

PARLIAMENTARY DEBATES

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OFFICIAL REPORT

First Delegated Legislation Committee

DRAFT GENERAL DENTAL COUNCIL (FITNESS
TO PRACTISE ETC.) ORDER 2015

Tuesday 19 January 2016

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The Committee consisted of the following Members:

Chair: MRS CHERYL GILLAN

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| † Ansell, Caroline (<i>Eastbourne</i>) (Con) | † Lord, Jonathan (<i>Woking</i>) (Con) |
| † Austin, Ian (<i>Dudley North</i>) (Lab) | † Madders, Justin (<i>Ellesmere Port and Neston</i>) (Lab) |
| † Brine, Steve (<i>Winchester</i>) (Con) | † Milling, Amanda (<i>Cannock Chase</i>) (Con) |
| † Fabricant, Michael (<i>Lichfield</i>) (Con) | † Reeves, Rachel (<i>Leeds West</i>) (Lab) |
| † Foxcroft, Vicky (<i>Lewisham, Deptford</i>) (Lab) | † Robinson, Mary (<i>Cheadle</i>) (Con) |
| † Green, Chris (<i>Bolton West</i>) (Con) | † Smyth, Karin (<i>Bristol South</i>) (Lab) |
| † Gummer, Ben (<i>Parliamentary Under-Secretary of State for Health</i>) | Thompson, Owen (<i>Midlothian</i>) (SNP) |
| Hodge, Dame Margaret (<i>Barking</i>) (Lab) | Joanna Welham, <i>Committee Clerk</i> |
| † Kirby, Simon (<i>Brighton, Kemptown</i>) (Con) | |
| † Lopresti, Jack (<i>Filton and Bradley Stoke</i>) (Con) | † attended the Committee |

First Delegated Legislation Committee

Tuesday 19 January 2016

[MRS CHERYL GILLAN *in the Chair*]

Draft General Dental Council (Fitness to Practise etc.) Order 2015

2.30 pm

The Parliamentary Under-Secretary of State for Health (Ben Gummer): I beg to move,

That the Committee has considered the draft General Dental Council (Fitness to Practise etc.) Order 2015.

It is a pleasure to be in the Committee with you in the Chair, Mrs Gillan. It is good to see hon. Members here and it is especially good to see the hon. Lady—I have forgotten her constituency, but it is good to see her back from maternity leave.

Rachel Reeves (Leeds West) (Lab): Leeds West.

Ben Gummer: Leeds West. I will go through this as quickly as possible. If Members have questions, they may raise them and I will try to respond quickly as well.

The Dentists Act 1984 established the General Dental Council and set out the GDC's functions and processes. The GDC is responsible for regulating the dental workforce in all parts of the UK. It has powers and duties that include setting the standards of conduct, performance and behaviour that dentists and dental care professionals are expected to adhere to. In addition, it is responsible for investigating any complaints or concerns that suggest that a dental professional may have failed to meet those standards.

The Government are keen to ensure that the GDC has an appropriate framework in place to allow it to carry out its statutory responsibilities effectively. The current legislation that governs the early stages of an investigation into a dental professional's fitness to practise does not provide sufficient flexibility to enable the GDC to carry out that function in the most effective and efficient way. Legislative change is needed to address that.

The order, made under section 60 of the Health Act 1999, amends the Dentists Act 1984 to reform the investigational stages of the GDC's fitness to practise procedures. The Department of Health publicly consulted on the proposals in the order and the vast majority of respondents agreed that the measure should be introduced and would have a positive effect on the GDC's fitness to practise procedures.

Through this section 60 order, I propose to provide the GDC with the powers to make five key amendments to its processes. First, the GDC will be provided with a rule-making power to allow it to delegate the decision-making functions currently exercised by its investigating committee to case examiners. The GDC's current framework requires that, following the triage of a fitness to practise complaint about a dental professional, if

that complaint falls in the GDC's remit, it must be considered by an investigating committee. That means that a panel must be convened for every case that reaches that stage. It is anticipated that the introduction of case examiners will mean a swifter resolution of fitness to practise cases as a full investigating committee will not need to be convened for every case. Instead, allegations will be considered by two case examiners.

The faster resolution of cases will enhance public protection. It will also remove some of the stress from the procedure for all parties involved. In addition, greater consistency in decision making should be achieved because case examiners will deal with a higher volume of allegations than an investigating committee, because the committee is convened from a large pool.

I realise that the fact that case examiners will be employees of the GDC may be a cause of anxiety for some. It is important to remember that they will not be making findings of fact in respect of whether a registrant's fitness to practise is impaired. They will make the decision as to whether a case needs to proceed to the adjudication stage and be considered by a practice committee.

