

BODY POLITIC **Nigel Hawkes**

## A discriminating judgment

The GMC's stance on the retention fee for doctors over 65 raises the wider question of just who the GMC is actually for

Doctors who have passed the age of 65 have had some unwelcome news. The General Medical Council has, on the advice of learned counsel, told them that the practice by which they are allowed to stay on the register without paying the annual retention fee is illegal.

In future, says the GMC, doctors who want to remain on the register will have to pay the fee, which currently stands at £390 (€490; \$780) a year. This has not been universally well received; nor does it seem to make sense. As one retired surgeon pointed out to me, life is full of examples where elderly people are given privileges: television licences, rail fares, bus passes, prescription fees, concessions on theatre and concert tickets. As Confucius put it: "Old age, believe me, is a good and pleasant thing. It is true you are gently shouldered off the stage, but then you are given such a comfortable front stall as a spectator."

Not if the GMC has its way. What makes its stance paradoxical is that it is using legislation designed to prevent discrimination against elderly people—the Employment Equality (Age) Regulations 2006—to justify the change. These regulations, which run to many pages of legal prose, are intended to prevent older people being treated worse than younger ones. The regulations tell us: "A person ("A") discriminates against another person ("B") if, on grounds of B's age, A treats B less favourably than he treats or would treat other persons." But there is nothing here to prevent B being treated more favourably than A, so far as I can see.

When challenged by Bill Jeans, a retired professor of radiology from Oman, the GMC pointed to section 19 of the regulations, which deals with how the rules apply to qualification bodies. This section says that it is unlawful for a qualification body to discriminate against a person by

the terms in which it is prepared to confer, renew, or extend a professional or trade qualification on him. (Him includes her, obviously.) Counsel's opinion is that this precludes the GMC from continuing with the exemption from retention fees, which has existed since 1970.

But—and here the plot thickens—the same paragraph goes on to say that it is also unlawful for a qualifications body to withdraw such a qualification from him or vary the terms on which he holds it. In its reply to Dr Jeans the GMC does not address this point.

Interpreting these regulations no doubt calls for a top legal brain, but let's try applying an ordinary one. If any discrimination is going on in the exemption of the over-65s from paying fees, it is against those under the age of 65. In explanatory notes, the regulations explain that discrimination arises where "a provision, criterion or practice, which is applied generally, puts persons of a particular age or age group at a disadvantage." You could certainly argue that this makes it unlawful to discriminate against the young as well as the old, though whether that was ever intended is unclear.

The regulations go on: "Discrimination will occur where the difference in treatment or disadvantage cannot be shown to be a proportionate means of achieving a legitimate aim." So the GMC's defence of the exemption, were it minded to make one, might be to argue that it is a proportionate means of keeping older doctors on the register. Would that be a legitimate aim? It might be, I suppose. If a cataclysmic event were to decimate the younger doctors, it would be handy to have a few older ones, still registered, to call back to the colours.

So there seem to be two potential areas of weakness in the GMC's argument—or in the drafting of the



“  
**Why has the GMC accepted this ruling so meekly? Perish the thought that it was motivated by the cost of servicing the over-65s**  
 ”

regulations. A qualifications body is not entitled to vary the terms on which a person holds a qualification (in this case, free registration as a doctor, established since 1970, for over-65s). If this failed, the defence of legitimate aims could be tried. But I'm no barrister, and I could easily be wrong.

One thing I am pretty sure of is that parliament had no intention of forcing a lot of older doctors to pay retention fees. That was never the purpose of the legislation, and if it is accepted without demur it could have knock-on effects in many other areas of life.

Why has the GMC accepted this ruling so meekly? Perish the thought that it was motivated by the cost of servicing these over-65s or the expectation that many would now start paying fees and swelling its income. Such a motive is unimaginable.

Unfortunately, that may well be just what a lot of older doctors are thinking. In its rush to preserve itself the GMC has been rather too ready to accept whatever this government has thrown at it. This includes the abolition of professional self regulation (not something the Law Society or the Bar Council would accept, since we're on a legal theme) and the change in the rules on standards of proof in cases of fitness to practise.

