

~ Public and Regulatory Law Group ~

This year is set to bring in changes across a number of regulatory areas following the introduction of revalidation for doctors in December, and a number of regulators consulting on changes to their regulatory regimes.

In terms of case law from December, the Court decided in favour of two doctors upon whom interim suspension orders were imposed. In both Patel and Houshian, the allegations concerned issues around dishonesty and probity and neither doctor was facing allegations in relation to their clinical practice. See below for further details.

Regulatory news

Health and social care

GMC - Regular checks for doctors begin:

Revalidation, a new system of checks to ensure the fitness to practice of doctors has now come into force. The process will include annual appraisals and feedback from patients and colleagues. Doctors will be required to revalidate every five years in order to retain their license to practice.

[Health Select Committee 2016 accountability report on GMC](#)

The Health Select Committee has published its annual accountability report on the General Medical Council and describes it as an 'effective' organisation. The report highlights progress made by the GMC in key areas, including the new impartial tribunal service.

[Professional Standards of Nursing & Midwifery](#)

This article from Personnel Today explores how standards for Nursing & Midwifery can be achieved and also investigates the introduction of revalidation for nurses and midwives, planned for 2016. It also considers the professional requirements and competencies required to meet the necessary standards.

GOC starts consultation process on consensual disposal The General Osteopathic Council is undergoing a consultation process in relation to consensual disposal of certain fitness to practice cases. It would allow cases to be concluded by agreement at the end of the investigation stage, as an alternative to referral for a hearing in circumstances where an admonishment is considered appropriate. The GOC invites views on this proposal – for further information on this consultation.

[GPhC responds to BBC investigation](#)

The General Pharmaceutical Council has responded to an investigation by BBC Inside Out London which alleged that some pharmacies had illegally sold prescription drugs without a prescription. The Council has announced it is working with the Police and has launched its own investigation into the allegations.

[HCPC Consultations on profession-specific standards](#)

The Health and Care Professions Council has launched two consultations on proposed changes to the profession-specific standards of proficiency for chiropodists/podiatrists, prosthetists and orthotists. The review will ensure that the standards of proficiency are relevant to each profession.

[Legal and Finance Update on introduction of QASA](#)

The Joint Advocacy Group which comprises the Bar Standards Board, ILEX Professional Standards and the Solicitors Regulation Authority has agreed the next steps for introducing the Quality Assurance Scheme for Advocates ("QASA"). The changes have been agreed following comments received in response to the fourth consultation but mean that the scheme will not start this month as planned.

[LSB report on Special Bodies consultation](#)

The Legal Services Board has considered the responses received regarding the regulation of special bodies/non commercial bodies and concluded that they will not become licensed under the Legal Services Act 2007 until at least April 2015. With no regulator ready to provide an appropriate licensing framework, statutory transitional arrangements will remain in place for at least the next two years.

[LSB publishes regulatory assessments](#)

The LSB has published its first assessments of the performance of regulators in the legal services sector, focusing on five of the seven regulators operating in the sector. It has concluded that some regulators demonstrated a clear understanding of the need to move to an outcomes focused and risk-based approach; however a 'sustained drive' to implementation is needed. A consultation has also been issued on the LSB's draft business plan.

[FRC takes on board comments following consultation](#)

The Financial Reporting Council has confirmed that observations made by interested parties during its consultations on Sanctions Guidance to Tribunals and changes to its disciplinary schemes have now been incorporated into revised drafts of those documents. These include an amended definition of 'misconduct' and more clarity in relation to the objectives of the sanctions guidance.

[Security Consultation on reform of regulation of private security industry](#)

The Security Industry Authority has announced that it is seeking the views of those involved in the private security industry, before commenting on the Government's favoured option of reform by way of a phased transition to a business regulation scheme.

[General Disclosure and Barring Service](#)

The disclosure and barring service was launched on 1 December 2012. The introduction of the DABS has resulted in the merger between the Criminal Records Bureau (CRB) and the Independent Safeguarding Authority (ISA).

