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Discussion paper

The future shape of healthcare regulation and the role of lay members

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ABSTRACT

Moi Ali looks at soon-to-be-implemented legislative changes that will alter the way members of healthcare regulators are selected, and offers a personal view on the benefits these changes will bring.

Keywords: lay members, nursing and midwifery regulation, professional self-regulation

How this fits in with quality in primary care

What do we know?
Regulation is an important means of ensuring professional standards. Lay membership of professional regulatory bodies is being strengthened.

What does this paper add?
This paper discusses from a lay perspective why lay membership of professional bodies is essential to sound regulation, why this is complementary to professional membership, and why selection of members by appointment is preferable to election. It also argues for strengthening lay membership to have equality with professional membership on regulatory boards.

Lay membership and selection to professional regulatory bodies

A few years ago at a meeting with a senior civil servant in the Department of Health (England), I suggested that the nurses and midwives on the Nursing and Midwifery Council (NMC) should be appointed, not elected. I recall adding that I also believed that there should be, as a minimum, parity between the number of practitioner members and the number of lay members on regulatory councils. He looked at me as if I was certifiable. Now it is government policy.

It took the notorious Dr Shipman murders to spark the debate about the shape of healthcare regulation in the UK.[1] But are the government's plans, set out in the White Paper, *Trust, Assurance and Safety: the regulation of health professionals*[2] good news for healthcare self-regulation – for patients and practitioners? When it comes to all-appointed boards, and to parity between lay and practitioner members on those boards, the answer is an emphatic yes.

An effective healthcare regulator needs members who are skilled in more than nursing, dentistry or optometry. Yes, of course expertise in the relevant field of practice is essential, but there's more, so much more that's required – knowledge of the regulatory process, expertise in corporate governance, experience of how boards work, commitment to Nolan principles (see Box 1),[3] an understanding of financial and resource management, familiarity with corporate risk assessment and risk management ... the list is long because the job is a big one. Council members on regulatory boards are responsible for the allocation of budgets running to tens of millions of pounds annually. If we are negligent, we are personally liable. That is a

powerful reason for ensuring that we are all up to the job. Unfortunately, elections cannot provide that assurance.

Box 1 Nolan principles

At the request of the Prime Minister, a committee led by Lord Nolan examined standards in British public life, concentrating on members of parliament, ministers and civil servants, executive quangos and NHS bodies. In 1995 the committee published what became known as *The Nolan Report*, which set out seven principles of public life: selflessness, integrity, objectivity, accountability, openness, honesty and leadership.

The notion of registrants, whether doctors, nurses or physiotherapists, using the ballot box to exercise their democratic right and choose their regulatory representatives is an appealing one. But the NMC (and the other regulators such as the General Medical Council (GMC), General Dental Council (GDC) and General Optical Council (GOC)) are not about *representation*. They do not exist to promote the interests of nurses in Newport or doctors in Doncaster. Nor, for that matter, are they there to campaign on behalf of patients. Their *raison d'etre* is simple: public protection.

To win an election, candidates must appeal to the voters – in the case of the NMC, with which I am most familiar, nurses, midwives and health visitors. This creates a temptation to say what voters want to hear: 'Vote for me and I'll be the voice of nursing in Northern Ireland', or 'I will campaign to keep registration fees low'. The candidate with the most appealing manifesto or seductive slogan is more likely to achieve election victory. That's fine in elections where there is a constituency to represent, such as a general election or a poll for a place on the council of one of the Royal Colleges. But those standing for election to the NMC and the other regulators are not there to represent *you*. Elections give the electorate false expectations, reinforcing the widespread misconception among many registrants that their regulator is some kind of membership or professional organisation.

The other issue with elections is that the candidate with trade union/professional organisation backing often receives the most exposure and thus, generally, the most votes. Unions are, of course, an important part of democratic life and, like other members, I expect mine to represent my interests and look after me. But the role of trade union is quite different from that of regulator. Where unions nominate candidates for election, there is an understandable expectation that the chosen candidate will promote the 'party line'. That 'line' might sometimes be at odds with what is in the public interest.

What happens when there is a conflict between professional interests and public interest? Being a union nominee can result in council members being pulled in two different directions. Take the issue of professional indemnity insurance, for example. It could be argued that it offers the public some protection if their practitioner is negligent. For this reason, healthcare regulators might debate its introduction as a mandatory requirement of registration. But what if such insurance were too expensive for, say, freelance midwives. It would be entirely legitimate for the Royal College of Midwives (RCM) to lobby to protect the interests of independent midwives. If I were an independent midwife, I would expect this of my professional organisation! But any NMC member whose position on council was courtesy of RCM backing could find themselves compromised when looking at that issue. Being a member of any regulatory body involves leaving one's union hat at the door and popping on a public protection hat. It may sometimes involve taking decisions that run counter to one's union's position. It is better all round that registrants are not placed in this difficult and potentially compromising position in the first place, and the appointments process is a way of achieving this.

