

Memorandum

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General
Medical
CouncilRegulating doctors
Ensuring good medical practice

To: Niall Dickson
Paul Philip
From: Code A
Copy: See attached
Date: 10 September 2013

DH(E) Quarterly Catch-Up**Time:** 1230–1330 — Tuesday 10 September 2013**Location:** Richmond House**Attendees:** Code A Niall Dickson, Paul Philip, Code A

Code A

Code A

Sarah Mackenzie

Issue

1. This is our routine quarterly catch-up with Code A

Background

2. The items on the agenda for this meeting are:
 - a. Francis Report follow-up
 - b. Legislative reform (Law Commission)
 - c. Our Corporate Strategy
 - d. Follow-up to Code A meeting re readiness for revalidation
 - e. General updates (if there is time):
 - i. Sabbatical
 - i. Health Select Committee appearance

- ii. CSA Report and IELTS
 - iii. Non-responders campaign
 - iv. Shape of Training Review
3. There are also two issues that have arisen in the last week:
- a. Gosport War Memorial Hospital
 - b. Red tape Challenge

4. The DH(E) have also asked to discuss 'Operation MONTA' (the investigation into doctors enabling abortion on the grounds of sex selection). Fitness to Practise colleagues had a 'Gold Command' meeting on Thursday 5 September. The current position is that investigations were pending the outcome of the Police investigation and the CPS decision. The Police have not yet shared any detailed information from their investigation with us and now that Jeremy Hunt has written to the Attorney General on this subject, do not wish to do so until a response one way or the other has been provided. This makes it difficult for us to progress our own investigation.

5. Also to note that the Secretary of State wrote to us as part of their developing older people strategy (referencing our support for the 'name over the bed' concept) asking for input into the consultation on the NHS mandate. We will be responding to that letter and separately to the consultation shortly.

Discussion

Francis Report follow-up

6. The latest intelligence we have regarding the DH(E)'s update to their initial response is that it will be in early November. Although the Keogh Review has reported on 16 July and the Berwick Review reported on 6 August we have not at the moment got any indication as to when the Farrar Review or the Clwyd-Hart Review will be published.

7. We also sent Code A and Code A a copy of the joint CQC/GMC Operational protocol when it was published on 15 August and we received a positive response from Code A CQC have been consulting on their new approach to inspection and monitoring. At the core of this approach will be five key questions they will seek to answer about each organisation they inspect, namely:

- a. Are they safe?
- b. Are they effective?

- c. Are they caring?
- d. Are they responsive to people's needs?
- e. Are they well-led?

8. Although we have previously had discussions with CQC about how their work might support revalidation and while we did receive a verbal commitment to build something into the new approach, there has been no detailed discussion about what this might look like (and we have made the point again in our consultation response).

9. Separately, the review of APS and it is recommending equating designated body status with APS for the purposes of section 44 D of the Medical Act. This will be instead of having separate criteria for approving bodies as now. The Strategy and Policy Board will be considering this issue the same day as this meeting.

10. For both reasons, it would be very advantageous for CQC to include an explicit judgement about compliance with RO Regulations in answering their 'well led' question – we would argue it is an important metric of leadership and governance. This will be an opportunity just to mention this to Code A and Code A

11. We are also likely to close the cases around the doctors working in management positions at Mid Staffordshire and suggest we sight Code A and Code A on this.

- **We had a slightly odd engagement with the Berwick Review but we were pleased to see mention in a few places of revalidation.**
- **Do you have any idea at the moment as to when the Farrar Review or the Clwyd-Hart Review will report?**
- **Presumably you need those two out of the way before you can update your initial response?**
- **We are intending to publish our own update at the six month point so mid-October.**
- **Just to update you on the working together front – you saw the joint Operational protocol that we've published with the CQC. We're about to start training it out and hopefully it will be embedded by the end of the year in both organisations. This is part of the generic concerns picture but we're undertaking more work internally on this.**
- **On the theme of the system being joined-up, another thing we've also been lobbying them on as part of the consultation on their inspection**

regime is whether they could make an make a formal judgement on compliance with the RO Regulations as part of their 'well led' conclusion.

- **Pending a Bill, on the APS front we are also looking at how we can link APS to designated body status instead of having separate criteria for approving bodies as now.**
- **On an operational issue, we've reached the point where we are about to make the decisions on the doctors working in management positions at Mid Staffs. I will write to you formally when the decisions are made but the evidence is not strong and legislative advice from Tom Kark is that we should close the cases.**

Individual named clinician

12. The current situation with the individual named clinician is that Terence Stephenson is hosting a seminar on 25 September which Peter will be speaking at and you will be attending. The SofS announced in a speech on 22 June that two Trusts (King's and UCLH) will pilot the concept although similar systems are (according to the BMA) already used in a number of places. Our position is that we will be as supportive as possible although we obviously cannot dictate to the NHS how it organises itself. We can however look at what this means for our standards guidance.

