

Memorandum

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Council

Regulating doctors
Ensuring good medical practice

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From: Code A

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Preparing for Face the Facts: media briefing

18 January 2010

Background

The GMC media team was approached by BBC Radio 4 producer Julian Sturdy in advance of a 'Face the Facts' programme about the GMC. Face the Facts is an investigative 30 minute documentary presented by journalist John Waite. (<http://www.bbc.co.uk/programmes/b007tmlp>) Some previous episodes have exposed the use of public funding in the Fire Service and some of the agencies in the care sector which exploit foreign workers.

We understand that the GMC programme will be focussing on reforms and developments at the GMC with a focus on three key areas; proposed changes to the GMC's role as adjudicator in the wake of the Government's decision not to proceed with the plans for the Office of the Healthcare Professionals' Adjudicator (OHPA); proposed reform of the current fitness to practise process; and revalidation.

The programme will also hear from Peter Walsh of Action against Medical Accidents (AvMa), Code A (whose Code A was killed after being treated by Code A Code A) and to the Medical Defence Union amongst others.

Internal/external audiences to brief

- Council
- Staff
- Medical defence organisations such as the MDU*
- Peter Walsh, AvMa*
- Code A

*nb these spokespeople/organisations have already been approached by the BBC for the programme

Spokespeople

GMC

- Niall Dickson will be recording an interview at 10am on 25 January.
- Peter Rubin is also holding a slot for interview at 11am on 25 January.
- An explainer item by Graziella Oragano on how Panels and hearings operate has been recorded. (14 January)

External

- Former Panel Chair (currently a Legal Assessor) Andrew Reid has conducted a recorded interview with Julian Sturdy.
- We understand that Code A and Peter Walsh are also being interviewed for the programme.

Risks and mitigation

Two major consultations into different elements of the GMC's fitness to practise work will be taking place during and shortly after this programme is due to be broadcast.

Both raise a great many questions about this area of the GMC's processes.

We have also been informed that the recommendations from Dame Janet Smith's fifth report following the Shipman Inquiry will form part of the GMC's line of questioning.

Likely lines of questioning

What do you say to those who suggest that your FTP hearings are flawed?
Surely there must be GMC influences on your hearings, as in the case of Jane Barton? Her brother Christopher Bulstrode must have had some part to play in her 'getting off'?

What did you really think of the Panel's decision in the Barton case?
There's a lot of disquiet about these decisions, what do you propose to do about that?

How can Panels be independent when they're employed and trained by the GMC?
A lot of people suggest that the GMC full of cronies? Are Panels full of cronies too?
Many have said that the abolishment of OHPA is a huge loss to independent decision making, what's your response to that?

How do you ensure that the decisions made by Panels are consistent? Can they ever be?

Is the GMC hearings process transparent?

How will proposed reforms to the hearings process ensure transparency when members of the public aren't following an investigation or hearing through?

Recommendations and timings (topline)

Action	Who?	Timing
Pre-briefing external spokespeople to be contacted in advance of their scheduled interviews, where possible	Ben	ASAP
Briefing GMC spokespeople prior to interview	Niall, Peter, Ben, <small>Code A</small>	24 Jan
Identify further work to mitigate adverse reactions and coverage (see risk register http://livelink/edrms/lisapi.dll?func=ll&objid=38117827&objAction=viewheader)	All	
Press releases and statements to be drafted following the programme's broadcast; statement to be developed an-issued subject to the programme's content. Fast sign-off and turnaround will need to be secured. Dates in Niall's diary for reactive broadcast requests if necessary.	Media team	When programme is broadcast early Feb TBC
Staff to be briefed about the broadcast	Internal comms	Day prior to broadcast (2 February TBC)

Key messages

General messages about the role of the GMC

- The GMC's primary role is to protect patients; this is at the heart of everything we do
- The GMC has undergone huge changes in its 152 year history
- Following Dame Janet (now Lady Justice) Smith's recommendations following the Shipman Inquiry, we made extensive reforms, in particular to our fitness to practise and governance models
- We are not complacent; there's still work to do, but we are taking steps to get to where we need to be to ensure even better patient safety.

