

March 2021

MPS submission to the Health and Social Care Select Committee inquiry into the Department's White Paper on health and social care

Introduction

Medical Protection Society (MPS) welcome the Health and Social Care Committee's decision to carry out pre-legislative scrutiny of the proposals in the recently published white paper. Understandably, much of the public debate has been on the very significant NHS structural reforms proposed, and we anticipate that this will also be the Committee's main focus.

We urge the Committee to also scrutinise the Government's proposals for professional regulation reform included in the white paper, and – just as importantly - what long overdue proposals to reform professional regulation will not be taken forward as part of this legislation.

Our submission is focused on this specific area. In particular, we suggest that the Committee recommends that:

1. **GMC's right of appeal against fitness to practise decisions.** Long overdue legislation to repeal the GMC's right of appeal against fitness to practice decisions should be included in the forthcoming Bill, finally acting on the recommendation in 2018 by an independent review which followed the case of Dr Bawa Garba and which was accepted by the Government.
2. **Abolition of health and care professional regulators.** Proposals that would enable the Government to abolish or merge professional regulators by secondary legislation should not be included in the Bill. Such a move would impact professional regulators' independence from Government and would also enable fundamental changes to professional regulation that would concern to health care professionals to be made with only limited scrutiny by Parliament.
3. **Wider programme of reform to professional regulation.** The Government should confirm the details of its wider programme to create a more flexible and proportionate professional regulatory framework, with further reforms it intends to implement via secondary legislation and not as part of this Bill. These should be focused on reforms that enable to regulators to streamline their processes, improve efficiency, reduce the number of investigations into less serious allegations, and conclude investigations in a more timely manner.

We would be very happy to provide further written or oral evidence to the Committee on this issue.

Background

There are nine health and social care professional regulators in the UK each of which has a separate Act of Parliament which underpins their work. For example, the work of the General

Medical Council is governed by the Medical Act 1984, and the General Dental Council the Dentists Act 1984.

A significant amount of detail about the regulators' day-to-day functions is set out in this legislation. As a result, amendments to the legislation often needs to be passed by Parliament in order for a regulator to reform its processes, including when making simple operational changes. Amendments to these Acts can be made either by new primary legislation, or under so-called Section 60 orders (a reference to the Health Act 1999 which provides a mechanism by which secondary legislation can be introduced to amend certain aspects of the legislation).

The White Paper proposes that the forthcoming Bill should enable the Government to make changes in a range of further areas by way of a Section 60 order rather than by primary legislation. These include:

- a) the power to remove a profession from regulation.
- b) the power to abolish an individual health and care professional regulator.
- c) the power to remove restrictions regarding the power to delegate functions through legislation
- d) the power to make senior NHS managers and leaders and other groups of workers subject to professional regulation

We are disappointed that several long overdue reforms have not been included in the Bill nor has any timescale been confirmed for implementing these.

We have concerns about the proposal to enable regulators to be merged or abolished by secondary legislation.

1. GMC's right of appeal against fitness to practise decisions

We are disappointed that the Government is still yet to act on its commitment to abolish the GMC's right of appeal against decisions made by the Medical Practitioners Tribunal Service.

In June 2018, the government accepted in full the recommendations of the independent report into gross negligence manslaughter in healthcare, chaired by Prof Sir Norman Williams. This included the central recommendation that 'the General Medical Council should have its right to appeal fitness to practise decisions by its Medical Practitioner Tribunal Service removed'¹.

The recommendation to remove the GMC's power of appeal followed the high-profile case of Dr Hadiza Bawa-Garba, who was erased from the medical register after the GMC appealed against a tribunal ruling that suspended her for 12 months. Dr Bawa-Garba was later reinstated after judges found the original tribunal decision to be appropriate.

The independent review, chaired by Prof Sir Norman Williams, concluded that removing the GMC's right of appeal against MPTS decisions would 'help address the mistrust of the GMC amongst doctors and contribute to cultivating a culture of openness that is central to delivering improved patient safety'. It concluded that public protection would still be maintained, with the PSA still retaining its near identical right of appeal to MPTS decisions.

