HOUSE OF COMMONS

Committee on Standards

Oral evidence: Code of Conduct, HC 671

Tuesday 10 November 2020

Ordered by the House of Commons to be published on 10 November 2020.

Watch the meeting

Members present: Chris Bryant (Chair); Mrs Tammy Banks (Lay Member); Mrs Jane Burgess (Lay Member) Andy Carter; Alberto Costa; Mrs Rita Dexter (Lay Member); Chris Elmore; Sir Bernard Jenkin; Dr Arun Midha (Lay Member); Mr Paul Thorogood (Lay Member).

Kathryn Stone, Parliamentary Commissioner for Standards, was in attendance.

Questions 1-33

Witnesses

I: Juliet Oliver, General Counsel, Solicitors Regulation Authority; Anthony Omo, General Counsel and Director of Fitness to Practice, General Medical Council; and Duncan Rudkin, Chief Executive and Registrar, General Pharmaceutical Council.

HOUSE OF COMMONS

Examination of witnesses

Witnesses: Juliet Oliver, Anthony Omo and Duncan Rudkin.

Q1 **Chair:** Welcome to this meeting of the Standards Committee comprising lay members and Members.

We are engaged in a full inquiry into virtually every aspect of the code of conduct—how it affects confidence in Parliament; how MPs see it; and how it can be improved if necessary to ensure that transparency and fair dealing are at the heart of everything we do.

We are grateful to the three witnesses: Juliet Oliver, General Counsel from the Solicitors Regulation Authority; Anthony Omo, General Counsel and Director of Fitness to Practise at the General Medical Council; and Duncan Rudkin, Chief Executive and Registrar of the General Pharmaceutical Council.

Before proceeding further, one of our lay members has to make a declaration of interest.

Arun Midha: I remind everybody that I am a member of the General Pharmaceutical Council and was a member of the General Medical Council.

Chair: Thank you, Dr Midha.

I thank our three witnesses for attending today. It is enormously helpful to have the perspective of other parts of society. We think we are a great exception to virtually every rule in the world, but it is none the less important that we abide by standards and norms that other professional bodies adopt.

In the light of that, will the three of you lay out the general purposes and aims behind your codes of conduct?

***Juliet Oliver*:** May I take it that the Committee is broadly familiar with the Solicitors Regulation Authority?

Chair: Broadly speaking, yes, but what is the core of why you exist and how you try to do your business?

***Juliet Oliver*:** We regulate solicitors and law firms in England and Wales. We oversee nearly 200,000 solicitors, about 150,000 of whom are practising, and more than 10,500 law firms in the jurisdiction.

One of the important things for us is that the work of lawyers touches very much on the lives and liberties of individuals. We have statutory regulatory objectives for the regulation of solicitors and law firms set out in one of our governing statutes, the Legal Services Act, which talk about our aims for regulation, including improving access to justice, promoting the public interest—things like the rule of law and the administration of justice—and the protection of clients.

There is often a real issue with the asymmetry of information between a lawyer and client—the need to make sure there are protections for clients and standards that lawyers can maintain. For us, our code of conduct is incredibly important to promote the right ethical behaviours, to inculcate a sense of shared values for the profession and, very importantly, to uphold public confidence and trust in the solicitors' profession to enable the legal sector to operate effectively in that respect to protect those important—to have safeguards around those important principles.

Q2 **Chair:** Thanks very much. Anthony?

Anthony Omo: Thank you and good morning again. Pretty similarly to Juliet, we regulate doctors in the United Kingdom. We are a statutory body created by Parliament. Our primary objective is protection of the public, which includes public confidence in the profession. We have one main code of practice, which is our good medical practice guide. That describes our expectation of doctors from different perspectives: what do we expect of a good doctor, what do patients expect, the wider public and colleagues.

That helps us to make sure that doctors understand that the care of the patient is their first concern, and we set it out under four broad headings to do with the knowledge and skills expected; safety and quality in practice; communication, partnership and teamwork—doctors work as part of teams—and maintaining trust, which covers all the things you would expect to see around conflicts of interest, financial dealings, and things outside of the practice of medicine as well.

For us, it is a guide for doctors that covers the values, attributes and behaviours—what it is to be a good doctor. We expect all doctors—from medical students to those coming into the country to practise and those who land here—to follow this guide, but to apply it in the context in which they practise, which you will appreciate is very different for doctors across the health service. We have a series of supplementary packs of guidance on specific issues, which help to deal with different key issues such as consent or confidentiality. We also have what we call good medical practice in action, which is a scenario planning that doctors can follow if they have a particular problem, and it shows them how the thinking should develop around that problem to help them put the guide into practice.

Q3 **Chair:** Okay, thank you. Duncan?

Duncan Rudkin: The General Pharmaceutical Council is, like my colleagues, a statutory regulatory body. We exist to protect, promote and maintain the health, safety and wellbeing of patients and members of the

public using pharmacy services. We regulate pharmacists and pharmacy technicians in Great Britain, and we also regulate retail or community pharmacies in Great Britain. Our work is all founded, essentially, on two sets of standards: standards addressed to pharmacy professionals—pharmacists and pharmacy technicians—and a set of standards which we address to the owners of pharmacies.