Reforms to Fitness to Practise

TOPLINE MESSAGES:

- We believe we can improve our Fitness to Practise procedures so that we can be fairer to doctors and patients
- We are currently consulting on proposals at the moment and we hope to engage widely with key interest groups including MPs, patients and doctors
- There is a misconception that our role is to discipline or punish doctors but in fact we are here to protect patients and the public and to provide opportunities to remediate and rehabilitate doctors.

OTHER MESSAGES:

- Attending a public hearing causes stress and anxiety for doctors and witnesses
- We know many doctors think the current system is overly punitive
- Sending the majority of cases to a public hearing is not the most proportionate or effective way of achieving this
- We can still make sure the outcomes and decisions from our investigations are publicly available and we are accountable to complainants and the public.

Case of Jane Barton

In response to questioning about allegations of unfairness in relation to the relationship between former Council member Christopher Bulstrode and Dr Barton (he is reported to be her brother).

- We do not hold information about the personal or family relationships of doctors on the register and we have never confirmed any such relationships.

Move from OHPA to new tribunal service

- The decision not to proceed with OHPA is a matter for the government
- The GMC had been committed to the establishment of OHPA and had been working jointly with them on the transition programme. This included the development of procedural rules, staffing issues, information systems, finance and accommodation. Joint governance arrangements for the programme had been established and the implementation plans were being developed.
- We are now considering how best to proceed with a new model of a doctors' disciplinary tribunal which is fair to patients and doctors
- We are committed to taking forward a programme of major reform to create an efficient and modern adjudication function which operates independently from our other work
- We plan to separate entirely our investigation activity and the presentation of cases from adjudication by creating a new tribunal service. This will have its own Chair, appointed through an independent process, who will report directly to Parliament on an annual basis.

Panels' decision-making

- Fitness to practise panellists are not employees of the GMC but contractors recruited by open competition. The process is carried out in line with guidance issued by the Office of the Commissioner for Public Appointments and is overseen by an independent assessor.
- In addition to induction training, all panellists are required to undergo annual training. Panellists also receive updates, attaching copies of appeal judgments, setting out the salient points arising from them so that they are aware of the relevant case law.
- When considering whether the facts alleged against a doctor have been found proved, panels and panellists reach their conclusions independently. Only they hear the evidence and assess the credibility of the witnesses.

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ANNEX 1:

Previous statements on related subjects:

Statement issued at conclusion of Dr Jane Barton's hearing:

"We are surprised by the decision to apply conditions in this case. Our view was the doctor's name should have been erased from the medical register following the Panel's finding of Serious Professional Misconduct. We will be carefully reviewing the decision before deciding what further action, if any, may be necessary."

Comment issued when decision to abandon OHPA was announced:

"We welcome the Government's decision. We are committed to taking forward a programme of major reform to create an efficient and modern adjudication function which operates independently from our other work.

"We plan to separate entirely our investigation activity and the presentation of cases from adjudication by creating a new tribunal service. This will have its own Chair, appointed through an independent process, who will report directly to Parliament on an annual basis.

"We intend to embrace the challenge we have been set, and believe we can make considerable progress, ahead of any legislative changes.

"The new approach will save doctors and taxpayers millions of pounds but we do understand it must also deliver tangible benefits, to assure both doctors and the public that the system is fair and proportionate as well as providing good value for money.

"The consultation on our proposals, which will build on the important work we have undertaken with colleagues at OHPA, will begin early next year."

ANNEX 2

Further background and messages

Fitness to practise panels

- When considering whether the facts found proved amount to impairment of fitness to practise the panels and panellists take into account *Good Medical Practice* and other ethical guidance published by the GMC as well as case law.
- When considering what sanction to impose panels are guided by the Council's Indicative Sanctions Guidance.
- The Courts have welcomed it as 'very useful' and 'a framework which enables any tribunal [including the courts] to focus attention on the relevant issues'. One High Court Judge* described the *Guidance* as 'equivalent to a sentencing guide. It helps achieve a consistent approach to the imposition of [sanctions] ...'

