allegations more than 5 years old

The government proposes the removal of policies on investigating allegations that are more than 5 years old. Under the current 5-year rule applied by some regulators, including the General Medical Council, allegations cannot be investigated if they happened more than 5 years ago ‘unless the Registrar considers that it is in the public interest for it to proceed’.

Catherine Wills¹

Author details can be found at the end of this article

Correspondence to:
Catherine Wills;
media@themdu.com

How to cite this article:

Wills C. Give doctors the regulatory regime they deserve. *Br J Hosp Med.* 2021. <https://doi.org/10.12968/hmed.2021.0352>

However, the government suggests changing this because it means regulators ‘cannot currently consider fitness to practise concerns which are more than 5 years old’. This is not the case. If a concern or complaint is older than 5 years but corresponds with a potential current impairment or risk to patient safety, the General Medical Council can still investigate.

The General Medical Council has produced detailed guidance (General Medical Council, 2021b) on applying the 5-year rule for its decision makers which considers factors such as the gravity of the allegation, the extent of any continuing unwarranted risk to the public and/or to public confidence and the potential for a fair hearing based on the available evidence.

Seen in this context, the 5-year rule is a useful filter which ensures the fitness to practise process is focused on whether a doctor’s practice is currently impaired and whether conditions are required on their registration to protect patients.

Without the 5-year rule, there is a risk that doctors will be routinely and needlessly subjected to fitness to practise proceedings for historic complaints where there is no question of current impairment or risk to patients.

More flexible regulation

The welcome intention behind these proposals is to give the General Medical Council greater flexibility, particularly in the management of fitness to practise procedures. It would be ironic if plans to remove health as a category of impairment and abandon the 5-year rule went ahead because these are two areas where the General Medical Council has been able to exercise its limited flexibility to date.

The Medical Defence Union hopes that the government will address these concerns when it brings forward draft legislation later this year, with a view to the General Medical Council having its new powers in spring 2022. This consultation moves closer to the promise of a regulator which protects the public while dealing with doctors fairly and humanely. There is still work to do to ensure this promise is fully realised.

Author details

¹Medical Defence Union, London, UK

References

- Department of Health and Social Care. Regulating healthcare professionals, protecting the public. 2021. <https://www.gov.uk/government/consultations/regulating-healthcare-professionals-protecting-the-public> (accessed 14 July 2021)
- General Medical Council. How we investigate concerns. 2021a. <https://www.gmc-uk.org/concerns/information-for-doctors-under-investigation/how-we-investigate-concerns> (accessed 20 July 2021)
- General Medical Council. Guidance for decision makers in applying the five-year rule. 2021b. https://www.gmc-uk.org/-/media/documents/dc12553--guidance-for-decision-makers-on-the-five-year-rule--external-_pdf-82134517.pdf (accessed 14 July 2021)

Key points

- The government is intending to reform regulation for doctors and other healthcare professionals.
- It should lead to fitness to practise procedures which are faster, fairer, less adversarial and more proportionate.
- A three-tier fitness to practise process covering initial assessment, case examiner stage and panel hearing is proposed.
- A separate category for dealing with doctors with health concerns must remain.
- Investigations into complaints that date back beyond 5 years should only take place if they are in the public interest.