Doctors are accountable to the GMC, but who is the GMC accountable to?

Fundamental questions need to be asked about who health regulators are accountable to, say Martin McKee and Scott L Greer

Martin McKee, 1 Scott L Greer2

The General Medical Council (GMC) makes it clear that doctors in the United Kingdom are “personally accountable for [their] professional practice and must always be prepared to justify [their] decisions and actions.” It expects them to comply with a set of obligations, periodically updated, in a series of domains including safety and quality, skills and performance, and maintaining trust.

But who is the GMC accountable to? This is an important question given a series of high profile cases that have attracted widespread criticism, most recently that of Manjula Arora, whose case handling the GMC has apologised for.

The GMC’s Code of Conduct states that it is accountable to “the public through parliament and the Privy Council.” Yet the Medical Act (1983) that establishes its legal basis does not mention parliament, instead saying that it will “be constituted as provided for by order of the Privy Council.” This was noted by the members of parliament who sat on the House of Commons Health Committee in 2011. They stated that “the current legislation makes the GMC accountable to the Privy Council; in the absence of a mechanism which makes this accountability effective we intend to exercise this function ourselves, on behalf of parliament.” This decision, while pragmatic, had no legal force.

Important changes in this situation came in 2002, with the introduction of the National Health Service Reform and Health Care Professions Act. This established what is now the Professional Standards Authority for Health and Social Care with the overriding objective to protect the public. It does so by, among other things, promoting and maintaining public confidence in professions overseen by certain regulatory bodies, including the GMC, and the professional standards and conduct of members of these professions. Its scope was expanded in the Health and Social Care Act (2012). This represents what has been termed “meta-regulation,” in which regulators are themselves regulated.

To make sense of these arrangements, we must look at the organisations involved and how they work.

The Privy Council

The Privy Council originated from bodies that predate the Norman conquest but has existed in its current form since 1801, albeit with some changes in its powers. It is presided over by the lord president of the council, a member of the UK cabinet who is usually also the leader of the House of Commons. The current holder is the MP Penny Mordaunt. As of 2022, it has over 700 members, each appointed for life by the sovereign on the advice of the prime minister. Although some postholders are customarily appointed by virtue of the posts they occupy, the prime minister ultimately has complete discretion.

Most privy counsellors are current or former politicians in the UK or Commonwealth countries, with some senior judges, bishops, and members of the royal family. In practice, however, its meetings are much smaller. They are attended by the sovereign and, typically, by four privy counsellors (the quorum is three), normally including the cabinet minister responsible for the subject matter of any orders being presented. The procedure involves the reading of an order proposed by a minister or other bodies, to which the sovereign will generally respond with “Approved.” The sovereign remains standing throughout, thereby ensuring that the meetings remain brief.

Like so much of the unwritten British constitution, these arrangements have long defied logic. Baroness Royall, a former president of the council, has described the Privy Council’s continued existence as “more or less a constitutional and historical accident.” Using the terminology of Walter Bagehot, in his classic book The English Constitution (1867), it belongs to the “dignified” part of the constitution, those theatrical elements intended to impress the masses, rather than the “efficient” part, whose role was to govern them. The dignified elements provided the legitimacy needed by the efficient ones. In practice, however, it is a vehicle by which the current government, and other statutory bodies such as the GMC, can avoid parliamentary scrutiny. Thus, despite its meetings being reported online, it is still described as “something of a black hole.”

The GMC

The second organisation to consider is the GMC itself. It underwent major reform in 2003, described on its website as a transition from self-regulation to what it terms “professional regulation.” The number of doctors on its council was reduced considerably—currently six lay and six medical members—and are appointed by members of the Privy Council. Previously, they were elected by the membership and thus accountable to them. The GMC has subsequently implemented a series of measures to increase the accountability of doctors, including revalidation. Ironically this came at a time when its own accountability had become less clear.10

1 London School of Hygiene & Tropical Medicine, London, UK
2 University of Michigan School of Public Health, Michigan, USA

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Professional Standards Authority

The third organisation is the Professional Standards Authority. Its website states that “parliament oversees our work. The Privy Council consults on the budget we say we need to do our work and sets the fees that the regulators must pay. The Health Committee can call us to appear and give account of our work,” although the last time it seems to have done so was in 2016. As noted above, it is tasked with protecting the public and maintaining public confidence in the regulation of healthcare professions. Its functions include formulating principles guiding good professional self-regulation, to encourage regulatory bodies to conform to them, and promote good practice. It is empowered to “investigate, and report on” the performance of regulators and recommend changes to the way they operate. Additionally, it publishes annual reports on each regulator, which are presented to parliament.

