



Shared Insights

The Fitness to Practise Regime - everything you need to know

Mark Stobbs, Director of Scrutiny and Quality at the Professional Standards Authority for Health and Social Care



brownejacobson_{LLP}

Background - the process

The regulator's FTP panel generally approaches the matter in three stages:

1. Fact finding: are the allegations proven whether based on an admission or established on the balance of probabilities
2. If proven: do they amount to misconduct? If so does that mean the registrant's FTP is impaired?
3. If impaired: sanction. Levels range from no action to removal and are designed to protect patients.

Brief History

- Arose out of the Shipman enquiry.
- Dame Janet Smith found the system of healthcare regulation in the GMC in particular not fit for purpose and overly paternalistic with a focus on self-protection.
- Shift was made from focussing on the serious professional misconduct of a practitioner to wider context of the risks they present to the public interest.
- FTP looks forward rather than just in the rear-view mirror.

Some recent well publicised FTP cases include [Bawa-Garba](#) (see below), liver transplant surgeon [Simon Bramhall](#) and optometrist [Honey Rose](#).

The Regulators

1. General Dental Council
2. General Medical Council
3. General Optical Council
4. General Osteopathic Council
5. General Pharmaceutical Council
6. Health & Care Professions Council
7. Nursing & Midwifery Council
8. Pharmaceutical Society of Northern Ireland
9. General Chiropractic Council
10. Social Work England

[Click here](#) for a list of who is regulated and by whom.



Ros Foster
Partner

London
ros.foster@brownejacobson.com
+44 (0)20 7337 1015

The Fitness to Practise Regime - everything you need to know

Ros Foster

What do the regulators do?

1. Set standards of competence and conduct which health and care professionals must meet in order to register and continue to practise
2. Check the quality of education and training courses to make sure they give students the skills and knowledge to practise safely and competently
3. Maintain a public register of professionals (dealing with admission de novo and readmission)
4. Investigate complaints about people on their register and decide if they should be:
 - allowed to continue to practise
 - allowed to continue to practise but with conditions on how they should work (for example, attending a training course)
 - suspended from practising
 - struck off the register (also known as 'erasure'), either because of problems with their conduct or their competence.

This process is commonly known as 'Fitness to Practise' (FTP).

How does professional regulation work in healthcare

Regulation in this field is not just about discipline but is designed to limit the risk of harm occurring to patients when they receive treatment or care. The regulators all have the same primary objective and that is to protect the public. This can be broken down into three broad goals:

- Protecting the public
- Maintaining public confidence in the profession and/or
- Declaring and upholding professional standards.
- See [GMC v Cohen \[2008\]](#):

Approach to FTP

The case of Grant (2011) recommended a far wider approach to FTP, considering not only the risks presented by that practitioner but the wider public interest.

- Has this practitioner acted in the past or are they liable to put patients at risk of harm in future?
- Are they likely to bring the profession into disrepute?

Bawa-Garba case - the Court of Appeal found that the panel should take into account wider systemic issues when determining impairment of FTP and sanction, which involve a multifactorial evaluative decisions for panels.

Panels also consider what remedial action individuals have taken and what insight have they shown into the nature of their conduct.

The Fitness to Practise Regime - everything you need to know

Mark Stobbs

Director of Scrutiny and Quality at the Professional Standards Authority for Health and Social Care

Introduction

The Professional Standards Authority was set up after the Shipman enquiry. Its duties/functions include

- Reporting annually to Parliament
- Taking a view on functions being carried out properly
- The right to refer to court FTP cases where it considers the decisions were not suffice to protect the public
- The power to accredit non-statutory registers of healthcare professionals as bodies that regulate their members appropriately

Legislation

Section 29 NHS Reform and Health Care Professions Act 2002

(4) Where a relevant decision is made, the Authority may refer the case to the relevant court if it considers that the decision is not sufficient (whether as to a finding or a penalty or both) for the protection of the public.

(4A) Consideration of whether a decision is sufficient for the protection of the public involves consideration of whether it is sufficient –

- a) to protect the health, safety and well-being of the public;
- b) to maintain public confidence in the profession concerned; and
- c) to maintain proper professional standards and conduct for members of that profession.

