



Walter Merricks remembers vividly the day when, newly unemployed, he signed on at the labour exchange in Camden, north London, and went on to lunch at the Athenaeum Club, gathering place of the great and the good.

It was 1981, and he had quit his job teaching social welfare law at Brunel University after being told he was about to be appointed deputy chairman of the Police Complaints Commission. As a former member of the royal commission on criminal procedure, he was an obvious choice for the job. But Margaret Thatcher, then Conservative prime minister, blocked the appointment (because, he believes, his leftist background meant he wasn't "one of us") and he found himself unexpectedly out of work.

Cyril Phillips, the commission's chairman, who had backed him for the post, took him to lunch at the Athenaeum to console him. "When I went to sign on at the labour exchange, I thought 'I don't think many of the people in this queue today are going to have lunch at the Athenaeum.' When I got to the Athenaeum I thought 'I don't think many of the people who are lunching here today have signed on this morning.'"

In urgent need of an income, he launched a column in the *New Law Journal* that shone a spotlight on embarrassing goings-on at the Law Society, the solicitors' professional body. It became essential reading for the society's staff, who scoured it for the inside track on what was happening in their organisation.

A senior official left under a cloud and his would-be successor had to step down after Merricks exposed questionable links in his background. When Merricks rang up to inquire whether the rumour the society was now resorting to head hunters to try to fill the "jinxed" job was true, he was told: "We're thinking about that—unless you'd do it."

"I said, 'Don't be ridiculous, you can't have me, I'm public enemy number one.' They said, 'No, you're a solicitor and you've got ideas about how things could be improved.'"

So he took on the job as head of professional and public relations and did it for 10 years. It proved to be the stepping stone to a series of high level public appointments—as insurance ombudsman, then the first chief financial ombudsman, and from 1 November the first chair of the new Office of the Health Professions Adjudicator.

The new body has, as yet, no staff and no permanent headquarters. But around April 2011 it

FINANCIAL OMBUDSMAN SERVICE

# IN SEARCH OF JUSTICE

Next month Walter Merricks will launch the new UK body that will adjudicate on doctors' conduct. **Clare Dyer** talks to him about his career and his aspirations for the new role

will take over one of the General Medical Council's main roles: deciding whether doctors' fitness to practise is impaired because of misconduct, ill health, or poor performance and whether a doctor should be struck-off or suspended from the medical register or receive some other sanction. As recommended by Dame Janet Smith, who presided over the inquiry into the career of Harold Shipman, the serial killer general practitioner, the GMC will no longer act as both prosecutor and judge. To ensure public confidence that decisions are being made purely on the merits of a case, the GMC's role will be limited to investigating complaints, gathering evidence, and "prosecuting" cases before the adjudicator's office.

The General Optical Council will follow the GMC in losing its adjudication role to the new office and, within a timescale still to be worked out, the government hopes to bring the other healthcare professions under its aegis.

### Diverse experience

It may seem quite a leap from financial services to the heart of the healthcare system, but Merricks spent six years as a member of the Human Fertilisation and Embryology Authority and served briefly as the authority's interim chair. His interest in assisted reproduction came about because he and his wife, Olivia Montuschi, had their son and daughter, now 26 and 23, by donor insemination after he learnt he was infertile. They were early proponents of openness about sperm donation, and the Donor Conception Network, which they helped found and which Montuschi still heads, is run from their north London home.

Merricks' career has not followed any predictable pattern, though innovation has been a recurrent motif. He set up the first law centre in England to be funded by a local authority, then went on to establish a university programme in the emerging field of social welfare law. As a member of the royal commission on criminal procedure he helped write the report that led to the creation of the Crown Prosecution Service. When he was insurance ombudsman, the decision was taken to combine the six individual ombudsmen into one financial ombudsman service, and he was given the job of setting up the new office and heading it. Now, at 64, he is launching the new UK-wide body that will adjudicate on doctors' conduct. But one thread runs through it all, he insists—the theme of justice.

"All my career has been in what I think of as

the justice business, and trying to improve the arrangements for justice in a variety of areas. I see a real affinity with some of the things I've done before in this particular role. We're going to inherit the functions of a number of organisations but put a new stamp and a new style on them."

### Different approach

The Office of the Health Professions Adjudicator, which will be operationally independent of both government and regulators, will be free to decide on its own rules for running cases and on the composition of its panels. So how new will the new stamp be and what can doctors who fall foul of their regulator after April 2011 expect? One of the new chair's first tasks will be to draw up a consultation paper on procedures for the office's hearings. With that in mind, he has been consulting with the regulators, doctors' defence organisations, and other interested groups.

GMC proceedings moved last year from the criminal to the civil standard of proof, so allegations need no longer be proved "beyond reasonable doubt" but only "on the balance of probabilities" or "more likely than not." But Merricks is struck by the flavour of criminal proceedings that still clings, with talk of charges and arguments over admissibility of evidence.

"The emphasis has got to be on the protection of the public. So I think that perhaps the style that has dominated till recently can be refreshed with that in mind." It has been suggested to him, he says, that proceedings should operate more like an inquiry than a criminal trial and should incorporate the changes that have occurred in recent years in the civil and criminal courts, with tighter case

management and advance disclosure of its case by the defence.

"That's where people have suggested some of the improvements might lie—

speeding up the process, making it tighter, more disciplined, learning the lessons of what's gone on in the family courts, the civil courts, the criminal courts, where there has generally been an effort to try to manage cases better, to make sure the time of the court or panel or tribunal is used effectively and proceedings don't just drag on."

A move suggested by a GMC working group is for the parties to be required to disclose evidence in advance to a set timetable, as happens in court cases, with costs penalties for failure to comply.<sup>1</sup>

Under the current system some cases, such as the proceedings against Andrew Wakefield,

the gastroenterologist who sparked off the MMR vaccine scare, drag on for many months with lengthy adjournments. Merricks says: "Judging how much time a case is going to take is an art, not a science, but nevertheless people are getting better at it in other areas. There's a degree of cooperation that is needed from the parties and also skilful chairing to ensure time estimates are adhered to without compromising fairness.

"It would be highly desirable to minimise the length of hearings, subject to fairness prevailing—fairness, but also the protection of the public. We have to keep on thinking this is not about whether the doctor's livelihood is being put at risk—that's not the starting point in this. The starting point is whether the public is going to be appropriately protected by the continued registration on current terms of this individual."

One possible change that has been floated is to have a legally qualified chair for each fitness to practise panel, doing away with the need for a separate legal assessor to give advice to panels of lay people and doctors. This model, which operates in employment tribunals, would arguably make for a stronger grip on proceedings, saving time and money. The Tackling Concerns Nationally working group, appointed by the government to make recommendations for establishing the adjudicator's office, suggested a pilot scheme to test the benefits of using lawyers to chair panels.<sup>2</sup>

Merricks has had "nothing but cooperation" from the GMC, which swiftly accepted in the wake of the Shipman inquiry that the creation of a separate adjudicator was inevitable. "I think there are probably many in the GMC who did not want this to happen," he adds. "And there are no doubt some people in the profession who feel that this function of striking-off or erasing a registrant from the register is something that's core to a self regulating profession. But now that principle is accepted as one that cannot survive forever. And certainly everyone in the GMC I've met is very focused on trying to make this happen in the best possible way."

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