



## JOINT CONSULTANTS COMMITTEE

February 2005

### A Response to the Fifth Report of the Shipman Inquiry

The medical profession understands the legitimate public interest in the conduct and competence of doctors and is committed to strengthening the institutions and processes for professional regulation in order to retain the trust of patients and the public. The JCC has therefore carefully considered Dame Janet's report and has noted the reaction of the media to the Inquiry's findings.

The Committee is united in wishing to respond positively to the contents of the report and wants to work constructively and coherently towards improving, where necessary, the mechanisms and quality of information required to strengthen the regulation of the medical profession. It is understood that in order for any appropriate changes to be instituted successfully the profession must collaborate with the public, patients and regulatory bodies.

Furthermore, the Committee also welcomes the government's decision to review the role, structure and functions of the General Medical Council in the light of Dame Janet's report and has consequently entered into discussions with both the GMC and the Chief Medical Officer to inform this process. We should welcome the opportunity to continue to be involved in this dialogue as the review develops.

The JCC is largely constituted of representatives of consultants and is concerned primarily with the Report's recommendations as they impact upon consultant practice. This response will not therefore comment on those recommendations specific to General Practice, but will address those that relate in general to the regulation of the medical profession.

#### APPRAISAL AND REVALIDATION

The process of appraisal has proven to be a valuable developmental tool and consequently its continuation is considered vital. Dame Janet recommends (25) that a decision must be taken as to whether appraisal is intended to be a purely formative process or whether it should serve several purposes: part formative, part summative and/or part performance management.

Our view is that appraisal was conceived as a formative and developmental mechanism, not a tool for judging a doctor's ability or conduct in a pass/fail manner. We would therefore be concerned if this emphasis were to be lost as a result of attempts to modify the process of appraisal during the review of revalidation. In its present form appraisal would not by itself be sufficient to act as the principal instrument underpinning a doctor's revalidation. However, we do not consider that this should be its prime purpose.

Dame Janet's suggestion (26) that for appraisal to be regarded as a robust clinical governance tool it must be 'toughened up' and that this would require appraisals to be based on a nationally agreed core of verifiable information points to a key concern. The

process of revalidation, in whatever form it takes, will have to be informed by clinical governance data.

However, at present the robustness of such data is open to question. It is therefore imperative that there is a dialogue between the profession and the public in order to explore the question of what objective, verifiable evidence should underpin assessment and how this can be reliably obtained. It will be essential that this evidence be perceived as appropriate by the public as well as the profession. We suggest that one mechanism for securing such evidence would be the use of data held by Health Service Trusts pertaining to the clinical outcomes of patients that a doctor has treated. The Committee urges Trusts to ensure appropriate procedures are in place that will enable reliable information of this nature to be captured.

## TRANSPARENCY AND DISCLOSURE OF INFORMATION

The JCC recognises the merit of Dame Janet's recommendations pertaining to the adoption of a policy of tiered disclosure to apply to all persons seeking information about a doctor (45) and the concept of a central database containing information about every doctor working in the UK (40). The Committee is keen to reaffirm its view that the principle of transparency is vital in relation to maintaining standards of practice, as well as to the disclosure of information. This principle should therefore extend to the existence of restrictions on a doctor's practice. Moreover, transparency must underpin the entirety of the GMC's operation. We therefore fully support the recommendation that the GMC should ensure that its publications contain accurate and readily understandable guidance as to the types of case that do and do not fall within the remit of its fitness to practise (FTP) procedures (49).

## SUPPORT FOR COMPLAINANTS

The Committee supports the recommendation that there should be a 'single portal' by which complaints or concerns about health care can be directed to the appropriate quarter (17) and suggests that this should be established at the earliest opportunity.

## THE GENERAL MEDICAL COUNCIL

The Committee notes the Report's recommendations relating to the function of the GMC and its composition. In doing so we are mindful that significant reforms in this area have recently been introduced by the GMC.

### Separation of Functions

The GMC's recent reforms are particularly relevant with regard to the recommendations concerning the separation of functions within the GMC (50). It is suggested that there should be complete separation of the GMC's casework and governance functions at the investigation stage of any new FTP procedures and that subsequently the adjudication stage of the FTP procedures must be undertaken by a body independent of the GMC (51).

We consider this to be a legitimate aspiration but Dame Janet's recommendations in this section of the report are somewhat vague. Clearly this is an area which the CMO's advisory group are likely to consider in depth. The JCC would welcome the opportunity to comment at an early stage on any proposals which are developed.

## Constitution

The report's suggestion that the GMC's constitution should be reconsidered, with a view to changing its balance, so that elected medical members do not have an overall majority (106), has some merit. This change would likely lessen the potential for accusations of partisanship.

This proposed measure, in combination with the recommendation that medical and lay members who are to be appointed (by the Privy Council) should be selected for nomination to the Privy Council by the Public Appointments Commission following open competition (107), would clearly advance the aim of making the GMC's operations more transparent.

The JCC is therefore generally supportive of both these recommendations.

## Accountability

We agree with the Report's recommendation that the GMC should be directly accountable to Parliament (107). The proposal that an annual report be published by the GMC for submission to a Parliamentary Select Committee is also valuable and would likely foster greater confidence in its function.

## Standards

The Committee is agreed that it is vital that the evidence collected about the clinical practice of a doctor is robust and can therefore be employed in a process that will offer reassurance to the public. Consequently, an emphasis must be put on developing a coherent framework within which this can be achieved. Therefore, we would welcome efforts to develop standards, criteria and thresholds so that decision-makers will be able to reach reasonably consistent decisions at both the investigation and the adjudication stages of FTP procedures (55). It will be essential that the profession is involved in this work.

Issues of consistency and transparency are also relevant to another concern, that of the clarity of definitions used in the regulatory procedures. Dame Janet suggests that the GMC's proposed system of revalidation would not provide an evaluation of a doctor's 'fitness to practise'. However, the task of providing a clear and coherent definition of what is meant by 'fitness-to-practise' will be fundamental to the current review. Without this, determining the appropriate mechanisms to evaluate a doctor's capabilities and performance will not be feasible. Similar priority also applies to defining the criteria that constitute a charge of 'serious professional misconduct'.

## THE COUNCIL FOR HEALTHCARE REGULATORY EXCELLENCE (CHRE)

The Committee has shown great interest in the developments arising from the National Health Service Reform and Health Care Professions Act 2002 and particularly the introduction of the CHRE. Dame Janet recommends that Section 29 of the Act should be amended so as to clarify that the Act provides for the CHRE to appeal against 'acquittals' and findings of 'no impairment of fitness to practise', as well as in respect of sanctions which it believes were unduly lenient (108). The Committee, while supportive of steps to aid clarification, would urge that these recommendations are dealt with cautiously as the CHRE's relationship with the GMC is still not completely clear.

## FINAL REMARKS

The JCC understands Dame Janet's concern that the GMC's procedures have, in the past, often proven insufficient to provide the necessary reassurance to the public. Whilst it is recognised that the GMC has itself acknowledged these shortcomings and proposed reform to counter this, the concern still exists that such reforms may, as Dame Janet suggests, be perceived as having not been made in the spirit of genuine concern for the public good.

Consequently, the JCC is firmly of the opinion that future reform must ensure effective patient and public involvement and act to provide both the public and doctors with the utmost confidence in the regulation of the medical profession. These are critically important times for healthcare in this country. The CMO and his advisory group can expect strong support from the JCC in their work. We should welcome the opportunity to continue to be involved in these important deliberations.