For the pharmacists and pharmacy technicians, the standards for pharmacy professionals that we publish essentially describe what we are looking for in terms of safe and effective pharmacy care. That is the approach that we take: to use the standards as the primary tool for describing the outcomes we are looking for from pharmacy professionals. In the way we put the standards together, we seek to generate a set of standards that reflect both what patients and members of the public want and expect from pharmacy professionals, and what pharmacy professionals themselves offer and commit to providing. We describe in fairly broad terms the outcomes that they should be seeking to achieve, leading off with person-centred care. The standards are then used in a variety of different ways in connection with a number of different sorts of enforcement proceedings, which I am sure the Committee may want to explore.

Chair: Thanks very much.

Alberto Costa: Good morning to our witnesses. Chairman, I think I have a declaration to make. I had a constituent whose child—well, a doctor was convicted of gross negligence manslaughter in respect to the death of my constituent's child. I worked pretty closely with Mr Omo and we had a series of meetings in respect of that issue, so I would like to make that declaration.

Chair: Okay.

Q4 **Alberto Costa:** My question really centres around how each of your organisations manages breaches of codes, how they are investigated and decided. I am particularly keen on finding out what the appeal system is in relation to decisions that have been made. Perhaps I can start with Juliet Oliver.

Juliet Oliver: Certainly—thank you. Yes, we receive around 11,000 complaints, reports or expressions of concern a year, and they go through a very formalised process to try and understand, first, which of them are really matters that engage our code and our standards. We go through a process of filtering and making sure that, if necessary, we pass concerns through to other regulators or the like who might be more properly interested in the matter.

However, of those that are really for us, first of all we have a sort of triage process at the beginning, to make sure that we are really addressing the right concerns and investigating those matters where there are serious breaches of our standards and that really engage a risk to the public interest—a risk to clients, a risk to the rule of law or the administration of justice, and the like. With that process, probably for every three cases that

we investigate, there are five cases that we close; that is the kind of process that we engage in.

Recently, we have put a lot more resource into making sure that that triage test is well resourced and is taken by senior members of staff, because it is the gateway to the whole process, and it also engages a lot of the initial customer service that we have as an organisation. Members of that team will pick up the phone, talk to a complainant, make sure that they clarify any issues, explain the reasons if we are not going to investigate a matter further, talk to the firm and perhaps give advice to it, etc. But if something gets taken—

Q5 **Chair:** Juliet, can I just stop you briefly to ask you something? You said "for every three cases that we investigate, there are five cases that we close". Does that mean five that you do not go any further with, but you carry on with three?

Juliet Oliver: That is absolutely right. So that would be five cases that would go no further at that point, and three would go into an investigation process, which can involve desk-based investigations, so that we would call in client files and ask for documents. It can involve an on-site inspection, so we have forensic investigators who will go and visit a firm, look at files and perhaps look at client account accounting systems, because quite a large number of our complaints will be about the handling of client money. They can interview witnesses and members of the firm, third parties, etc.

In our jurisdiction, there are certain decisions and certain sanctions that are reserved to us as an organisation, and certain decisions that we will prosecute before the independent Solicitors Disciplinary Tribunal. At the end of our investigation, we will decide whether the case is one of those more serious cases that we will prosecute before the independent tribunal, or whether we can instead rebuke a firm or a solicitor, impose a small fine up to about £2,000, or we can put controls on practice. With non-solicitors who work in law firms, we have powers that we can use against them as well.

That is just briefly touching on the appeal point, because I know that was one that you were interested in. With matters that we decide ourselves, there is always an internal review process. We would encourage people at the first port of call—if they have a concern about our decision, we can review it ourselves, we can retake the decision, we can refer it back for further investigation, or the like.

Ultimately, however, there is an appeal to the independent Solicitors Disciplinary Tribunal from decisions that we make ourselves. Decisions made by the tribunal are appealed to the High Court. There is a right of appeal for all the decisions that we make, at any stage through the process—sorry, I should say early-stage decisions. Investigation-stage decisions are whether to investigate or not; that kind of decision is subject to judicial review in the courts.

Q6 **Alberto Costa:** Before I move to Mr Omo, I should declare that I am a non-practising solicitor in England, Wales and Scotland. Given our interest in looking at our own code of conduct, to what extent does the appeals system that you have—you explained how that operates—impact on how you have drafted or how you amend the code of conduct? Obviously, the code of conduct is only as good as the body that ultimately adjudicates on it, so what impact do those external bodies where appeals can be heard impact on how you have drafted your code of conduct?

Juliet Oliver: That is a very interesting question. For me, part of enhancing public confidence in the profession in the standards that they are set to meet is making sure that there is public confidence in the process that we follow to enforce it. It is really important that all stakeholders have confidence that we have a robust and fair process. We know as a regulator that you are constantly balancing interests. You are not going to please everybody with the outcome, but everybody has a right to expect that you are deciding matters fairly. Appeals are a hugely important safeguard within that process, including having lay members as part of the process throughout that kind of independence from the profession. There are a number of safeguards that we build into the process, and I think appeals are a critically important part of that.

In terms of actually informing the standard-setting process, that is quite interesting. Certainly there are really important lessons that come out of the jurisprudence from the court about how standards operate in practice. For example, some of the principles that are quite key to the way the SRA has developed its standards, like acting with integrity and promoting public confidence: things that are quite high level. We know that the courts have supported our approach to taking forward cases where we see issues that may, we think, breach social norms, but we do not necessarily have a really detailed prescriptive list of what all of those issues are. I am thinking, most recently, of sexual harassment cases that we have been looking at in the organisation and pursuing. We have had some prosecutions of those kinds of cases where the tribunals have upheld our approach. Even though we do not say in the code, "You must not commit sexual harassment", we know that the way in which we have drafted our standards can be upheld as being wide enough to incorporate those kinds of issues. I think there is something about the process informing itself as you get jurisprudence from the courts and tribunals.