The GMC now sees its job as one of protecting patients, which it is ill equipped to do. Its job, actually, should be to protect the profession—and, in doing so, to protect patients. Doctors, young and old, regard the retention fee as excessive. As motions submitted last week to the BMA's annual representative meeting show, many now think that if the GMC is to be a public rather than a professional body the public should pay for it and not the retired, who've earned their exemption.

**Nigel Hawkes is health editor, the Times** [nigel.hawkes@thetimes.co.uk](mailto:nigel.hawkes@thetimes.co.uk)

Cite this as: *BMJ* 2008;337:a809

## WHAT'S NEW ON BMJ.COM

This week on *bmj.com*, listen to our podcasts—six short interviews with leading commentators about the health minister Lord Darzi's review of the NHS. Our bloggers share interesting reflections about making mistakes, hair loss, and attending conferences. And don't forget: continuous publication means that all articles are published on *bmj.com* as soon as they're ready—so check our running 7 day table of contents for what's new.

### FROM THE BLOGS <http://blogs.bmj.com/bmj>

Guest blogger Julian Sheather reflects on how his own attitude to making mistakes has changed since childhood: "Certainly my long acquaintance with my own mistakes has made me more tolerant of others'. It has also shown me how difficult it can be, and how much courage it can take, to own up to them." Anna Donald attends a funeral and ends up musing on her repeated hair loss after chemotherapy: "As a woman at least, you save a small fortune on haircuts, treatments and 'products' (though good wigs aren't cheap). You can shock small children and shut annoying people up by casually removing your hat and wig. A leering man on a station platform certainly looked startled when I took off my hair."



And Domhnall MacAuley finds he is mildly disappointed by the conference of the Society of Academic Primary Care: "I struggled to see the relevance of many of the presentations to real patients. The strongest message came from Mary Robinson (pictured), former President of Ireland and Human Rights Commissioner at the UN. The daughter of two GPs, she challenged us all to think of human rights and social responsibility. And, she said, her early grounding in the importance of human rights was in seeing how her father cared for his patients young and old. A timely reminder."

[julian-sheather-on-making-mistakes](#)  
[anna-donald-funerals-and-hairstyles](#)  
[domhnall-macauley-primary-care-and-the-president](#)

### PODCASTS <http://podcasts.bmj.com/bmj/>

Reactions to the Darzi report

Leading commentators react to the report by health minister Lord Darzi, in which he put emphasis on the need to improve quality of care after a decade of investment in services. Listen to *BMJ* features editor Deborah Cohen speaking to:

- David Hunter, professor of health policy and management at Durham University and chair of the UK Public Health Association
- Jane Collins, chief executive of Great Ormond Street Hospital and former paediatric neurologist
- John Dean, director of Bolton primary care trust and consultant physician in diabetes
- Duncan Keeley, general practitioner in Oxfordshire
- Angela Coulter, chief executive of the Picker Institute
- Bernard Ribiero, president of the Royal College of Surgeons

### CALL FOR ABSTRACTS

#### International Forum on Quality and Safety in Health Care

The call for abstracts opened this week for the 2009 International Forum, to be held in Berlin, Germany on 17-20 March 2009.

We are interested in hearing from you if you have new work with results to present or you might want to tell us about important cultural or leadership initiatives that have stimulated change (and whether that change was an improvement). Perhaps you have a new tool or method that you have employed and you want to share experiences and results. Visit the International Forum website (for more information <http://internationalforum.bmj.com/>).

### Last week's *bmj.com* poll

"Should geriatric medicine remain a specialty?"

You replied:

**YES** 587 (80%)

**NO** 146 (20%)

### This week's poll asks

"Should disadvantaged people be paid to take care of their health?"



Where do you stand on this issue? Vote on *bmj.com*

### MOST READ ARTICLES

Management of breast cancer—Part I

Secular trends in self reported sexual activity and satisfaction in Swedish 70 year olds

Darzi review: Reward hospitals for improving quality, Lord Darzi says

Cardiovascular evaluation before participation in competitive sports

Prognosis in patients with recent onset low back pain in Australian primary care

### MOST RAPID RESPONSES

Top-ups for cancer drugs: can we kill the zombie for good?

Should geriatric medicine remain a specialty?

A friend in need: why friendship matters in medicine



A very bad report on regulating complementary medicine

Cardiovascular evaluation, including resting and exercise electrocardiography, before participation in competitive sports: cross sectional study