

Mr R Duff
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Department of Health

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30 September 2014

Dear Mr Duff

GMC & PSA: Proposals to reform the adjudication of fitness to practise cases

Thank you for the opportunity to respond to your consultation. Action against Medical Accidents (AvMA) is the UK charity for patient safety and justice. We have always taken a keen interest in health professional regulation, informed by our experience of supporting patients who experience poor care and our unique blend of medico-legal and regulatory expertise. We have strong concerns about certain aspects of the proposals and will restrict our comments to those.

Article 22: "Vexatious" allegations

The proposed power to dismiss cases deemed to be "vexatious" is unnecessary, would lead to subjectivity, bureaucracy and legal challenges, and works against the primary objective of protecting patients and upholding professional standards.

By definition, vexatiousness concerns the intentions of the person concerned. In considering allegations, the GMC should not be concerned at all about the intentions of the maker of an allegation. Each allegation should be considered objectively on the facts and whether they point to possible un-fitness to practise or danger to patients.

The GMC already has sufficient powers to dismiss allegations which have insufficient grounds/evidence. This change would inevitably lead to doctors and their representatives attacking the intentions of patients who make allegations. Judgements about the intentions of the maker of the allegation would inevitably rely on the subjective impressions of the investigation committee members, and could lead to cases being dismissed on basis even when in fact there is sufficient evidence to warrant investigations. It would inevitably lead to legal challenges of decisions made on these grounds. This part of the article should be removed.

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Article 22: “Five year rule”

We were very surprised and disappointed to see a proposal to enshrine the “five year rule” further in statute. The five year rule is highly controversial. AvMA and other patients’ organisations have argued strongly for its removal. Most regulators do not have a “five year rule”, so this will add to inconsistency and may be at complete odds with what the eventual Bill will have to say on this matter.

Such a provision is completely unnecessary, as the GMC already has perfectly adequate powers to dismiss a case if there is insufficient evidence. A decision whether or not to investigate an allegation should be made objectively on the facts, and on whether the allegation calls the registrants’ fitness to practise into question or an investigation is required in order to maintain public confidence in the profession. The time of events leading to an allegation do not necessarily have any bearing on whether action is needed to protect patients or uphold standards and the reputation of the profession now.

The use of an arbitrary (why ‘five’ years in particular?) barrier to the GMC acting in the interests of patients and patient safety at all times is bureaucratic and has already led to bad and potentially dangerous decisions being made to dismiss cases. An unintended consequence of the five year rule is that it actually creates a perverse incentive to cover-up incidents for as long as possible in order to minimise the likelihood of GMC investigations. The continued use of the five year rule will make it harder for the GMC to uphold the professional ‘duty of candour’ which is a high priority for the Department.

The “five year rule” has no useful role in health professional regulation and should be removed completely.

Articles 18 and 19: GMC appeals and PSA referrals

We have concerns about the duplication of roles between the GMC and the PSA, which already has a power to refer decisions. We would prefer to see more powers and a widened remit for the PSA for example to challenge decisions to dismiss cases at the assessment or investigation stage. Giving the GMC this power and not the other regulators would cause more inconsistency, and could cause unnecessary confusion and cost. Why couldn’t the GMC simply ask the PSA to appeal a decision it was unhappy with? We are concerned that this proposal could undermine the role of the PSA (for example if the GMC chose not to appeal but the PSA decide to refer cases).

I hope you find these comments helpful. We would be happy to discuss these issues in more detail.

Yours sincerely

Peter Walsh

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Chief Executive