Q7 **Alberto Costa:** So it is complementary. The jurisprudence helps your organisation better in the regulation on behalf of consumers of legal services, and indeed to assist members of the profession to improve their own standards and behaviour.

Juliet Oliver: Indeed, and it sends messages around the things that we consider are important where those are upheld. We learn from issues that are taken forward at the courts, if there is feedback from the courts about how we are approaching cases. Some of those decisions send a clear message to the public and the profession that help to support and uphold what we are trying to do in maintaining those standards.

Q8 **Alberto Costa:** Mr Omo, given the experience that I have had with you on how your organisation disciplined one of its members in the appellate process, perhaps you can give us your views and assistance on the types of things that we need to take into consideration when looking at our own code of conduct and the investigation and decision process.

Anthony Omo: I agree with much of what Juliet has said. I will start where you finished. Although the courts can and do provide guidance, they don't always, so I think that relying solely on the courts is probably not what we would do. Absolutely we have the same process, which I will run through in a minute, but for us good medical practice is an enabler of good practice, so we have tried to embed it both within what employers do and expect of doctors because they have a role in managing the behaviour of doctors, and in all of our wider regulatory activities. For example, it informs key parts of the outcomes that we set for medical students and graduates. It forms part of the training for postgraduates. It is part of the appraisal system that employers run, and then revalidation, which we sign off on at the end of it, so it runs through an entire practice of a doctor. Minor breaches we expect the doctor to justify and employers to pick up, in the main.

Like the SRA, for more serious breaches we have a more formal system, which you are aware of and you have described, where we would investigate and assess whether it is something for us or something for the employer, or something for someone else to pick up. After investigation, we make decisions: we could agree undertakings, issue a warning or send the case through to an independent tribunal that we have, and they can then take action.

There are, as you would expect, appeals from the decision of the tribunal to the courts, and that route Juliet has described. Don't get me wrong, we do get guidance from the courts in terms of learning for both us and the profession, but the system of making sure that it is embedded in a professional practice and not just reliant on the end process—the court—helps to make sure that the standards are living and helps the public to see that the standards are alive. We do not get that many cases. Juliet has described her numbers, but we receive something like 9,000 complaints a year, we investigate about 2,500 that we think are on the more serious end and we refer roughly 300 to tribunal for hearing. Those are the serious cases that tribunals then take action on. Most of the others are closed or passed back to employers to pick up issues they can deal with locally.

For us, good local practice is a benchmark and a standard to be met. Working with others in the system and the professionals themselves, we expect that it is managed. The public is a key part of this. I think it was Juliet who alluded to making sure that the public are aware of the processes, that the processes are consistently applied, that they understand the decisions—they may not like the decisions reached, but they understand them and understand how you reach them—and, if they have raised a complaint or concern, that they are kept informed of what is happening and what is going to happen and are a full part of that. That is

all part of the confidence in the system, and at the end of the day, that is what it is about.

Q9 **Chair:** Anthony, can I ask you a question on the back of that? What do you do about confidentiality? At what point does it become public to the complainant, for instance, that you are taking this seriously and that it has become one of the 2,000 or one of the 300 cases?

Anthony Omo: For us, as soon as a complainant raises a concern with us, they are part of our system. In the early stage we offer them a meeting to explain what we do, what we can do and, quite importantly, what we cannot do. Then we work with them on the complaint to make sure we understand it. They will know what is happening from the start. We do not necessarily release details to the wider public until we have decided to investigate and/or take some interim action, but the complainant from the very beginning will be aware of what we intend to do and then what we do through the process.

Chair: Back to Alberto.

Anthony Omo: I hope I have answered most of that.

Q10 **Alberto Costa:** You have, thank you very much, Mr Omo. We will move on to Mr Rudkin, with the same questions that I posed to both Ms Oliver and Mr Omo.

Duncan Rudkin: It may be worth unpacking in a little bit more detail the way that the standards are not written as a set of rules. Broadly, I would highlight the distinction in my terms this way: in a set of rules, the authority would set out, "This or that behaviour is either allowed or not allowed. You must or must not do x or y."

Q11 **Alberto Costa:** That is called prescriptive rules, as opposed to principles-based rules, is that right?

Duncan Rudkin: That is probably a good phrase for it. In a rules-based system, as I understand it, when you have a complaint the focus is essentially on whether the rule has been breached. That, of course, can quite rightly lead to a lot of focus on definitions and whether behaviour falls within or without a set of defined terms. In the kind of standards that we use, because we are seeking to describe safe and effective pharmacy care in a positive way and in a way that can work across very varied settings, sectors and forms of practice, we try to avoid defining rules by describing, as Anthony said, a benchmark of practice.

That means that when we receive a complaint or concern, in that process we are not focusing primarily on whether there has been a "breach". The exam question that our statute sets for us when we are looking at concerns is whether the fitness to practise of that individual is impaired by reason of, for example, misconduct. We examine what has happened. In the most serious cases, if we end up with a hearing, we may bring a set of allegations of matters of fact that we then seek to prove, and if we are able to prove matters of fact, we have to then go a step further and demonstrate how that amounts to misconduct that impairs the registrant's

fitness to practise. Again, it is not quite a focus on whether there has been a "breach" of a set of standards. The fact that there may have been a falling short against the standard can be evidence of unfitness, but as I hope I have explained, we therefore try to avoid focusing on a set of definitional questions about whether or not a rule has been breached, and focus on what is perhaps the more substantive question from a professional regulation point of view, which is whether that individual's practice should be either suspended or restricted in some way.