For other reasons too, appointment is a better method of selection. As it is based on ability, not popularity, those with the correct skill set, experience and knowledge are chosen. There is no danger that a council will comprise immensely popular but poorly equipped members. With no ballot, there is no pressure on members to keep the voters happy and so secure their future re-election. They are unfettered and free to take decisions that are in the best interests of public protection.

Some registrants I have spoken to fear that any appointments process will result in positions going to the great and good, such as to the high-flying, pen-pushing nurse/medical directors with impressive national profiles but little recent patient contact. Regulators need these healthcare leaders and the experience they can bring; equally important, though, is the current, (literally) hands-on experience of more-junior practitioners. The appointments process can ensure a spread of skills and experience. With elections, it is pot luck.

The value of a lay perspective

The issue of lay membership in professional self-regulation is still contentious, even in the UK, where we have had it for many years. (In other parts of Europe it simply does not exist and even the concept of lay representation is little understood.) It could be (and has been) argued in the UK that members of the

public cannot possibly know enough about being a doctor to regulate doctors, or sufficient about nurses to regulate them. It is true that a lay member will not be an expert in professional practice: that is not their role. That is also why regulators need practitioners, who know their profession and understand the issues pertinent to it. As lay members, we bring a different perspective and skills that might not otherwise be present on a council. On the NMC we have members from education, management, the legal profession, public relations and commerce. This diverse skill-mix enables us to make good decisions that help protect patients and raise standards in nursing. That in no way diminishes the huge role nursing and midwifery professionals play at the NMC. Our strength is having professionals to inform the debate by bringing their experience, and lay members to bring their skills and perspective. When this works well, it results in a true partnership based on mutual respect.

But surely your average member of the public does not understand professional self-regulation? Correct. Pluck ten citizens off the street and the chance of them knowing much about regulation will be very low. But the same would be true if ten nurses were randomly picked from a ward. That is another good argument for having appointed rather than elected members!

One important thing lay members bring to the regulatory table is the patient's perspective on issues. That's not to say that healthcare professionals cannot see things from this perspective: many doctors and nurses are also patients. Being *in* the bed, rather than *alongside* it, can give nurses an insight that can be more difficult to maintain when one is immersed in the profession all day, every day. As a practitioner, you may have performed a procedure 1000 times, but it's the first time that the patient has undergone it. That is so easy to forget. Many of the best patient advocates I have met are nurses and doctors who have spent a long time being patients.

The patient's perspective is vital and should be sought out, valued and reflected in the decisions of regulators. It is not more important than the professional's view – it is complementary. It goes without saying that we need nurses' involvement in nursing regulation, and their valuable experience and opinion must be reflected too, but it is only one side of the coin.

Lay membership strengthens healthcare regulation by providing credibility. Would you trust a builders' regulator that consisted solely of builders? No, you would suspect them of self-protection, not consumer protection. Would you trust them more if you knew that there were consumers on board, including one or two who had experienced problems with builders in the past? Of course you would. Equally, the public and the media would dismiss an all-doctor regulator as a protectionist set-up. There would be little public trust and confidence in it. Clearly then, there is a role for lay members, and this has long been accepted in the UK, but is there a need for parity? Currently the NMC, GMC and other large regulators have a larger number of lay members than ever before, but still they have not achieved parity. That will change under the new legislation, but why is parity necessary?

At the NMC, there appears to be near-parity: 12 registrant members against 11 lay members. However, each registrant has an 'alternate' to stand in at council if they are unable to attend. Lay members have no such proxy, so the lay voice is diminished if a member is unable to be there. What is more, alternates are actively involved in all committees, thus further diluting the lay voice. So a council that appears to have an almost 1:1 registrant:lay ratio actually has something more akin to a 2:1 ratio. A diluted voice is a weaker voice. True parity means true equality.

A regulator founded upon sound governance principles is a respected regulator. It is a regulator the profession can be proud of. It's a regulator the public can trust and have confidence in. And that kind of win–win is surely to the benefit of practitioners and their patients.

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3 Committee on Standards in Public Life. *The Seven Principles of Public Life* www.public-standards.gov.uk/about_us/the_seven_principles_of_life.aspx (accessed 23 May 2008).

CONFLICTS OF INTEREST

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PEER REVIEW

Commissioned, not externally peer reviewed.

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