Additionally, the GDC, in its rules and guidance, will provide that the case examiners must make decisions based on documentary evidence, which will be supplied to them in the same manner as is currently the case for the investigating committee. The case examiners will not be involved in evidence gathering. One lay case examiner and one registrant case examiner from the same part of the register as the individual whose case is being considered will consider an allegation, which will provide another safeguard to ensure fairness in the process.

Interested parties will be keen that case examiners are recruited, trained and supported in the right way. I have been assured by the GDC that case examiners will receive comprehensive and robust training. The GDC is developing a robust system of review and appraisal that will monitor and support performance and ensure appropriate decision making. The quality of the case examiners' decisions will be underpinned by ongoing training and detailed guidance. The GDC will also introduce mechanisms for auditing decisions on a routine basis and apply lessons learnt from the audits to the guidance material.

Secondly, provision will be made to allow both the case examiners and the investigating committee, in certain cases, to address concerns about a registrant's practice by agreeing appropriate undertakings with that registrant. This will be instead of referring them to a practice committee. Undertakings will be applied, where appropriate, at the end of the investigation stage of the fitness to practise process. The introduction of this change will mean that some cases that are currently referred to a practice committee may not need to be, in instances where it is determined that the agreement of undertakings could lead to a resolution of the case in a way that is sufficient to protect patients and the public. For example, if the case involved an allegation that a registrant's health was affecting their fitness to practise, it may be possible to agree undertakings that would address any risks posed to the public and to the registrant as a result of this health condition. This would also avoid the anxiety, time and cost incurred by referring the case for a full hearing. Rules will provide that a registrant must

not be invited to comply with undertakings if there is a realistic prospect that, if the allegation were referred to a practice committee, the registrant's name would be erased from the register.

Thirdly, the GDC will be provided with the power to make rules to provide for a review of a decision that an allegation should not be referred to the case examiners or to the investigating committee, and a review of a decision that an allegation should not be referred to a practice committee. This will not be an unfettered power. Through rules, the GDC will provide that a review can be undertaken by the registrar if it is considered that the original decision was materially flawed, or if new information has come to light which may have altered that decision and a review is in the public interest. Such a review can occur only within two years of the original decision to close the case. Allowing a review in these circumstances adds a further safeguard to the system. Providing the GDC with the power to take suitable action will improve public protection and maintain public confidence in dental regulation.

The order will also introduce a power to enable the investigating committee and the case examiners to review their determination to issue a warning. A registrant will be able to request such a review within two years of the original decision to issue the warning. At present, there is no mechanism via which a registrant who is issued with a warning can appeal this decision within the GDC. Instead, the only route of appeal open to them is to apply for judicial review. This can be costly for the registrant and the GDC and stressful for the registrant. Warnings can remain on an individual's record for a number of years—for as long as the warning has been issued—and be accessed by patients and employers. Providing individuals with a route of appeal that does not require application for a judicial review is a fairer and more proportionate approach.

Finally, provision will be made to ensure that registrants can be referred to an interim orders committee at any time during the fitness to practise process. Currently, the legislation around when a case can be referred to an interim orders committee at certain points in the process is ambiguous. This amendment will remove any ambiguity and maintain public protection and confidence throughout the entire fitness to practise process. It will provide a higher level of patient protection, ensuring that those who are potentially unsafe to practise can have their registration suitably restricted while inquiries and investigations are made. In addition to enhancing patient safety and improving the fitness to practise processes for a registrant and all parties concerned, it has been identified that making these amendments will create approximately £2.5 million per annum of efficiency savings for the GDC over the next 10 years.

In summary, these proposals to reform and modernise the GDC's fitness to practise processes will make the system more efficient and effective, benefiting patients, practitioners and the health service. They will result in improved public protection and an increase in public confidence in the General Dental Council. I commend the order to the Committee.

2.39 pm

Justin Madders (Ellesmere Port and Neston) (Lab): It is a pleasure to serve under your chairmanship, Mrs Gillan.

The fitness to practise process is not working effectively at the moment, so although I will raise a few points, some of which the Minister has already addressed in his opening remarks, and I hope he will be able to deal with the others when he responds, we will not object to the order today. However, we have wider concerns about delays in the reform of health and social care regulation, as well as the performance of the General Dental Council.

As it stands, it takes up to 18 months for a fitness to practise complaint to be dealt with by the General Dental Council. This is bad for professionals, bad for patients and their families and causes unnecessary distress to everyone involved. Not only is the process too slow, it is also too expensive, with cases costing an average of £78,000 to resolve, so we welcome the thrust of the order, which will address a long-standing need to improve and speed up the complaints-handling process and will potentially deliver savings of £2 million to £2.5 million per annum.