In order to remove the GMC's power of appeal, amendments to the Medical Act 1983 would be required. We are still waiting for draft legislation to be published or an indication from the government being given as to when it will deliver on this commitment. We believe provisions should be included in the forthcoming Health and Social Care Bill to abolish the GMC's right of appeal and see no reason why this could not be included alongside other provisions within the Bill related to reforming professional regulation. Such a move would give the profession confidence that the government is finally acting on this commitment.

¹https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/717946/Williams_Report.pdf

2. Abolition of health and care professional regulators

It is difficult to argue with the Government's statement that the existence of nine professional regulators leads to duplication and inefficiencies, and that there is scope to consider merging or abolishing some of the much smaller regulators.

We do not however agree with the proposal to enable the Government to abolish a regulator by introducing secondary rather than primary legislation.

In order for professional regulators to sustain the confidence of both the public and the professions they need to be able to demonstrate impartiality. Regulators are and need to be independent of government, the professionals themselves, employers, educators and all the other interest groups involved in healthcare. For this reason, the professional regulators have been set up in a way which means they are independent of Government, accountable to Parliament and with their operational performance scrutinised by the Professional Standards Authority. They are funded by registration fees paid by registrants.

We would expect that the regulators feel much less independent of Government if they knew they could be abolished by secondary legislation, and that this in turn could impact the way they conduct their responsibilities and the confidence of the profession in the regulator.

We believe the Government should now be able to confirm what changes they plan to make to the professional regulators and for this to be implemented in primary legislation that is scrutinised throughout the passage of a Bill. As far back as the 2017 consultation 'Promoting professionalism, reforming regulation', the Government set out a case for reducing the number of regulatory bodies, with a proposal that there should be three or four regulators. Many professions, including doctors and dentists, would have concerns about being under a 'super regulator' that has less of a connection to and understanding of their profession. We do not believe such a significant change should be possible by secondary legislation with limited scrutiny by Parliament.

3. Wider programme of reform to professional regulation

The white paper confirms that the proposals to reform professional regulation form part of a wider programme to create a more flexible and proportionate professional regulatory framework that is better able to protect patients and the public. The aim of these reforms would be to enable regulators to ensure that the processes which professionals have to go through in order to join and stay on a register are proportionate to assure public safety and are not overly bureaucratic. The white paper states that this reform programme will be taken forward following further consultation and delivered separately through secondary legislation.

We regularly support doctors and dental professionals facing an investigation by the GMC and GDC. We have long argued for reforms to the Medical Act to enable the GMC and GDC to streamline their processes, improve efficiency, reduce the number of investigations into less serious allegations, and conclude investigations in a more timely manner.

The vast majority of GMC and GDC investigations are closed without action, the end result being that far too many doctors and dental professionals go through a stressful process each year, while many complainants also endure a lengthy process with a disappointing outcome. The status quo serves neither doctors nor patients and the GMC and GDC, through changes to the Medical Act and Dentists Act, needs to be given discretion to not take forward investigations where allegations clearly do not require action.

We urge the Government to proceed with these proposals with more urgency and would welcome the Health Select Committee also promoting the importance of these reforms.

About MPS

MPS is the world's leading protection organisation for doctors, dentists and healthcare professionals with more than 300,000 members around the world.

Our in-house experts assist with the wide range of legal and ethical problems that arise from professional practice. This can include clinical negligence claims, complaints, medical and dental council inquiries, legal and ethical dilemmas, disciplinary procedures, inquests and fatal accident inquiries.

MPS is not an insurance company. We are a mutual non-for-profit organisation and the benefits of membership of MPS are discretionary as set out in the Memorandum of Articles of Association.

Contact

Should you require further information about any aspects of our response to this consultation, please do not hesitate to contact us.

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