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## GMC and vulnerable doctors: making sure fear is not a factor

The deaths of almost 100 doctors while under GMC investigation over the past decade has raised questions about the stress and fear associated with the process. **Clare Dyer** reports on the regulator's moves to soften its harsh image. But is it going far enough?

**M**ary O'Rourke QC recalls the time a doctor threatened to jump out of a seventh floor window at the General Medical Council's building while she was defending him on misconduct charges. The consultant paediatrician, who was in his mid-60s, displayed Asperger's traits and had had recurrent depressive episodes, anxiety, obsessional tendencies, and thoughts of suicide. All three psychiatrists who prepared reports for his case agreed that he was unfit to take part in the proceedings and unfit to practise medicine then or at any time in the future. But the GMC refused to let him take himself off the medical register voluntarily. That took a trip to the High Court, which branded the refusal "irrational."

O'Rourke, a 27 year veteran in defending beleaguered doctors before their regulator, has represented several who were suicidal. They included Sabah Al-Zayyat, the paediatrician who failed to spot battered baby Peter Connelly's injuries two days before his death. It took two GMC hearings and a High Court ruling before she was eventually allowed to remove herself from the register. "It was horrible to see her fall apart," says O'Rourke.

Of another doctor who faced the GMC, she remembers, "We had him on suicide watch for the whole two weeks of the hearing. At one stage he said to me, 'It's utterly hopeless, there's no point in going on.' That doctor is now back in unrestricted practice."

This month the GMC announced a review of cases in which doctors have killed themselves while going through fitness to practise procedures to see whether it can do more to support those who are vulnerable. The move follows the disclosure that 96 doctors have died since 2004 while involved in GMC investigations, although how many of those took their own lives was not

revealed. The figures emerged from a Freedom of Information Act request by the campaign group Doctors4Justice.

### Need for support

The GMC's chief executive, Niall Dickson, has asked Samdrah Horsfall, former interim chief executive of the National Patient Safety Agency, to examine the cases where a doctor has died by suicide while under a fitness to practise investigation and consider whether there is more the GMC can do to support vulnerable doctors. "While we must never lose our focus on protecting patients, we also have a duty of care to doctors in our procedures and we have commissioned this review because we want to do everything we can to help and support those with health problems," says Dickson.

"Some of the doctors are referred to us because they have serious mental health problems, including severe depression and various forms of addiction. We recognise that these can be very vulnerable individuals and that being part of a fitness to practise investigation is almost always a stressful experience for everyone, and especially for the doctor involved. We are piloting meetings with doctors to hear their side of the story earlier, and we have commissioned the BMA's Doctors for Doctors service to provide confidential emotional support to any doctor involved in a fitness to practise case who wants it."

Chaand Nagpaul, chairman of the BMA's General Practitioners Committee, thinks the review should go further and look at what doctors perceive as the whole "culture of fear" surrounding GMC procedures. "We're pleased that the GMC is looking at this very serious issue of doctors who have committed suicide during or pending a fitness to practise investigation. But it really does need to look at not just suicide but the stress doctors are under when they receive

notification for a fitness to practise hearing. I think we need to look at the entire process from the content of the letter, communication with the GMC by telephone or correspondence, and support for the doctor.

"If we only look at the severest casualties, suicides, we're not paying enough attention to the large numbers of doctors who are going through enormous emotional turmoil and suffering mental stress and illness as a result. We need to look at both the GMC process and at other aspects that can provide support to doctors."

O'Rourke describes the GMC's letters to doctors under investigation as "quite harsh and unfriendly," although the regulator says it has recently adopted a new, more sensitive tone in its communications as part of a review designed to make its procedures less stressful. This includes communicating extra sensitively with those doctors deemed to be at risk of self harm.

These are more likely to be doctors whose health is thought to raise questions about their fitness to practise, although health problems will often affect conduct and performance too. Doctors who experience depression, alcoholism, or drug misuse may find themselves facing misconduct allegations as well as concerns over their health. Liz Miller, a general practitioner specialising in occupational health, who has bipolar disorder, says three friends of hers killed themselves after GMC investigations.