The PSA's Work in Numbers

- Decisions considered:
- 2783 in 2019/2020, 2019 in 2020/2021, 2137 in 2021/2022 approximately:
- 20% erasure
- 40% restrictive sanction
- 40% non-restrictive sanction/no impairment/not proven
- Referrals made to court - 22 in 2019/20, 11 in 2020/21, 18 in 2021/22

Process

Initial Review - If concerns, seek papers. Deference is a key concept. The PSA is aware that the panel saw the registrant that they are expert trained. They know the Courts are highly unlikely to overturn factual findings of a panel unless there is a substantial error.

- Detailed Case Review - Close or refer to case meeting
- Case Meeting - Close or refer to court
- Can also send learning points.

What do they look for?

- How well has the regulator/panel done its job? Impact of any errors.
- How serious are the issues?
- Were there environmental concerns?
- Is the registrant safe to practise?
- Is the public interest satisfied?

Current Areas of Concern

- Abuse of vulnerable patients
- Incompetent treatment
- Consent
- Candour
- Fraud/dishonesty
- Sexual boundaries - patients and colleagues
- Public interest assessment
- Racism/bullying/discrimination at an institutional level. Research indicates that bad cultures lead to bad outcomes for patients.
- COVID-19 - During the pandemic, the PSA had to consider how far people should be allowed back to the profession to meet workforce needs where there were concerns about competency.

The Fitness to Practise Regime - everything you need to know

How we can help

Discussion summary

There was some conversation around

- The mental health impact on medical professionals of waiting long periods of time for results of FTP investigations.
- Whether a national register would help capture unreported near misses and agency staff who frequently move around.
- The importance of a culture of organisations/employers investigating and reporting where appropriate and reflecting and learning from incidents.
- Data on temporary restorations during the pandemic and whether temporary return has been used to demonstrate remediation of previous concerns in restoration applications. Those regulators with temporary registers (GMC, NMC, GPhC, HCPC, SWE) published those registers. They did not include registrants who had been erased for misconduct because they were not eligible for membership of the temporary register. Former registrants who had voluntarily erased for something other than misconduct could join the registers. The regulators will hold the figures for the different categories of temporary registrant.
- Generally, panels find it powerful when registrants are open and insightful and have reflected on their actions.

How we can help

We can assist with:

1. Advice on the FTP process and liaison with the regulators.
2. Advice on the interaction between the FTP process and parallel legal proceedings.
3. Issues relating to disclosure, confidentiality and/or data protection in connection with the FTP process.

Contact us



Lorna Hardman
Partner

Nottingham
lorna.hardman@brownejacobson.com
+44 (0)115 976 6228



Simon Tait
Partner

Nottingham
simon.tait@brownejacobson.com
+44 (0)115 976 6559



Damian Whitlam
Partner

Nottingham
damian.whitlam@brownejacobson.com
+44 (0)330 045 2332



Ros Foster
Partner

London
ros.foster@brownejacobson.com
+44 (0)20 7337 1015



Nicola Evans
Partner

Birmingham
nicola.evans@brownejacobson.com
+44 (0)330 045 2962

Contact us

Birmingham office

Victoria House
Victoria Square
Birmingham
B2 4BU

+44 (0)121 237 3900
+44 (0)121 236 1291

Exeter office

1st Floor
The Mount
72 Paris Street
Exeter
EX1 2JY

+44 (0)370 270 6000
+44 (0)1392 458801

London office

15th Floor
6 Bevis Marks
London
EC3A 7BA

+44 (0)20 7337 1000
+44 (0)20 7929 1724

Manchester office

3rd Floor
No.1 Spinningfields
1 Hardman Square
Spinningfields
Manchester
M3 3EB

+44 (0)370 270 6000
+44 (0)161 375 0068

Nottingham office

Mowbray House
Castle Meadow Road
Nottingham
NG2 1BJ

+44 (0)115 976 6000
+44 (0)115 947 5246



Please note:

The information contained in this document is correct as of the original date of publication.

The information and opinions expressed in this document are no substitute for full legal advice, it is for guidance only.

[2022] ©