Submission by Critical Psychiatry Network 7 April 2011

Consultation questions

Question 1
Do you agree that, where there is no significant dispute about the facts, we should explore alternative means to deliver patient protection other than sending cases to a public hearing? If you disagree, please give reasons for your answer.

YES

Question 2
Do you agree that it would be appropriate for the GMC to have discussions with doctors in order to foster cooperation? If you disagree, please give reasons for your answer.

YES

Question 3
Do you think that doctors:
a. Should be able to share information on a 'without prejudice' basis?
b. Should not be able to share information on a 'without prejudice' basis?
c. Should be able to share information on a 'without prejudice' basis where the GMC cannot directly use that information in a later hearing but can conduct further investigation and use any information uncovered by such investigation?

YES to C.

Question 4
Do you agree that we should consider ways to access practical facilitation skills to support constructive discussions with doctors?

Yes. In the interests of natural justice, this exercise should be done at the outset with facilitators employed by the GMC that include other doctors or others knowledgeable in the field of practice (e.g. psychiatry, maternity) nominated by the doctor against whom the complaint has been made; these facilitators, in the case of a psychiatrist being complained against, should include a range of professionals (for example from social sciences and psychology) with a knowledge of mental health practice in diverse cultural settings and views about the nature of 'mental illness'

other than the traditional bio-medical one. It should be noted in this regard that the range of what constitutes normal practice in psychiatry is wide ranging and / or the nature of what is or is not 'illness' may be the subject of debate, even controversy. For example, consider the following possible scenarios: A patient consults a doctor for 'depression'; hostile feelings towards members of their family; or 'hearing voices'. The particular doctor, cognisant of the various social and cultural explanations for such complaints, may decide to delve into social issues, family relationships or spiritual considerations. In each of these instances the patient or their family may consider the doctor to be negligent for not prescribing medication because information on medication is easily available to the general public, and the pharmaceutical industry advertises medication (to the medical profession) as the answer for problems diagnosed as 'illness'.

By analogy with the Bolam case, the GMC should explicitly recognise the legitimacy of a defence against the accusation of negligent care, if the doctor can argue that they meet a standard of a responsible body of medical opinion skilled in that speciality.

A properly facilitated discussion of the sort envisaged above could uncover a complaint as being a result of misunderstanding of the nature of what constitutes normal and ethical medical practice in a multicultural society, such as British society or one arising from malicious or frivolous considerations being made about a particular doctor. If this is likely to have happened, the GMC should then follow a specific approach that investigates the nature of the complaint in all its broader aspects, before proceeding with the rest of the process of investigation.

Question 5
Do you agree with the approach outlined for communicating with complainants about our discussions with doctors? Please give reasons for your answer.

YES

Question 6
Do you think the term 'by mutual agreement' correctly reflects the outcome of discussions with doctors? If not, what term would you prefer and why?

Yes

Question 7
Do you think that publication of the sanction accepted by the doctor will maintain public confidence in the profession? If not, are there other steps we should take?

Yes

Question 8
Do you believe we should publish a description of the issues put to the doctor? What other information (mitigation taken into account, etc) should we publish?

GMC should publish any evidence that the doctor concerned provides in mitigation as well as (if relevant) a discussion of diversity in society on the nature of what constitutes normal medical practice taking into account diverse ways in which 'illness' may be perceived in the case of mental health problems that some people may construct as 'illness'.

Question 9
Do you think our proposals above are a reasonable way to deal with any risk of deterioration of evidence? Do you have any other suggestions?

Yes

Question 10
How do you think we might ensure that unrepresented doctors fully understand the implications of signing a statement of agreed facts?

GMC should (with the help of the Law Society) appoint legal representation acting on behalf of the doctor concerned to advice the GMC.

Question 11
Are there cases which should be referred for a public hearing even where the doctor is willing to agree the sanction proposed by the GMC? If yes, what types of cases and what criteria should the GMC apply to identify such cases?

Yes. We believe that a public hearing should take place when the complaint is against a psychiatrist and the latter's defense includes the contention that the practice concerned was a deviancy from current normal practice but still ethical and proper in the best long term interests of the patient considered as a part of the patient's family and community. A possible scenario is as follows: A psychiatrist is called into a situation where a teenager living at home with his parents has attacked his mother. The psychiatrist comes to the conclusion that the family should be referred for family therapy but meanwhile arranges for joint discussions with the young man and his mother to be undertaken by social worker. The mother refuses to

attend the joint discussions and the parents take their son to a private psychiatrist who diagnosed schizophrenia and prescribed major tranquillizers. The young man committed suicide before the drugs were administered. The parents claimed negligence because the doctor failed to make the 'correct' diagnosis and institute correct (NICE-approved) treatment - the correctness of diagnosis being supported by two specialists nominated by the Royal College of Psychiatrists (as having expertise in diagnosing mental illness) who did so after looking at the doctor's notes. The doctor being complained against may accept the (s)he did not adhere to normal practice and so have no alternative but to accept the sanction of practicing under supervision of the two specialists nominated by the Royal College of Psychiatrists.

The criteria applied for holding a public hearing even where the doctor is willing to agree the sanction proposed by the GMC should be that: (a) The doctor is found to have deviated from normal practice; (b) The doctor agrees that this may well have been the case; and (b) The deviation from normal practice involves the use of diagnosis of mental / psychiatric illness.

Question 12
Do you agree that there are some convictions that are so serious that the behaviour is incompatible with continued registration as a doctor and that there should be a presumption that the doctor be erased?

Yes

Question 13
Do you agree that the convictions we have identified are convictions which fall into this category?

Yes

Question 14
Are there any other convictions you think should fall into this category?

No

Question 15
Do you agree that doctors within our fitness to practise procedures who refuse to engage with our investigation, where we have made every attempt to seek their engagement, should be automatically suspended from the register?

Yes

Question 16
Do you think that these proposals will benefit or disadvantage any groups of people who are involved in our fitness to practise procedures?

In the case of the practice of psychiatry, there is a wide variation in how the concept of 'illness' (giving rise to diagnosis) is perceived within the psychiatric profession. This was highlighted in a recent 'Moral Maze' debate on Radio 4 as a problem that affects society as a whole. Therefore, the GMC proposals as they stand may well disadvantage innovative and imaginative psychiatrists, psychiatrists who practice with a transcultural approach and psychiatrists committed to a social model of illness. It may also result in doctors in general giving less importance to the best interests of patients considered holistically, and more importance to making sure they are not complained against – i.e. may promote the practice of defensive medicine, that would overall harm society.

Question 17
Do you think these proposals will impact on the confidence in our procedures of any particular groups of people? If so, which groups and why?

These proposals, unless changed radically, may impact on restricting the progress of community-based and socially-based medical practice especially in the case of psychiatry.

END