

Managing disputes within medicine: is there a role for alternative dispute resolution?

Managing complaints from disappointed patients is now so frequent that it has become part of day-to-day professional life. Doctors are under fire from many directions — they are obliged to cooperate with the NHS complaints procedures, must respond to separate legal complaints and are vulnerable to patients complaining directly to the General Medical Council (GMC). The cumulative effect of this three-pronged attack is to draw the profession's attention to the need to maintain standards but also to battle-harden individuals against the worry and annoyance which such complaints invoke.

On another front there is an increasing tendency for serious disagreements to arise between health-care professionals — many of which have the potential to threaten an individual's livelihood. Binding contracts between consultants and trusts or educational agreements between trainees and postgraduate deans carry with them bilateral responsibilities that on occasions will cause serious disputes.

It is a matter of conjecture as to how the profession will deal with issues arising out of the proposed revalidation process if an individual's livelihood is threatened by GMC judgments. When problems do arise — as they inevitably will — they will need to be resolved fairly, within the profession and should be binding. Rather than relying on civil litigation there could well be a role for alternative dispute resolution (ADR) — a process supported in recent legal reforms introduced by Lord Woolf.

ALTERNATIVE DISPUTE RESOLUTION

ADR forms a spectrum of processes, many of which are legally binding

and all of which are carried out in private. They include arbitration, expert determination, mediation and conciliation.

Arbitration involves the appointment of a third person — the arbitrator — who hears the case and then gives a binding decision. In some cases there may be a panel of arbitrators. Expert determination involves appointing an independent third party who is an expert. These are two methods of 'alternative adjudication', which ensure a binding decision, without recourse to the courts.

Mediation is less legalistic, used more commonly but still involves a third party — the mediator — whose role is to help both sides come to an agreement which each considers acceptable. Mediation can evaluate the legal strengths of a case, assist the parties to define the issues or both. When successful both parties agree, the agreement can be documented and then form a legally binding contract if the parties so choose.

Conciliation resembles mediation but the third party takes a more interventionist role in bringing the two parties together and suggests possible solutions to help achieve an agreed settlement. In general this acts as a prelude to mediation and the term is gradually falling into disuse.

'Med-arb' is a combination of mediation and arbitration where parties agree to mediate but if that fails the dispute is referred to arbitration.

RESTORING PUBLIC CONFIDENCE

One of the central issues affecting medicine at present is how the profession is to be regulated. Achieving public confidence in medical performance is a priority and this will mean assessing individual performance and when problems arise solutions which are fair to doctors and safe for patients have to be found.

Where serious disputes arise, particularly if an individual's livelihood is under threat, there has to be a better place than the law court to resolve the problem. The inclusion of a med-arb agreement in educational contracts between trainees and postgraduate deans, the employment agreement between doctors and trusts and, dare one say, between the GMC and individual doctors is a proactive means of providing a basis for fair and professional resolution of the small but growing number of intraprofessional disputes.

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KEY POINTS

- Disputes arising between health-care professionals need to be resolved within the profession.
- Resolution by means of civil litigation should be avoided.
- Methods of alternative dispute resolution offer binding and private means of settling such disputes.