Its annual reviews of the GMC assess its performance against 18 standards, and, in conclusions that might surprise some of the GMC’s critics, it has decided each year since 2014 that all have been met. But it clearly has some concerns. In its last parliamentary evidence session, its former chief executive stated: “We are working against the legal framework rather than with it” and, with regard to the complex appeals system against GMC decisions, “There is duplication of effort with, to my view, no obvious public benefit.” It can also initiate special investigations when requested by the health secretary or their counterpart in the devolved administrations.

Health and Social Care Committee

We have previously mentioned the House of Commons Health Committee (now “Health and Social Care” since the department it scrutinises was renamed in 2018). Like other select committees it has limited powers but, by virtue of its independence from the executive, can make recommendations. As noted, in the early 2010s it held a series of accountability hearings into the functioning of the GMC, showing that the committee was willing to challenge it. In its 2013 hearing it noted that the GMC was unable to explain the reason for the growth in complaints against doctors. Yet it has limited power. It provides recommendations to the GMC and the government but, in its responses, the government has limited its comments to those directed explicitly to it.

No recent hearings have taken place, however, except for one that specifically examined the GMC’s handling of the case of Hadiza Bawa-Garba, when the Professional Standards Authority advised the committee during its preparations. This is despite the committee’s previously stated view that such hearings should take place annually. A former member of the committee (personal communication) has described the extremely heavy workload of the committee, with members balancing their increasing workload across their many responsibilities. This means that, in effect, members depend on the assessments of the Professional Standards Authority and would only hold an accountability hearing if it seemed necessary.

For completeness, it is necessary to note that, like all statutory bodies, the actions of the GMC may be subject to judicial review where it is argued that they are unfair, illegal, unlawful, unreasonable, disproportionate, or irrational. In addition, the reporting arrangements differ in some respects in the devolved administrations.

Lack of accountability

Unlike in many other countries, the unwritten British constitution has evolved incrementally, resulting in a situation that is often difficult to understand. Ministers still have widespread power under the Royal Prerogative, for example, although less than previously. Yet, as the Ministry of Justice noted in 2009, the scope of this power is “notoriously difficult to define,” and many elements have “no judicial authority at all.” This has created a situation in which we depend on what Lord Henessy has referred to as “the good chaps theory of government,” in which those in positions of authority can be trusted to do the right thing. But, as he has highlighted, recent events have shown that this no longer works.

Examining the current setup makes it clear that the GMC’s claim that it is accountable to the public, through parliament and the Privy Council, is a convenient fiction. Other than through the courts, there seems no clear and transparent way for the public to hold the GMC to account. For this to change, the GMC’s current legislative basis would need to be revised—something that is now being considered. This should, however, oblige it to account, regularly and transparently, to the members of parliament and their counterparts in the devolved nations, who represent the public.

This would demonstrate that it is capable of responding to legitimate concerns about how it operates and the priorities it decides on.

In this digital age, the public expects a higher degree of transparency than ever. It is unclear whether a system with an institution older than Queen Victoria at its heart can provide it. Nor is it clear whether the government’s current thoughts on possible change will tackle this issue.

The independent review into the GMC’s handling of Manjula Arora’s case stated that “The UK government’s reform of legislation that underpins the regulation of healthcare professionals is long awaited and is vital for a more flexible, proportionate, and compassionate approach to fitness to practise in the future. We join the GMC in calling for these reforms, which we believe should happen as quickly as possible, for the benefit of both doctors and patients.” We agree, but argue that this should not simply tinkering at the margins and instead ask some fundamental questions about who health regulators really are accountable to.

Competing interests: MM is a registered medical practitioner and is president of the BMA although he writes in a personal capacity. We are very grateful to Daniel McAlonan, at the BMA and staff of the Professional Standards Authority for advice.

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