We are a little disappointed, however, that the order fails to guarantee the independence of the fitness to practise function, which is crucial if the new process is to acquire the confidence of patients and the profession. I can see the attraction of case examiners deciding whether complaints move forward at the end of the investigation stage in a manner not dissimilar to many other regulatory regimes, but I hope the Minister will agree that how that works in practice will need an early review, which is vital in the context of the recent review into how the GDC has conducted itself.

A report, published on 21 December, was commissioned by the GDC following concerns raised by a whistleblower that certain processes were compromising the independence of the investigating committee's decision making. Some of the report's conclusions are deeply concerning. It found that there were inappropriate interventions and undue influence by investigating committee secretaries during investigating committee meetings, as well as the amendment of decision documents without appropriate authorisation. In the light of the report, it could not be more important for the process to be fully independent and to be seen to be independent of the GDC. I am therefore sure that the Minister understands the deep reservation—he acknowledged it during his opening comments—that is felt among the profession that new case examiners can also be employees of the GDC. Given the concerns that were expressed only a few weeks ago, I will be grateful if the Minister sets out how professionals can possibly be assured that this process will be truly independent and how he proposes to monitor the new system to ensure that patient and professional confidence is upheld.

The success of the proposed system will also rely on the calibre, qualifications and appropriate training of the individuals carrying out the new function. To quote another finding of the review:

“The approach taken by the GDC to recruiting, training and supervising the Investigating Committee Secretaries is likely to have contributed to the development and continuance of objectionable practices.”

The Minister addressed that in his opening remarks, but what assurances can he provide that the new officers will be supported in the right way once the process is under way and, crucially, that they will always be from the same profession as the individual whose case is

[Justin Madders]

being examined? While the order has the potential to bring about much-needed improvements, a satisfactory response should be provided to those legitimate concerns to secure the confidence of professionals and patients.

Turning to wider issues, while the order will improve some of the procedural problems, we should be in no doubt that a complete overhaul of the GDC is what is really needed. The GDC is Britain's most expensive and least efficient healthcare regulator. In the Professional Standards Authority's 2014-15 performance review, the GDC failed to meet eight of the 24 standards of good regulation and, crucially, fully met only one of the 10 standards relating to fitness to practise processes. In comparison, the General Medical Council met every one of the 24 standards. During the debate on the order in the other place, the Minister, Lord Prior, acknowledged that the Government are concerned about the GDC's performance, that the recent reports are worrying and that the profession lacks confidence in the GDC. Will the Minister set out what the Government are doing to address that? Does he have full confidence in the GDC's ability to carry out its vital functions?

The order is necessary only because the Government continue to kick into the long grass the health and social care regulatory reforms that we have been discussing for some time. I am aware that when the reforms to fitness to practise were first proposed almost five years ago, the Government's response was that they were not prepared to introduce secondary legislation because they had already asked the Law Commission to produce a new legislative framework, reforming all health and social care regulators. However, those draft regulations were published back in April 2014 and have been gathering dust on the Secretary of State's desk ever since. A Bill is not even in the pipeline, which is partly why we are here discussing the current condition of the GDC. Will the Minister set out today when the Government will finally move forward with the wider health and social care regulatory reform that has cross-party support and is desperately needed?

2.44 pm

Michael Fabricant (Lichfield) (Con): I do not intend to detain the Committee long. It is a personal pleasure to serve under your chairmanship, Mrs Gillan, as you and I share common views on certain matters, but perhaps not on the General Dental Council.

This morning, maybe rather foolishly, I emailed my dentist, whom I am seeing for a check-up on Friday in Bore Street in Lichfield, as I wanted to ask him for his impressions of the order. He has come back to me with a very brief number of points. If it is good enough for the Leader of the Opposition to mention Mary of Marylebone, it is good enough for me to mention my dentist—I will not mention his name—of Lichfield. He makes the point that there has been a massive increase in the number of complaints being made against dentists to the General Dental Council. He says it is up 110% in the past three years, partly because the GDC has been inviting people to make complaints. The GDC is just one of several bodies to which one can make complaints if one is not happy with the service from one's dentist.

As the Minister and the hon. Member for Ellesmere Port and Neston have said, the whole point is to try to get complaints dealt with faster. That is a good thing in some ways, because it will reduce the stress not only for the patient but for dentists themselves. However, it is important that with the new, faster process, investigations are not skimmed on. Can the Minister reassure me and my dentist in Lichfield that the new process will not mean that complaints are not dealt with thoroughly? Some of them do need to be dealt with thoroughly, perhaps more so than at present.

I also make the point that the Opposition spokesman made about case examiners. It is important that they are seen to be independent, whether or not they are. In fact they have to be independent, but they also have to be seen to be independent. I am not altogether sure that people will be satisfied with the judgments that they make if it is thought that they are biased towards dentists, given that they are employees of the General Dental Council. I will be interested to hear what the Minister has to say about that.