- **On the individual named clinician front - Terence Stephenson is hosting a seminar on 25 September which Peter will be speaking at. Have you been invited?**
- **Of course much of this is all to do with breaking down the silos between management, doctors and nurses and getting the appropriate clinician to demonstrate some leadership in the care of individual patients as well as clarity of roles and accountability.**
- **Obviously we can't dictate to the NHS how it organises itself but we will be very supportive of the idea and we are looking at how this 'accountability' might manifest in our guidance.**

Cohen

13. We have been engaging with the DH(E) with examples of cases where the Cohen judgment has materially affected the way we have handled a case. Code A Code A had a teleconference with Code A on 6 September to discuss the case studies. There is general agreement that current case law does not address how public confidence should be balanced against remediation in performance cases. The case law deals with substantive conduct issues. The possibility of a PSA

— a test case — was suggested and the difficulties for PSA where the case law does not support this was acknowledged.

14. We are unable to bring a test case in a reasonable timeframe as we will need the adjudication reform section 60 to have come into effect and wait for a suitable case. Pursuing the legislative change option through the Law Commission was also discussed and a meeting with the Law Commission was suggested as an alternative approach.

- **I gather two options were floated at the teleconference last week, either a test case or legislative change. I think legislative change via the Law Commission would likely give us a more certain outcome in a more reasonable timescale.**

- **I have discussed this briefly with Harry this morning.**

Legislative Reform

15. We have heard nothing further on the QA of medical education overseas front however, given the timescales, it is likely that the only option is to try and resolve it in the proposed Bill arising from the Law Commission work.

- **We've finally got the Language capability consultation live I see! Obviously very pleased about that.**

- **Is there any further news on the Law Commission front?**

Readiness for revalidation

16. At the teleconference with [Code A] on 6 August, there was a high degree of interest and support from the Minister for the idea of a joint letter from ourselves, the CQC and Monitor to write to the Chairs of all Designated Bodies that have boards (where we have that information) across all sectors to draw their attention to their responsibilities to support the revalidation process.

17. [Code A] asked to see a copy of the draft and we have shared it with both him and [Code A] at NHS England. [Code A] suggested that we hold off sending the letter until the latest ORSA report was published. The ORSA results are apparently not positive with no significant improvement on the previous report in terms of appraisal rates. [Code A] suggestion was that we could then use the letter to reiterate the need for doctors to have appraisals.

18. However the ORSA report's expected publication date has now slipped from early September to early October. This is not an issue for us as we are still discussing with CQC about whether they could add a paragraph indicating or signalling that part of their inspection regime against the 'well-led' domain would be

the appropriate arrangements are in place to support revalidation. However as they are consulting on this, they do not as yet have a finalised position and are still trying to find a suitable form of words for the letter. Monitor have yet to provide us with any comments on the letter.

- **Just to follow-up on the [Code A] teleconference – I think we've now shared the draft letter to go to the Chairs of designated bodies that have boards. We're still discussing with CQC about what they might put in about how their inspection regime will consider revalidation in the 'well-led' domain and we will strengthen the line about appraisal once the ORSA report has been published – I gather that's been pushed back to early October?**
- **Just separately on the locums issue while we are talking [Code A] – I'm seeing KPMG and [Code A] tomorrow (the 11th).**

Corporate strategy

- **To sight you, we are in the middle of working up our corporate strategy for the next 4 years.**
- **We are not going to be doing a CQC-style full-on engagement around this but we did want to take the views of the other organisations that are in the same space.**
- **Obviously still a work in progress but at the moment but I'm sure none of the emerging themes will be a surprise to you.**
- **Encouragingly the feedback we've had from staff has definitely reflected the fact that we're not part of the medical establishment any more but rather working with doctors for patients.**
- **The other major theme is taking on the challenge of the Francis Report combined with other factors, principally the PMETB merger and revalidation, have brought us onto the pitch in patient safety terms.**
- **We are getting access to a much more information through our own processes and through participating in Risk Summits and Quality Surveillance Groups as well as things like the Keogh Mortality Review.**
- **This is good in that it brings us much closer to the people we're regulating but it also means we will inevitably be expected to act on information, even if our own legal framework doesn't always give us any direct powers.**

- **Of course we will need to come up with a form of words that manages the political and public expectation around what regulation can achieve. While we can become more proactive and speed up the actions we take, we cannot be on every ward double checking every doctor's decision.**

Baker Report

19. The DH(E) released the Baker Report regarding deaths at Gosport War Memorial Hospital in the early 2000s. The Independent was reporting over the weekend that a 'Public Inquiry' would be held.

