

Singing from the same hymn sheet — how the Society is in tune with Foster

Although Andrew Foster's review of non-medical professional regulation has thrown up a set of difficult questions and challenges for the Royal Pharmaceutical Society, it also proposes many regulatory changes in line with how the Society is already doing things. Tom Moberly reports

The report of the "Foster review" — "The regulation of the non-medical healthcare professions: a review by the Department of Health" — presents a number of challenges for the Royal Pharmaceutical Society and poses serious questions over the future of its dual role, at least in its present form (*PJ*, 22 July, p91). However, in a number of key areas it also reinforces much of what the Society already does.

For instance, the review recommends that all regulators of non-medical health care professions should have a "transparent and demonstrably independent adjudicatory body on fitness-to-practise issues" — something that, in the form of its Statutory Committee, the Society has had since the provisions of the Pharmacy and Poisons Act of 1933 were implemented. And it also suggests that the bodies adjudicating on fitness-to-practise issues should have legally qualified chairmen and use a civil standard of proof — both of which the Statutory Committee already does.

Lawyers as chairmen

Having a lawyer chairing the Statutory Committees is a strength which the Society has had for many years and one which provides safeguards for members of the Society. Mandie Lavin, director of fitness to practise and legal affairs at the Society, says: "I think that any pharmacist or technician brought before the Statutory Committee would want to know that the person chairing the proceedings is someone of the utmost integrity. Having a legally qualified chairman



appointed by the Privy Council means that they can be confident that is the case."

Independence

The independence of the Statutory Committee from the Society's Council means that, in terms of adjudicating on questions of members' fitness to practise, the Society is well ahead of other health care regulators, Eileen Neilson, the Society's head of policy development, says.

This independence also plays an important part in terms of how the Society's dual functions work together, Christine Gray, head of corporate governance at the Society says. "The separation of the Statutory Committee of the Society from its Council is important, because it means that the people who look at individual cases are independent of those who make policy and set standards — it is broadly similar to the separation of parliamentarians, who make laws, from the judiciary, who adjudicate on individual cases," she says. "And although the Infringements Committee is not at present independent of the Council, the new committees being established under Section 60 to replace the Infringements Committee and the Statutory Committee will be — members of the committees will be appointed by the independent appointments group set up by the Council," Ms Gray adds.

Under the new committees, pharmacists should also feel confident that the Society has a more appropriate range of sanctions, she says. "At present, the Statutory Committee

can only reprimand someone or take them off the Register. Under the new system, the health committee and the disciplinary committee will be able to suspend registration or put conditions on it, such as requiring a pharmacist to undergo a course of treatment for alcohol or drug misuse, to be restricted to a certain area of practice or to be supervised for some period of time," she adds. "I would hope that people would see that this allows for a more sensitive, nuanced approach to dealing with fitness-to-practise issues."

Standard of proof

The Foster review also argues that the civil standard of proof should apply to all professional jurisdictions. A civil standard of proof means that a case must be proven "on the balance of probabilities", whereas for a criminal standard of proof a case has to be proved "beyond reasonable doubt", Ms Lavin explains.

"The Society's Statutory Committee has a long history of having a civil standard of proof, which most other regulators do not have, and the Council is keen to retain that," she says. "The Society's response to the fifth Shipman report made that clear in the response which was fully endorsed by the Council," she adds. "Dame Janet Smith also made it apparent in the fifth report of the Shipman Inquiry that she believes that the civil standard of proof has the potential to provide greater public protection and should be the standard of proof for all health care regulators."

For other health care regulators, cases dealing with sexual complaints can often fail to reach a criminal standard of proof because there may be no witnesses, other than the complainant and the professional under investigation, and the failure rate of such cases has caused public concern, Ms Lavin says.

"A criminal standard of proof can also make it difficult to pursue cases that have failed in court, even if the fact that one involves criminal behaviour and the other professional misconduct means that the nature of the charges is different," she adds. "For the Society, however, having a civil standard of proof means that if a case has not been successfully prosecuted in court, it can still be pursued by the Statutory Committee," she explains. "This is particularly the case with accusations of fraud, where there may be ample evidence of failings in professional behaviour even if it has been difficult to achieve a criminal conviction."

Continuing professional development

The importance of non-medical health care regulators providing "objective and robust assurance that individual professionals remain fit to practise" is also emphasised in the report, and this is something the Society has been working towards for some time, Ms Neilson says. "In terms of educating health professionals about continuing professional development — an essential step towards revalidation — the Royal Pharmaceutical Society is doing more than some of the other regulators, particularly in terms of supporting pharmacists with their CPD," she says. "The Society has also put a lot of work into creating a culture where CPD is integrated into pharmacists' and technicians' day-to-day work," she adds.