That can, though, leave us in a situation where we have questionable or obviously bad practice that is outwith the spirit of the standard, but does not necessarily amount to misconduct, in terms of something that might impair somebody's fitness to practise. That can account for quite a large proportion of cases, and can be a source of frustration for complainants and people raising concerns, who may feel that somebody has got away with something that they should not have done. It is quite important to be mindful of that fundamental difference between a standards system and a rules system. Of course, the downside of a rules system is that it can focus the mind on the historical behaviour, rather than the question of whether somebody's practice is currently problematic.

Chair: Thanks very much, Alberto. Andy Carter?

Q12 **Andy Carter:** Thank you, Chair. Juliet, I wonder if I could come to you first. You touched a little earlier on the filtering process that you have when you are receiving complaints, and you then talked about the process of boiling it down to how many you look seriously at. I wonder if you could talk us through that filtering process—moving out irrelevant or malicious complaints—a little bit more. How do you go through that exercise?

Juliet Oliver: Certainly. There is a team who look at complaints and concerns that come in the front end, and as I say, there will be an initial redirection of issues that are not for us or do not really engage this process. Then, there is a team of trained and qualified investigation staff who work solely at the front end, as we call it—our assessment and early resolution team—and we have about 40 staff in that process. As I say, it is well resourced; it is really important for us as an organisation that we set matters off in the right way, right from the outset.

They run through a test, which first looks at, "Does this matter engage our standards? Is it something that is touched on by the standards and rules that we have set?" Secondly, they look at, "Does it present on its face something that is serious enough that it would result in some kind of regulatory action?" That really goes to what Duncan was saying about the fact that, because we have more of a principles-based standards approach, we really are looking for whether the behaviours present a risk: whether they fundamentally make us feel that this is somebody, a firm or an individual, that is not trying to do the right thing and presents a risk in the way they are behaving. Thirdly, they will look at whether the case is provable: "Is it something where, on its face, we could gather evidence to prove that this happened in the first place?"

If that test is met, it will go through into the investigation stage, and that is where the evidence will be gathered. Cases will fall out at that point as well, because as we go through the evidence-gathering process, we will learn more. We might decide that it is not provable, or we might decide that matters are not as serious as we thought we were. I have been looking at the numbers from last year, which are pretty standard. Perhaps 5,000 cases will be closed in that early assessment and early resolution team process. About 3,000 will go forward to investigation. But we will probably have a formal kind of sanction or a formal letter indicating that we have concerns to a firm or an individual in only about 400 of those cases. About 125 will be the most serious cases, which we would prosecute before the SDT. So it really is, as you can see, a funnel and a filtering process that we go through.

Q13 **Andy Carter:** At the most basic level, do you have criteria for who is able to bring a complaint against somebody within the body of people that you regulate?

Juliet Oliver: No, it is completely open. Again, looking at the figures for last year, I can say that about 60% of the complaints that we get are from members of the public, so that will be clients or other interested parties; it will be those involved, perhaps, in proceedings where solicitors or lawyers are involved. That's members of the public.

About 25% come from the profession, so that might be individuals or firms self-reporting. We do have obligations in our standards that if you see misconduct, you should report it to us, so firms will report to us where they have concerns about what has been going on, or an individual within them will.

We also get complaints and referrals through from other stakeholders, other regulators, other organisations, the police and other prosecuting authorities.

We also do proactive work, so we might do a thematic review of firms where we are interested in an area of work. For example, anti-money laundering controls have recently been an area of sharp focus for us as an organisation. So we will go into firms, look at particular requirements, see how firms are approaching this and publish good practice, but through that kind of work we sometimes pick up problems. We will always seek to encourage compliance, but where we see there are real problems, those kinds of activities can end up referring cases through to our investigation teams as well.

Q14 **Andy Carter:** Thank you; that is very helpful. Anthony, can I ask the same questions of you? Who can bring a complaint, and what is then the filtering process for taking out what you may class as malicious or irrelevant complaints?

Anthony Omo: Yes, thank you. It is a pretty similar system, as you would expect. Anybody can bring a complaint to us; it doesn't matter who they are. We have them from family members, the patients themselves, other

doctors, the employer, the police—you name it. Anybody can refer a complaint to us, and we will look at it through our triage process.

Our triage test is set out in our rules, and it is as simple as this: does the matter raise a concern about the doctor's fitness to practise to the extent that the national regulator needs to take some action? That is to say, is there a risk to patients or public confidence? And we have pretty much the same process. We look at the detail we have in the complaint. We look to see whether it meets that test, and if it does, it will go through for a proper investigation, whereby we will seek to gather evidence. At the end of that evidence gathering, the doctor has an opportunity to put their case. Then there is a second decision: two senior decision makers, what we call case examiners—one medic and one layperson—will make a decision about whether there is a realistic prospect of proving the case at a tribunal. If there is, they will then refer it to a tribunal. If there is not and they think there is no case to answer, they will close it. And if they think that it is not something that needs to go to a tribunal but there is something there, they can issue a warning or they can agree undertakings if it is something to do with clinical practice.

Our numbers are pretty similar to the SRA's. We get most of our complaints from members of the public, and most of those are closed, because they are not actually complaints about a doctor that we need to do something about. That is not to say that they are not serious complaints, but in the main they are about access to healthcare, communication issues or wider system issues for which the doctor is being held responsible, and we filter those back to the employer or the other system regulators to pick them up.