Judicial Review – Proposals for reform

The Government has launched a consultation in relation to new measures intended to stem the growth in applications for judicial review. It aims to seek views in three key areas; reducing the time limits for bringing a judicial review relating to procurement or planning in line with the appeal timetable which already applies to those cases; removing the right to an oral renewal where a judge refuses permission where there has been a prior judicial process, or where the claim was judged to be totally without merit; and the introduction of a new fee for an oral renewal - if the oral renewal is successful, the fee for post permission stages would be waived.

Case Law

Patel v General Medical Council [2012] EWHC 3688

The applicant, P, a GP, sought to terminate an 18-month interim suspension order imposed upon him by the General Medical Council's Interim Orders Panel. P had been a member of the Board of Governors and was Chairman of the Finance Committee at a school. He was arrested in connection with these roles following an allegation that he had authorised substantial payments to staff who were not entitled. This was alleged to have occurred over six years and he was charged with a conspiracy to defraud and committing fraud by abuse of his position. The sum involved was £1.8 million.

The panel made an 18-month suspension order on the basis that this was necessary to maintain public confidence in the profession. It noted that whilst suspension removed P's ability to practice, the probity concerns, the seriousness of the charges and the amount involved meant no conditions could be imposed to adequately protect the public interest before a full hearing could resolve matters. P appealed on the basis that suspension was not necessary, proportionate, nor in the public interest given that the allegations were not related to clinical matters.

The Court held that although a large sum of money was involved in the conspiracy charge, it was the nature of the wrongdoing that was the important factor, not the sum itself. No other complaints had ever been made about P's clinical competence or honesty. He was innocent until proven guilty and there was no allegation of personal gain and dishonesty still had to be established.

Applying the test in the Guidance for Interim Orders Panels as to what a reasonable onlooker would think of P being allowed to continue to practice if convicted of the conspiracy, it was clear that no reasonable onlooker would be offended to learn that P had been allowed to continue to practice in the interim. There was no evidence of a threat to the public's welfare and the decision would not undermine the public confidence in the profession. On that basis it could not be said that the public interest required P's suspension. The appeal was accordingly granted.

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Houshian v General Medical Council [2012] EWHC 3458

H appealed against an interim suspension order imposed upon him by the GMC's Interim Orders Panel suspending his registration for 18 months pending the determination of his fitness to practise. Between 2004 and 2008, H had been employed by an NHS Trust as a consultant orthopaedic surgeon. He was dismissed for gross misconduct relating to his treatment of colleagues. There were no issues as to his clinical practice.

H had claimed against the Trust for unfair dismissal and discrimination but his claim was dismissed, following a finding by the employment tribunal that H had deliberately fabricated evidence and made a number of unsubstantiated and damaging allegations against former colleagues. H faced an allegation of impaired fitness to practice before the GMC which included an allegation of dishonesty in the forging of documents and the submission of them as authentic for the purposes of the tribunal proceedings.

The Panel considered whether an interim order was necessary and it concluded that allegations against H were serious, concerned his probity and that an interim order was necessary to protect the reputation of the profession and maintain public confidence. It concluded that, whilst suspension removed his ability to practice medicine, the seriousness of the allegations and the tribunal's findings meant suspension was a proportionate response to the risks posed by H remaining in unrestricted practice.

H argued that the Panel's decision was unfair, disproportionate and plainly wrong and that the reasons provided were inadequate.

The Court held that whilst the Panel had considered that suspension was a proportionate response to the risk posed by H's remaining in unrestricted practice pending hearing, it had failed to expressly identify that risk or its degree. The risk was to the public interest in maintaining confidence in the profession, rather than to the safety of the public, since the public interest ground was the sole basis for the Panel's order.

However, the Panel had not sufficiently focused upon the question of the likelihood of serious damage to the public interest. It was not enough to rely on the seriousness of the allegations faced by H going to his probity and the weight of the reasoning and findings of the tribunal (which was not a criminal court dealing with specific allegations of dishonesty). The evidential burden of proving the charges remained on the GMC, and the use of the documentation before the tribunal might yet be open to entirely innocent explanation or substantial mitigation. The public interest considerations could fairly be reflected by an appropriate decision at the final hearing when all the facts had been fully explored, and all defences had been fully advanced. It was not necessary to suspend H from practice before that exercise had been undertaken. The interim order was accordingly terminated.

-BARRISTER NORMAN BOND