Last year the GMC launched Your Health Matters, a website with case histories and advice on its health procedures. Doctors are assured that often there is no need for GMC intervention "if a sick doctor has insight into their condition, is seeking appropriate treatment, following the advice of their treating physicians and/or OH [occupational health] department in relation to their work and restricting their practice appropriately."



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#### Too many referrals?

The GMC insists its core function is not to punish doctors but to protect patients and the public. But the statistics show that most of the doctors going through a process the GMC acknowledges is highly stressful have never harmed patients at all. Complaints soared by 18% between 2011 and 2012, but 60% of the 2012 complaints were closed at triage (compared with 40% in 2008) and 75% of the remainder were concluded by case examiners with no action or just advice.<sup>1, 2</sup> One factor in the rise in complaints is that more employers in recent years have been reporting doctors to the GMC. "This raises a fundamental question about whether complainants are using the GMC appropriately," says Stephanie Bown, director of policy and communications at the Medical Protection Society, which defends doctors in GMC proceedings. She calls for more resolution of problems at local level.

In June 2012 the GMC underwent its biggest change since it was set up more than 150 years ago, when it launched the operationally independent Medical Practitioners Tribunal Service (MPTS), headed by a judge. The GMC still investigates and presents the cases, but hearings are held by the tribunal service. Fitness to practise figures for 2012 show that fewer doctors were subject to the most serious sanction: 55 were struck off in 2012, down from 93 the year before and the lowest number since 2008. Only 10% of cases were referred to a fitness to practise panel, which has the power to erase the doctor from the medical register, compared with 28% in 2008.

The cases of John Walker-Smith and David Southall, senior figures with international reputations who were ordered to be struck off by the GMC but reinstated by the courts, offer no reassurance that the regulator will always reach the right result. In the case of Walker-Smith, a paediatric gastroenterologist who coauthored the notorious MMR paper with Andrew Wakefield, Mr Justice Mitting listed a catalogue of errors, called for fitness to practise panels that are hearing weighty cases to be chaired by "someone with judicial experience," and declared, "It would be a misfortune if this were to happen again."<sup>3</sup> Southall, a child protection expert who was targeted by parents' rights campaigners, faced three separate GMC cases over a total of 14 years; the final case was dismissed last year.<sup>4</sup>

These cases happened before the MPTS took over fitness to practise hearings and interim orders panels, which have power to suspend doctors or place conditions on their practice

pending a full hearing. And the cases against Southall were brought under old rules that favoured the complainant at the expense of the doctor. But O'Rourke questions whether the raft of new panel members recruited for the MPTS have enough experience and training for the role. She adds, "There are a number of cases where the allegations can appear serious and the case is put through too quickly and too easily, and the analysis has not been properly done on whether there is a sound evidential basis for the allegations that have been made."

When doctors do challenge decisions in the courts, judges are holding the regulator to account, as their rulings are influencing future decisions. Interim orders panels have been issued with new guidance after a string of High Court cases last year in which judges found them too ready to suspend doctors, depriving them of their livelihood when no findings had yet been made against them.<sup>5-9</sup>

More radical change is on the horizon. In future many fewer cases are likely to go to a public hearing. Since last year the GMC has been piloting "consensual disposal," in which a sanction is offered and the doctor invited to agree to

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it without a hearing. In cases of health or performance concerns, the GMC has for some time accepted undertakings from the doctor, such as agreeing to be monitored or to refrain from performing certain procedures. But the intention is to apply consensual disposal to all types of case, even the most serious, where the sanction is removal from the medical register. There would be no public hearing but a summary of the case and any sanction would be published on the GMC website.

Last month the GMC launched a survey of an anonymous sample of nearly 7000 doctors on the register to find out if they think it acts in a fair and objective way. The organisation is unlikely to be expecting many five star reviews. Regulators are never popular with those they regulate. But at least the GMC wants to hear what doctors have to say.

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