The Opposition spokesman said that the GDC is one of the most expensive regulators in the country—perhaps the most expensive. My dentist makes the point that the GDC has increased its retention fees massively in recent years. Not every dentist is rolling in money, and the fees are quite a strain on their income. This might be slightly outside the remit of the order, but can the Minister assure me and my dentist, and indeed other dentists who might be interested, that the new structure will not directly cause GDC fees to go up for dentists? I look forward to hearing his reply.

2.47 pm

Ben Gummer: I am surprised to be on my feet now, because I thought a huge number of Members would wish to contribute to the debate, but I am forced to reply only to the two speeches that have been made. I can give brief but, I hope, reassuring answers to them.

The shadow Minister, the hon. Member for Ellesmere Port and Neston, has been as assiduous as ever in looking at the detail of the order, and he was entirely correct to raise challenges. On the independence of case examiners, which my hon. Friend the Member for Lichfield also raised, it is important to say that the Government and regulators have sought to use experience and mechanisms already in place in other regulatory bodies to improve the system in the GDC. This is not a system dreamed up *ab initio* but one used by other regulators as a complaint passes through the regulatory system. We therefore hope that it has good antecedents, especially in the GMC, whose good-quality case handling over the years has been mentioned.

I understand that the system is new to the dental profession, so it is important that I point out two things. First, there will be two case examiners. One will be lay and the other will come from the same part of the register as the person being referred. To answer one of the points that the hon. Member for Ellesmere Port and Neston made, there will be continuity. If the two case examiners cannot reach a decision, the case will still go to a practice committee with three members, as happens currently. In a sense we hope to use an additional layer, whether or not there is a clear route to an investigating committee. If that layer fails, a case will default back to the original structure as outlined in the 1984 Act.

Justin Madders: I am grateful to the Minister for his explanation, and I agree that the processes are similar to those of other regulatory bodies. We certainly hope that efficiencies will result from the order. The point that the hon. Member for Lichfield and I were making is that it is about the perception of the investigators' independence. That is critical, particularly given the history of this particular body.

Ben Gummer: On the hon. Gentleman's wider point about the reform of healthcare regulation and why it is happening through section 60 orders at this stage, I understand his frustration. I hope I can reassure him by referring to my written ministerial statement just before Christmas, in which I outlined that we are hoping to take forward the Law Commission's report and look at the work that the Professional Standards Authority for Health and Social Care has put together on the reform of professional regulation, to see whether there is an ideal combination of the two pieces of work.

I have discussed the order at length with the regulators. They are content with the way we are going, and we will enter a period of extensive consultation, which I hope will lead to substantial reforms. However, that can be done only on a consensual basis. I very much hope to involve the Opposition in that work, because it is clearly important that healthcare regulation remains a non-partisan issue.

That takes me to another point that the hon. Gentleman raised: how we will guarantee the independence of the case examiners. I understand, especially given the recent history of the GDC, that he wants to ensure that independence in the first years. The Professional Standards Authority for Health and Social Care has proved itself a worthy guardian of healthcare regulation in the past few years. Its reports, one of which he quoted in his speech, give an accurate picture of the state of healthcare regulation. It will audit the new system with assiduity and report back in its annual review about whether it is working.

My hon. Friend the Member for Lichfield referred to the fees gathered by the General Dental Council, which have increased in several of the past few years. I understand from the PSA's last report that the GDC's performance

has improved somewhat over the past year, but it certainly has a great distance to make up. It is not for me to determine fee levels for healthcare regulators. However, with a number of fees having gone up recently, I made clear to all the regulators when we met last that I expected them to do everything within their powers to either freeze fees or, where they find can efficiencies, pass them back to their members if possible.

Michael Fabricant: Can my hon. Friend reassure me that the specific measures in the order will not lead directly, because of excess or extra costs, to increased fees?

Ben Gummer: I can assure my hon. Friend that the order will be cost-saving for the General Dental Council—the estimated savings are £2.5 million. It depends slightly on whether the increase in referrals to the GDC continues. If it does, that saving will be eaten up in the increased resources required to process claims. However, if the number of incidents stays the same or reduces, I agree: the logic would be that the GDC might find space to reduce the fees it charges to its members. That is exactly what I have encouraged all the regulators to look at—how can they make justice quicker, which is good for everyone? If they save money in the process, which should only be a secondary consideration, it should be passed on to their members. In some regulated professions, many people, such as nurses or associated healthcare professionals, are not on high wages, and the fee levels make a difference. The regulators are aware of my views, and I put them as strongly as I can without infringing on their independence.

I hope I have answered every one of the shadow Minister's points.

Justin Madders *indicated assent.*

Ben Gummer: I think that is a yes. If there are no more questions, I will sit down. I hope that the Committee will endorse this section 60 order.

Question put and agreed to.

2.55 pm

Committee rose.