- **I saw the press coverage of the Baker Report over the weekend — we assume this is press over-reporting?**

Red tape challenge

20. We have just responded to a request from the DH(E) regarding filling out a template on the impact our regulatory function has on doctors. This is in the context of the red tape challenge which is designed to reduce the burdens on businesses. One of items in the red tape challenge package is a proposed 'growth duty' for regulators — which will require regulators to take into account the impact of their activities on the economic prospects of firms they regulate. This was consulted on earlier in the year however at that time the GMC was not in scope. Given that financial imperatives were identified as being a major contributor to Mid Staffs, Maidstone and Stoke Mandeville, we would be concerned if we were brought into scope.

- **We've just provided some information for one of your teams to help inform the red tape challenge — given the Mid Staffs (and others) context — do Cabinet Office understand the risks around introducing a 'business' emphasis to the regulatory framework around patient safety?**

General updates

Sabbatical

- **Just to let you know, I am going to be out of the country for October and first part of November.**
- **I will be travelling to New Zealand to attend a meeting of the IAMRA Management Committee and then on to Washington for the Revalidation Symposium, which is being jointly hosted by the FSMB and GMC.**

- **I am using the opportunity to extend my travels and visit a number of countries in order to reach a better understanding of regulatory models beyond the UK. The idea grew out of conversations I have had with Peter over a year ago around the likely direction of travel of health regulation and the importance of understanding different regulatory models in other jurisdictions — particularly relevant now given the potential Law Commission Bill on the regulation of health and social care professionals.**
- **Paul will obviously be acting Chief Executive during that period so contact him if you need anything.**

Health Select Committee

- **We've also now had a confirmed date for our Health Select Committee appearance confirmed as the 10th of December which we've managed to negotiate so I'm back.**

CSA Report

- **Just to mention one piece of work that might cause some noise - I commissioned [Code A] and [Code A] to do a review of the Clinical Skills Assessment (CSA) part of the Royal College of General Practitioners MRCGP exam following concerns raised by the British Association of Physicians of Indian Origin.**
- **We sent it out to a few organisations to check the factual accuracy of the report and have received largely positive feedback as well as a few queries. They are going through the comments but some of them were about statistical issues which [Code A] wants [Code A] to look at and he's on leave until 16 September so we don't have an exact date at the moment although our intention is still to publish as soon as possible.**
- **One of the more interesting things in the report is that poor performance at IELTSs and PLAB seems to be indicative of poor performance later at the CSA.**

Shape of Training Review

- **We are getting into the final stages of the Shape of Training Review. There has been a call for greater flexibility in training and also a return to encouraging more generalism rather than super specialism in the curricula.**

- **The report of responses received to the call for evidence has been published and the Expert Advisory Group and sponsoring board are due to have their final meetings in September. The final report should be coming in late October.**

Doctors without connections: Writing to 'non-responders'

21. Most doctors have a connection to a designated body – the organisation that will support them with their appraisal and revalidation.

22. During the summer of 2012 we ran our 'Make your connection' campaign, targeting around 54,000 licensed doctors, asking them to confirm their designated body or tell us they don't have one. The majority of these doctors responded to our campaign however there remain around 8,200 doctors that have not. We have written a number of times to these doctors, most recently in January 2013, when we wrote to all doctors to confirm the date of their first revalidation.

- **On revalidation, later this month, we are planning to write again to the so-called 'non-responders' who have not replied to our 'Make your connection' campaign that ran last summer. This was trying to get doctors to notify us who their designated body was. There are about 8,200 doctors who we don't have a designated body for at the moment.**
- **Our letter will say that they must confirm their designated body or tell us they currently do not have one. It will also say that their licence is at risk if they fail to provide us with this information.**
- **Our letter will explain that regardless of the date they will revalidate, as a licensed doctor, they need to have regular appraisal and collect supporting information about their practise. And, that they need to connect to a designated body that will support them with this.**
- **Doctors that fail to respond to this communication will have put their licence at risk and we will take steps to withdraw it.**
- **We will ask doctors to respond using GMC Online. This is where doctors can find all their revalidation details, including the date of their first revalidation, in the revalidation area of their account. We have information for doctors about how to set up an account if they don't have one, including an online step by step video guide, on our website.**

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