

James Ewing
Policy & Planning Manager
The General Medical Council
350 Euston Road
London NW1 3JN

T 020 7633 7000
E wendy.harris@ohpa.org.uk
www.ohpa.org.uk

May 2011

Dear James

Reform of the fitness to practise procedures at the GMC – the future of adjudication and the establishment of the Medical Practitioners Tribunal Service – a paper for consultation

I write on behalf of the Board of the Office of the Health Professions Adjudicator (OHPA) in response to the above consultation.

In writing the foreword to the consultation document, Professor Sir Peter Rubin notes that the repeal of OHPA is being pursued in the Health & Social Care Bill 2011. Pending repeal, the OHPA Board continues to fulfil its statutory obligations, and takes an interest in developments and proposed changes to adjudication of the GMC and the other professional regulators. The Board understandably holds a continuing belief in the need for independent adjudication, operating in a modern and efficient procedural manner, and is pleased to see so many of its own policy and procedural ambitions repeated within this particular consultation.

The Board offers the following observations and commentary:

Nomenclature

The name (Medical Practitioners Tribunal Service, MPTS) chosen for the new disciplinary body implies a single profession, yet the Department of Health has previously indicated that, in time, this new body might undertake adjudication of other health professions. If this development is truly a re-positioning of health profession adjudication, then a title more applicable and acceptable to a wider cohort might seem sensible.

Governance

We appreciate that by the very nature of its establishment the MPTS cannot be fully independent of the GMC. The challenge therefore is to create governance arrangements that will go as far as possible to establish the independence of its judicial functioning, and to protect it from the pressures that would otherwise arise in simply being a department of the GMC. The consultation contains only thin details of the arrangements, and insufficient at this stage to demonstrate that these objectives will be met. This is an area that would benefit from further development. For example, should there be a separate Board for the MPTS that would sit between the Chair of the MPTS and the GMC to assess performance, set remuneration, etc? How will the structure ensure that sufficient resources will be allocated to the MPTS out of the GMC budget? We note that, while the consultation refers to the recruitment of a Chair of the MPTS, it remains silent on the relationship between this role and the GMC Council or the Registrar.

The proposal that the MPTS should report directly to Parliament, while not improper, is unusual; it is not one placed upon genuinely independent tribunals. Parliament may find it strange to receive reports from this body but from no other professional disciplinary tribunal.

We also wonder whether this line of accountability is consistent with the idea that the MPTS should be held to account via twice-yearly reports to the Council of the GMC.

The intended provision to allow the GMC to appeal against decisions made by the MPTS is also unusual and may be controversial. Given that the MPTS is being set up within the GMC, the criticism will be made that the GMC is seeking a right to appeal against "its own decisions". Creating such a right of appeal cannot create institutional independence that does not truly exist, nor do the moves to give semi-independence to the MPTS necessarily justify allowing the GMC right of appeal against its decisions. Such a right of appeal is not available to other health profession regulators who feel that their evidence and argument has wrongly failed to convince a fitness to practise panel. They have one chance only to put their case: doctors may feel they are subject to some form of double jeopardy. It is not evident why the GMC should be accorded a right of appeal.

CHRE

Continuing the theme of appeal, there appears to be a significant overlap with the section 29 powers reserved to CHRE. Assuming these powers remain with CHRE and its future successor (and we know of no reason why they might be withdrawn), then greater clarity for the use of an additional appeal route is required. We would certainly suggest that the procedural arrangements for appeals, and the timescale that they may be made within, should be the same for the GMC and CHRE. If both bodies were to exercise appeal rights in the same case, there should only be one appeal hearing.

The wider relationship with CHRE (or its successor), and any implications of the creation of the MPTS on its oversight function is not explored in the consultation. Will the CHRE have a separate role overseeing MPTS and the GMC? We have yet to hear a view from any party as to how this might work.

Costs

The GMC were keen for OHPA to exercise the costs provisions contained within the Health & Social Care Act 2008. We do believe that there is a role for a costs jurisdiction to maintain an appropriate discipline on parties, and hope that this will not be lost when this aspect is explored further.

These matters aside, the OHPA Board wishes to record its support of the GMC in adopting many if not all of the policy ambitions and procedural changes OHPA had itself proposed. We hope and believe that these reforms to the existing process will greatly improve efficiency and the quality of outcomes, and may ultimately lead to the system of fully independent adjudication as intended by Lady Justice Smith's recommendations.

We would be happy to discuss this response further.

I am copying this letter to Sir Peter Rubin, Niall Dickson and Paul Philip.

Yours sincerely

Wendy Harris
Policy Director, signing on behalf of the OHPA Board

cc. Sir Peter Rubin
Niall Dickson
Paul Philip