We get the next biggest percentage—about 30%—from employers themselves where they have taken the doctor through a local process and decided that actually this doctor needs to go to the regulator; and we look at those. We get about 20% from others acting in a public capacity, so from the police and from other regulators.

Again, we look at all this through the same filter. We assess at the early stage whether it meets that basic test for us to investigate—whether it is something that we need to look at. In terms of what others are doing, sometimes there are local investigations, and we work quite well with employers and other system regulators. We have an outreach team that meets regularly with system regulators and employers to discuss concerns as they emerge. We try to make sure that we head these things off before they come to the regulator, so that we do not have the delay that can sometimes be there, which is not in the doctor's or patient's interest. We also work with patient groups—for example, a couple of pieces of work that we have done over the last year are with those representing disabled persons and people with mental health issues, because we find that those are two groups that struggle to raise concerns. We have worked with charities around that, to make sure that they understand what we do and we understand what the concerns are, and that the profession gets the guidance it needs around that. If we have to take some cases or there are

serious cases that we need to look at, they can act as representatives for those patients. That is our system, but it is pretty similar to the SRA's.

Q15 **Andy Carter:** That is very helpful. I wonder whether I can pick up on a point that Chris raised earlier, around confidentiality. Obviously, the reputation of doctors is incredibly important. What advice do you give to complainants around confidentiality, particularly with regards to social media? It is very easy for somebody who is very frustrated and angry to post all kinds of things on social media, which could have a significant impact on the standing of a doctor. Do you provide any advice and guidance on that?

Anthony Omo: We do, and there is lots on our website. There are two sides to that. For doctors, we advise them not to use social media as a forum. We expect the same standards, regardless of whether you are in the virtual world or the real world. For patients, we have a patient guide and charter that explain what the expectation is. As I think I said earlier, we do not publicise cases until we have decided to take them. We are then very careful about what we say, because we are mindful that, as our figures show, most of these cases are closed quite early.

We are quite careful about the information we put out—what we put out, and when we put it out—and we are very clear about this with patients, doctors and those involved in the process. Part of it is the rules we follow—the procedures and guidance. We have consulted widely on it. I think the point was made earlier that everyone who is engaged in it understands it and knows what is happening. They know that it is consistently applied, and they know they outcomes. They may not like the outcome—I will be very clear about that. Sometimes the patients are not entirely happy with the outcome, but at least they are able to follow the system. They understand the system, and they accept that they have had a good hearing and a good outing and that we have considered the concerns carefully.

As I said, we publicise when something is found, which is at the end of it, but we are acutely aware on both sides that sometimes doctors take to social media inappropriately. We have issued guidance around that, which makes it plain that it is inappropriate to do so. You should not really commit to social media what you would not want to commit in writing, and we do look at that and hold them to standards. Similarly, we offer advice to members of the public when we are working through a complaint. The key thing around it is that if we are going to take a complaint, we do not want them doing anything that could prejudice a case against a doctor by putting things out there that they are not able to rely on. As has been described by Duncan and Juliet, we have a formal legal process to follow if you are going to take action. If you have information that is out there, you could find that you are not able to use that, or that it weakens the veracity of the information. We try to guide patients through. Again, I completely accept that sometimes it is not possible to censor them, as it were.

Q16 **Andy Carter:** That is helpful. Finally, Duncan, can you give us a sense of who can complain to your organisation, the numbers that are filtering

down—from the total number of complaints that you received, to how many you might investigate—and the process of filtering out malicious complaints?

Duncan Rudkin: We have a very similar filtering process to the ones that Anthony and Juliet have described. We go through a series of gateways, effectively, at each stage, seeking to understand more about what may have happened and reaching a view on whether it then passes on to the next stage. It is quite important to highlight that the fact that we or somebody else might believe that there might be some element of malice in the complaint is not a relevant factor. In fact, it is quite important that we take concerns and complaints raised by anybody, as my colleagues do, including patients and members of families as well as employers. The motivation of the person raising the concern is not something that is relevant to our decision making.

It may, exceptionally, become relevant, it seems to me, at a very much later stage, if we have a hearing and it may impact on the credibility of a witness, for example, but essentially it is important that concerns can come through from anybody who wants to raise them. That can include the media, as well as other professionals.

Our numbers are much smaller than those of my colleagues, because the pharmacy profession is smaller, but proportionately I suspect we are in a very similar sort of territory. We have ultimately a very small number of hearings, and many of the cases—in fact, the vast majority of cases—are closed at earlier stages. We are, as I think all the health professional regulators are, very keen to find ways in future to make these processes more useful for everybody, because they can be a very negative experience for everybody involved, particularly where it can take a while to reach a conclusion that nothing is going to be done—in many cases, of course.

One thing we are looking at is whether we can find more useful ways of responding to matters that are raised with us that may not lead to somebody being struck off, for example, but that nevertheless raise important educational matters or an issue about a system of care. I think that is an important area for us as regulators to be looking at.

Andy Carter: Thank you. That is very helpful.

Q17 **Chair:** Can I just ask all three of you very briefly—this is a yes/no answer, I am afraid—when somebody is going to the final stage, I presume they are allowed legal representation.

Juliet Oliver: Yes, absolutely—and they commonly do.

Anthony Omo: Yes.

Duncan Rudkin: Yes.

Chair: I presumed as much, but I thought we should just get it on the record.

