



**Fitness to Practise Adjudication for
Health Professionals:
Assessing different mechanisms for
delivery**

RESPONSE TO CONSULTATION

October 2010

Introduction

1. Action against Medical Accidents (AvMA) is the specialist charity which focuses on patient safety and justice. We advise and empower over 3,000 people each year who have been affected by medical accidents, and work in partnership with healthcare organisations and the healthcare professions to improve patient safety and the way medical accidents are responded to. We have over 25 years' experience and expertise in this area. Supporting and advising people in bringing complaints to the attention of professional regulators is an integral part of our advice service. Our response to the consultation is therefore based on the experiences of patients who have been involved in complaints to the professional regulators with particular reference to the General Medical Council.
2. Whilst the establishment of the Office of the Health Professions Adjudicator (OHPA) may represent part of the solution for increasing confidence in the operation of the GMC's fitness to practise procedures (FTP), AvMA would not perceive this as the key priority. We believe the primary focus should be on the management of cases at the pre-adjudication stage.
3. From AvMA's experience, in addition to the investigation of FTP cases often being too slow and cumbersome to provide adequate protection for patients, we have also seen a range of other significant failings at the pre-adjudication stage. This includes evidence of poor case management, a lack of clinical robustness applied to the investigation, a lack of adequate support and expert advice for witnesses, and concerns relating to the transparency and quality of evidence that underlies the decision making process at all stages from screening to drafting of charges. It is this experience that informs our response to the consultation and why we believe that the initial focus needs to be on the pre-adjudication stages of the FTP procedures.

Q1. Should the Government proceed with its preferred option – Option 2 Yes or No?

4. No. AvMA does not favour any one of the proposed options. We would be against Option 3 (no change) but neither do we believe that either Option 1 or 2 represents the way forward.
5. From AvMA's experience of advising patients and relatives on fitness to practise cases, adjudication would not be a priority in terms of improving the effectiveness and independence of the GMC's fitness to practise (FTP) procedures. As set out in the introduction, we believe the main focus should be on the screening, investigation and disposal of cases. This is not to say that the adjudication of cases has been without its problems but adjudication can only be as good as the evidence put before it and the quality of the investigation that underlies that evidence. This is not just to protect patients but also to ensure that the procedures are being applied fairly, appropriately, consistently and proportionately. Therefore, in order for the Government to improve the public's (and the profession's) confidence in the FTP procedures, more benefit would be gained by introducing greater independence at the pre-adjudication stage. Therefore, establishing a body such as the OHPA, whilst it may well provide improvements in the adjudication, it will not address the more fundamental problems with the process overall.

6. The above should also be seen in the context that the majority of cases are disposed of without being subject to adjudication. This leads to another key issue around the ability of individuals and organisations reporting concerns to the GMC to appeal decisions taken during the pre-adjudication stages. AvMA believes it is essential that these early decisions by professional regulators on whether or not to investigate are open to challenge through an independent appeals process. This will not only help to ensure that cases are not erroneously disposed of but will also act as a system of quality control of the regulators' FTP procedures. Whilst the GMC has strengthened their internal procedures for reviewing decisions, AvMA believes that to ensure the public's confidence in the process, an independent appeals process should be available. The Council for Healthcare Regulatory Excellence (CHRE) would be an obvious candidate for fulfilling this role providing this would not conflict with their role in reviewing the final decisions of FTP committees.
7. With respect to Option 2, this relies very heavily on the assumption that there has already been a very significant change in culture and practice at the GMC. Whilst we would acknowledge the work undertaken by the GMC, we would suggest that the impact assessment document presents a somewhat optimistic view of the level of change that has already taken place. There is therefore a real risk that Option 2 represents a 'tinkering' with existing procedures and that what is really required is a fundamental rethink of the whole approach to FTP including the option that it is operated independently of the GMC.

Q2. Do you have any comments on the identified benefits, costs and risks of the Options that are detailed in this document and its accompanying impact assessments and are there any other considerations that the Government should consider?

8. As set out above, we believe the focus should be on the pre-adjudication stage and that this is the area that would potentially benefit most from being managed independently of the GMC. As an interim measure, we would recommend a complete review of the pre-adjudication stages of the investigation of FTP cases.
9. As set out above, we also believe it is essential to introduce an independent appeals process to enable pre-adjudication decisions to be challenged. This will help provide an independent safeguard against poor case handling and decision making, and provide greater protection for patients as well as improving standards more generally. Given the CHRE's existing role in scrutinising standards and sharing best practice, they would appear to be best placed to manage both the review and to take on the role of managing appeals.
10. As part of the review, we would suggest that there are a number of other key issues that need to be considered including the following:
 - i. Independent advice and support for individuals reporting concerns to the GMC

AvMA provides support to patients and their relatives in reporting concerns to the GMC. This type of support is essential not just in terms of providing emotional support for what can be an intrusive and potentially damaging experience, it is also important in terms of empowering people to navigate their way through the FTP procedures and ensure that they can be effective in their role as witnesses to those proceedings. As an example, AvMA has been involved in cases that would have been abandoned had it not been for the

individual having access to AvMA's resources and advice in cases which ultimately led to sanctions being imposed.

II. Engaging the expertise of patients

We would suggest that much more needs to be done to ensure meaningful engagement of patients within professional regulation. It is notable that both in the consultation document and the impact assessment, there is very little reference to the role of patients. We believe that many of the problems associated with professional regulation could have been identified and addressed much earlier if there had been a greater willingness to properly engage with patients and listen to their experiences and in particular, those patients who had had cause to bring a complaint to the professional regulators. Certainly it has been AvMA's experience that it is often the case that a single patient's journey through the fitness to practise procedures can expose many of the structural and cultural problems that exist within the operation of those procedures.

At a more fundamental level, patients can often provide a more objective view on issues which are so embedded in the culture of an organisation that the organisation itself is unable to recognise that there are areas where there are failings. It is for this reason also that one would have to be sceptical that Option 2 would provide a significant change from the current status quo. AvMA would therefore recommend the importance of strengthening the role of patients and representative organisations in professional regulation. The role of patients and others involved in reporting concerns to the GMC will potentially be even more important depending on the future funding of the Commission for Healthcare Regulatory Excellence (CHRE).

III. Appealing FTP panel's decision

The GMC and/or CHRE should have a much broader right of appeal against decisions made by FTP panels where a decision is considered unreasonable and goes against the interests of patient safety.

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