

# A better form of regulation?

**H**as this week seen the end of professional self-regulation as we know it? The provisional answer is “yes”. For the first time — under section 29 of the National Health Service Reform and Health Care Professions Act 2002 — the decision of a health regulator to exonerate a member has led to the regulator being taken to the High Court by the Council for the Regulation of Healthcare Professionals (CRHP) on the grounds that the decision was too lenient.

The regulator in this instance was the General Medical Council and the details of the case can be read on p403.

Some pharmacists will be scratching their heads and wondering about the relevance for them of these legal to-ings and fro-ings. They are highly relevant because the CRHP is the

statutory body that oversees the decisions of the regulators of all the health care professions, including the Royal Pharmaceutical Society. (To date, it has scrutinised 27 decisions of the Society’s Statutory Committee and has taken no further action.)

Under section 29, if the CRHP believes that the regulator has made a decision that is not in the public’s interest, and that patient safety may still be at risk, it has

the right to take the regulator to the High Court for that decision to be re-examined and, if appropriate, overturned. This ruling and the result of another test case — also reported on p403 — help define the limit and extent of the powers of the CRHP under section 29, which will effectively keep regulators up to the mark and ensure that public safety is always their prime consideration.

There are two schools of thought on the implications of this for self-regulation. One is that, as the CRHP takes more cases to the High Court, the regulators, in their eagerness to avoid the extra hassle and expense that this will inevitably involve, may become more draconian in making their disciplinary decisions. Self-regulation will, in future, be conducted with one eye on the High Court.

The other school — which is supported by the second ruling this week — is that if a health profession’s regulatory process is in order, it has nothing to fear.

As time goes on, and more cases are taken to the High Court, or the Court of Session in Scotland, it will be revealed to both the CRHP and the regulators what sorts of decisions are likely to be challenged.

Perhaps all this signals an end to professional self-regulation as it has been known. But if it offers greater protection to patients, ensures that regulators treat their registrants in roughly the same way, and guarantees that the processes are transparent and fair, it could be argued that it will create a better form of self-regulation.

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