

The Visible and Invisible Performance Effects of Transparency in Medical Professional Regulation: Implications for the GMC.

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Rationale

Increasing use of audit, evidence-based standards and targets in British public services has been accompanied with an rising interest in the effects of these forms of 'transparency'. Traditionally, medical professionals have been primarily regulated by their professional peers, yet some have argued that this lack of transparency may hide poor performance. The 2007 White Paper Trust Assurance and Safety proposed new more transparent regulation for British doctors. It also proposed that psychotherapists and counsellors should, for the first time, be statutorily regulated by the Health Professions Council (HPC). The project team, from **King's College London** and **Royal Holloway, University of London**, explored the visible and invisible effects of transparency in clinical regulation, including gains in clinical performance,

as well as instances where greater regulatory transparency may lead to 'performance side effects' such as perverse behaviours and gaming.

Methodology

This project began with a literature review on professional regulation and transparency. We then conducted 20 informal and 50 formal qualitative interviews (with GPs, psychiatrists, mental health professionals, regulators and representatives of patient and professional bodies). We also observed professional conferences and the HPC's professional liaison group

Key Finding & implications for the GMC

- Doctors described what we term '**spectacular**' forms of transparent regulation, driven more by rare but high profile cases of malpractice than by its effects on the practice of the majority of doctors and patients. Data also pointed to a 'blame business', involving legal, media and regulatory interests driving and benefiting from rising levels of complaints.
- The consequent panoply of healthcare regulators, and associated legalised bureaucracy, created an environment described as 'reminiscent of the Inquisition' and doctors' experiences of regulatory processes were of feeling '**guilty until proven innocent**' even when allegations were vexatious or clearly unsubstantiated.
- Doctors and their employing organisations are anxious about the perverse unintended impact of professional disciplinary hearings, complaints and litigation upon safe and effective medical practice. In a wider regulatory climate and with 'inevitable' accusations of malpractice doctors are reacting with '**a different consultation model... Everything you do and say in consultation can be used against you... so safeguard yourself first.**'
- Critical to developing and monitoring safe and effective professional practice is what we describe as '**formative spaces**' in which doctors can discuss and be challenged on difficult issues without 'being turned into a patient for a criminal'. However, a culture of legalisation and blame in healthcare is undermining such spaces and doctors' willingness to disclose problems, which may drive malpractice underground with consequences for professional development and patient safety.
- The GMC needs to balance its response to legalisation and high profile malpractice cases with the impact on practice for the majority of patients and professionals. The GMC could consider streamlining disciplinary processes and improving support for doctors under investigation. Finally, the GMC needs to preserve 'formative spaces' within regulation.