* **Code A** (in the case of R on the application of Abrahams – v – the GMC [2004]) who described the ISG as very useful and **Code A** described them as equivalent to a sentencing guide. There are further quotes in the ISG itself (at paras 9 and 10): [http://www.gmc-uk.org/Indicative Sanctions Guidance April 2009.pdf](http://www.gmc-uk.org/Indicative_Sanctions_Guidance_April_2009.pdf) 28443340.pdf

Professor Christopher Bulstrode

- Professor Bulstrode was an elected member of Council from 1 July 2003 until 31 December 2008.
- When a Council member, Professor Bulstrode served on the following committees:
 - Resources Committee: Sept 2003 - September 2005.
 - Education Committee: Sept 2003 – Oct 2008.
 - Trustee of the Pension Scheme: November 2003 – March 2008.

Reforms – post Shipman Inquiry

Standard of Proof

Lady Justice Smith recommended that we reopen the debate on whether to adopt the civil standard of proof at Fitness to Practise Panel hearings. Following amendment to the Fitness to Practise Rules in 2008, we have implemented the civil standard of proof at the fact finding stage of our hearings.

Liaison with employers

A recommendation was made that the GMC should continue to liaise both informally and formally with employers when allegations arose regarding doctors. We routinely

request information from employers where a complaint reaches our threshold at initial assessment.

We are also developing our employer liaison model, as originally proposed by the Chief Medical Officer in *Good doctors, safer patients* which is currently being piloted in two regions in England. Once we have evaluated the results of the pilot we will consider whether it can be rolled out across the UK.

Case examiner decision making

In line with Lady Justice Smith's recommendations any decision regarding whether to close a case or refer it forward to a hearing are made by two cases examiners, one medical and one non-medical.

Fitness to practise information

The report expressed concern about the ability of the GMC to audit its decisions and made a number of recommendations on this subject. We have subsequently introduced an electronic case management system and our procedures require that every decision is recorded on the system. This enables effective audit and we periodically commission external bodies to conduct audits as well our own internal audit processes. The Council for Healthcare Regulatory Excellence also undertakes an annual audit of our fitness to practise processes and publishes a report.

Lady Justice Smith also recommended that a report be produced annually to be a transparent statement of fitness to practise activity. In addition to the GMC's corporate annual report we also produce our Fitness to Practise Statistics on an annual basis. These are published on our website.

Investigation following referral

A recommendation was made that the GMC should have an explicit power to perform investigations following the decision to make a referral to a Fitness to Practise Panel hearing and prior to the hearing commencing. There is now an explicit rule that enables the GMC to do this.

Suspensions and conditions

A number of recommendations centred around suspensions and conditions. One recommendation called for a Fitness to Practise Panel to be convened in the event that there had been breaches of conditions imposed on a doctor to consider whether any further measures to protect the public were necessary. The GMC's Case Review Team, which was established following the report, monitor compliance with

conditions and in the event of a breach, the Rules allow the Registrar to make a referral for an early review hearing so that a Fitness to Practise Panel may consider the matter.

A series of recommendations proposed that there should be at least one review hearings for all cases where conditions or suspensions have been imposed. Under the current legislative framework a review hearing is directed by the Fitness to Practise Panel at the end of a hearing. As a matter of course review hearings are generally directed in the majority of cases where conditions or a suspension have been imposed. However there are a small number of cases, usually relating to short 3-month suspensions where it may not be proportionate to convene a review hearing. The *Indicative Sanctions Guidance* provides advice to Fitness to Practise Panels on the factors which they should consider in making this decision.

Governance

Lady Justice Smith made a number of observations regarding the make-up of the GMC's Council and suggested (rather than recommended) that the constitution be reconsidered. Particularly she was concerned that, while medical membership of the Council was important, elected medical members should not have an overall majority.

The constitution of the Council has undergone a fundamental reform since 2003. In January 2009 the Council was reconstituted with 24 members, all of whom are appointed. Half of the Council are medically qualified and half are lay. Council members are no longer elected and the recruitment process is entirely open.