Q18 **Rita Dexter:** I would like to follow up with something that arises from Duncan's contribution, if I may. As the three of you have described, in Parliament there is a filtering system or a funnel. The commissioner starts with a large number of complaints and that is reduced to a very small number that are actually investigated. There are a series of rules about things which are prohibited from consideration by the commissioner and many of those make sense on their own merits. Contributions on the Floor of the House, for example—if a constituent doesn't like that contribution, that is not something that the commissioner would investigate.

There are a series of exclusions, which make perfect sense, but one of the things I am interested in is whether the public get a sense that there are just big holes in the system, because so little of the complaint activity translates into an investigation or outcome. With so many of the things that are reported about the conduct of MPs, in terms of individual cases, members of the public don't see anything come out the other end as a result.

I was therefore interested in what Duncan said about things that don't make it into the process in a formal way. I suppose one of the things I am interested in is whether, as a Committee, we should be publishing some kind of annual report that looks at issues beyond the substance and outcome of individual complaints, either individually or as a whole collection. Do any of your bodies do anything that promotes lessons learned in a more formal or educative way, based on those complaints that don't survive through the formal complaints system?

Chair: Why don't we go in a different order, starting with Duncan?

Duncan Rudkin: That is a really important question, I think, because there is that iceberg of complaints, the vast majority of which do not actually result in formal regulatory action, where there is perhaps often under-utilised learning and insight, not least about what matters to patients raising concerns, that may not translate into action against individuals but can raise issues of wider concern in the health system. For us, that can feed through into various different channels, through intercommunications activity into our stakeholder engagement work, talking to representative and leadership bodies. It can inform the iterative production of new sets of standards, and can sometimes inform a decision to generate a particular piece of more detailed guidance on a topic where a number of concerns may have come in that do not individually amount to a fitness-to-practise action, but nevertheless clearly point to an issue which we need to attend to in the profession. I think we can use that iceberg of cases in various ways, and improving the visibility of that and the lessons and insights from it is definitely something we need to do more of.

Anthony Omo: I completely agree with Duncan. I think he has hit upon what is a very important part of maintaining confidence in ourselves as regulators if we are knocking back a not insignificant number of

complaints. I agree with what Duncan says about the learning, and we do something similar.

There are two things I would add. First, we do publish an annual report on fitness-to-practise activity, so what we do is public. Within that report, we describe and try to explain why we have taken certain things forward and why we haven't taken other things forward, so there is a bit of understanding about what we, as a regulator, can do, and what we cannot do.

We also publish, again annually, "The state of medical education and practice". It is a similar document that holds a mirror up to the profession, so this is us speaking to the profession. Again, we use the statistics that you have described around complaints, concerns, the type of things that patients are concerned about—the angst and other things—and reflect that back, working with others. The profession can have a think about some of that stuff, as Duncan said, to inform not just the standards we set and change, but also the various colleges—the BMA and other interested groups—so that they can work with us to inform standards.

The final thing I will say is that we do a lot of work with patients, because there is a misunderstanding about what we as a regulator can do and achieve. Sometimes, patients think that we are all-encompassing and that if there is any concern about a doctor, no matter what it is, we will deal with it and give them a resolution. Of course, many end up being sorely disappointed. We work a lot with patients who come to us and with patient groups. As I say, we meet with patients who make a complaint so we can explain this.

We have revamped our website, and a lot of work has gone into getting upstream to explain that, as the General Medical Council, we are part of a system, this is our part in the system and this is what we can do. We try and help them navigate that system; it is a hugely complicated system, and so patients do flounder.

Chair: I am sorry to be cutting people off; I am conscious that we arrived late for you, which is our fault because we were having a debate about something else. However, I am also conscious that we promised that we would finish by 11 o'clock, so we need to be concise.

Anthony Omo: Not a problem, I have given my contribution.

Q19 **Chair:** Juliet, do you want to answer Rita's question, and then I will come on to Arun?

Juliet Oliver: Sure. I will be brief. In terms of explaining managing expectations, the reasons we give to complainants when we close their case and individual cases are incredibly important. We know that they may not be satisfied by the outcome, but if they understand the reasons, it can help them understand what we do.

In terms of wider engagement, as well as the kind of annual reporting that Anthony has described about our complaints process, we have some other

ways in which we publish information. One of those is, as I mentioned before, that we can carry out thematic reviews into areas of law. If we have anecdotal evidence that there may be things to look at—concerns, things that might be going wrong but it might be across an area of law, for example, in asylum or immigration work or in personal injury as a sort of theme—then we will go and do reviews. We will look at firms carrying out that kind of work and better understand how it is working. We will publish information so that can help complainants, clients and the profession understand where their risks might lie in a particular area.

I want to add one further thing, because what you focus on at the front end is important, and it is key that that is understood by everyone. We recently published a new enforcement strategy, which sets out the kind of factors that affect our judgements on risk and on the seriousness of concerns that come through the front door. We engaged incredibly widely on developing that, and we did a campaign. We spoke to client groups, public groups and professional groups to try to get their understanding or expectations of the kinds of behaviours they would like to see us take action on—what is more or less serious. We spoke to tens of thousands of individuals through that process, and that really widespread approach helps to ensure we understand what the expectations are of society, and help us to explain and promote a better understanding of the kinds of things we will focus on through this process, and that some things will not be appropriate for this kind of regulatory or disciplinary process.

Chair: I am reiterating the brevity message, and not just because Arun is about to ask a question.

Arun Midha: Chris knows that I am not brief.

Chair: No!

Q20 **Arun Midha:** We have talked a lot about principles underpinned by rules, so I will not dwell on that question. However, I am curious to know from your context, do you consider the cultural context when you develop your principles and underpinning rules, and if so, could you explain your thinking? Can we start with Duncan?

Duncan Rudkin: Thank you, Arun. I think that is an important question. When we were putting the current standards together, which date from 2017, we brought together a large number of different groupings, focus groups and workshops from different quarters within the profession, different service users, members of the public and patients from different parts of Great Britain, as part of that conversation, to generate what ultimately becomes a short set of quite broadly defined outcomes-focused standards.

Those standards make great play of some fundamentally important concepts and words, such as "respect", "dignity", "effective communication", "patient's best interests" and so on. As a sector, and as a regulator specifically for pharmacy, we are becoming more aware of the fact that many of those concepts and that language can play out in ways

that mean quite different things in different cultural contexts, and we have one set of words.

There is a challenge for us in understanding how to use those standards in ways that are culturally aware and competent. I am mindful that, although they were generated from a very inclusive process, those words risk being Humpty Dumpty kind of words. That is important when it comes to enforcement, where everyone's confidence is reliant on the predictability and reproducibility of outcomes in the interests of certainty and fairness. We need to have the best of both worlds, with broadly defined outcomes-focused standards and individual decision making, which can risk feeling quite subjective in terms of interpretation. Context is critically important. The context of practice and the person raising the concern is an area that the regulators are looking to understand much more fully than perhaps we have in the past.

Q21 **Arun Midha:** Anthony and Juliet, do you have anything to add to that?

Anthony Omo: No. The system is pretty much the same for us, as described.

Juliet Oliver: I would add one thing. We have recently moved from a rules-based, prescriptive handbook to a much more principles and standards-based code. One of the important drivers for that is to have a set of standards that can adapt to the context where solicitors' firms can exercise their professional judgment to adapt that to the context in which they practise. They need to be able to justify their actions as against that context.

It is really important to ensure that the code does not become out of date quickly. It can meet challenges and changes. For us, LawTech is a huge driver for change in the sector. It is a very diverse sector anyway. Having something that can be applied to different cultural contexts is very important.

Arun Midha: Thank you.

Q22 **Sir Bernard Jenkin:** It is interesting to listen to this, because we are perhaps going on the same journey—trying to get people to think less about the rules and more about the principles and values. How do you engage those you regulate on the values and principles question, rather than just ensuring they do not fall foul of rules?

Anthony Omo: We consult widely with doctors, doctor groups, the colleges and the BMA, as well as the public. There is extensive engagement. It begins with asking what the standards are. What should be expected of a good doctor? What does that look like for the public, for doctors and for others? We then have that extensive programme pulled together and regularly tested, as Juliet has said, so we review them.

Q23 **Sir Bernard Jenkin:** How do you test it?

Anthony Omo: By going back when we have pulled it together. We re-review the guidance periodically, to say, "These are the principles. This is

what we say you should do. Does that still hold?" Bearing in mind Arun's question about context, context can change and sometimes norms change. We do that regular consultation as widely and often as we can. Of course, we do not do that too regularly, so that standards are never set, but we have to do that widely. Doctors are at the heart of that, alongside patients and others in our constituent groups, to ensure we are getting it right.

Q24 **Sir Bernard Jenkin:** For brevity's sake, do the other two do the same?

Duncan Rudkin: We do the same in terms of production. It is important that having produced the standards, we find ways to engage with the profession around those standards, but on topics that are of lively interest to them from their point of view. There is a risk that regulatory standards sit on a shelf, so to speak, or on a website, and they can be quite difficult to engage with. We look for opportunities in current topics, where we know there are concerns among a profession about a particular issue. Covid is full of such issues. Those give us opportunities to have conversations with the profession, its leaders and representatives, as well as directly with individuals through our direct communications, to try to bring the standards to life on an ongoing basis, as Anthony said earlier.

Q25 **Sir Bernard Jenkin:** Ms Oliver, do you have anything to add?

Juliet Oliver: We do the same in terms of the production, engagement and development of standards, and having opportunities to communicate through a range of webinars, seminars and newsletters on topics.

I would add one thing on keeping the codes under review. As I mentioned, we have developed new standards that were introduced a year ago. We have committed to a five-year programme of evaluating how those new standards are working, the impact they have on the market and how they are working for the profession and the public. With help from external economic consultancies, we have developed metrics and indicators. We will be reviewing and reporting at one-year, three-year and five-year stages on the standards across the piece. It was an important part of the reform programme for us to have a formal way of evaluating the changes that we have made. That is what we are planning to do over the next period.

Q26 **Sir Bernard Jenkin:** May I follow up with a rather wild supplementary? We are asking about your organisations, but what do you think about the way we do things? What do you observe about our system? You can be as outspoken as you like. We want your evidence and advice.

Duncan Rudkin: In a previous role many years ago, I worked in another health regulatory body. Many of its members, in a former era of professional regulation, were elected by the profession.

That was a very different kind of dynamic, as you can imagine.

I can empathise with the challenge of having different modes of accountability. Perhaps the most important is the democratic process, which is not part of the regulatory machinery that Juliet, Anthony and I

have to manage. There certainly has been a challenge in the past with elections. The General Pharmaceutical Council came out of a period of change in health professions regulation, when the self-regulation of the profession through the professional body had run its course and a separate statutory body had to be created. We don't have any particular prescriptions for you, but we certainly have some empathy.

Q27 **Sir Bernard Jenkin:** I will ask the other two to come in, but I just want to point out that we seem to be migrating towards a much more independent system that takes the MPs out of the equation. That was a demand from a lot of staff, who had no faith in the MPs' regulating themselves. Is that a trend that you would encourage—an independent complaints system?

Juliet Oliver: I was just going to come in on that, because it has been a very important direction of travel for the SRA. We are part of the Law Society of England and Wales, but with the Legal Services Act they were required to create a functionally and operationally independent regulatory arm, so the SRA is in fact an independent board of the Law Society.

That independence, both in terms of the way in which we operate and the perception of us as being a professional regulator acting in the public interest, rather than part of the profession and the other representative roles that the Law Society carries out, has been incredibly important. That has been the direction of travel in the legal sector, and it goes back even further in the health sector. I certainly see that as an important direction.

Q28 **Sir Bernard Jenkin:** What about the GMC?

Anthony Omo: I think you are in a different environment. I think you are doing the right things, in terms of seeking to understand what others are doing and learning from it. What the three of us do is by no means perfect. We are different bodies, as has been described. Asking the questions you are asking and seeking to have this extensive engagement should lead you to what is right for MPs, the public and your stakeholders.

I don't think it would be right for us to say, "Our system is the system." It may be a hybrid of the systems we have described, but doing what you are doing is the best way to do that. My view is irrelevant, in a sense. I can tell you what works for us, as we have done. Having a system that is regularly reviewed and consulted on, that you keep up to date, that is consistent and transparent, that deals with breaches that are public, and that people understand—all those things have helped us to build confidence. Following that line without landing on whether it is independent or separate is what I would encourage.

Q29 **Chair:** We are sort of independent but not independent, and we sometimes veer between the two within half a sentence. Our commissioner is independent. Only she decides whether to start an investigation; that is not a decision of the Committee. We can only act on the back of a decision by her. These are important and difficult questions. You still have some rules, don't you, even though you move towards principles. For instance, we have a rule that you have to register certain

things.

Anthony Omo: The GMC certainly has a statutory framework that helps promote the rules and makes sure we maintain them. We do have rules that we use, and I have described the enforcing, but we have set principle guidance—that is the document. There is a conversation that runs through our regulatory framework.

Juliet Oliver: For us, there are certainly some issues where we think that the risks require certain steps to be taken, where we are more prescriptive, in terms of rules, or where we think things really should be prohibited. Our client account rules are a good example of that. We have redrafted them in a more purposive and user-friendly way than they used to be under the old handbook, but they still contain rules, such as, "You shall keep client money separate from office money." It is that kind of approach. So there are certain things that we have drafted more in a rules-based way.

Q30 **Chair:** Can you fine solicitors?

Juliet Oliver: Yes.

Q31 **Chair:** If a complainant was out of pocket because of something a solicitor had done, you could fine the solicitor and give the money to the complainant, or is that for the courts?

Juliet Oliver: We cannot give the money to the complainant. That is for the courts or the legal ombudsman, who can award redress. If the courts find negligence, they can award compensation. Our fines go to the Treasury. One of the criteria for our fining powers is that we would remove any benefit the solicitor might have had. If a solicitor gained a benefit from their conduct, we take that into account when setting the level of the fine.

Q32 **Alberto Costa:** I should like to follow on from Bernard's questions about what you think about our system. As the Chair said at the outset, transparency and fair dealing are at the heart of what our Committee does.

All three of you went through your appeals systems. Our system is very odd. We have an independent Parliamentary Commissioner whose decisions are referred to our Committee. The SRA can make decisions. Serious issues go to the Solicitors Disciplinary Tribunal, which I understand is composed of two solicitors and one lay person. Members are appointed by the Master of the Rolls. That is a court of law—it is a statutory tribunal. The decisions can be appealed through judicial review, if there is a ground for improper procedure or unfairness, or can go the High Court. The General Medical Council and the General Pharmaceutical Council have similar appellate systems.

We have none of the above. My concern has always been our uniqueness—Parliament has the Bill of Rights and is meant to adjudicate upon itself with the involvement of the judiciary. What advice would you give us in ensuring we comply with article 6—the right to a fair hearing—

to ensure that any adjudication on a breach of the code is done in the best and most transparent way, as the Chair said at the outset?

Anthony Omo: Our systems, as you appreciate, are set out in statute. On the principles of the systems, you do not need statute. Having decision makers trained in making those decisions and with the necessary background; being clear about the charges being laid and having the opportunity to respond to them and to be represented; having a system where the decisions made are then transparent; and being clear about what the steps are.

We have an internal review system that isn't a court but is a trained decision maker, and all those principles are what go to make a fair hearing: making sure that the charge, the allegation, the concern or whatever it is, is clearly laid out; that the evidence is transparent; and that the person at the front end is provided with the opportunity to respond, and the person or person making the decision are appropriately trained. It is also about ensuring that that process is transparent and consistently applied.

Juliet Oliver: Like Anthony, I would highlight the review power, which gives you an opportunity for a further, separate look at what has been done. That separation—having somebody different reconsidering what you have done—in the right circumstances can be very important.

The only other things I would mention are the accountability, the principles of justice and the fact that our hearings are all in public, that our decisions are all published and that we have lots of detail on our website on what we do, how we work, and the amount we spend on all these different parts of the process. There is something there about the accountability to the public for the way in which you do the job you are tasked with, which is very important.

Q33 **Chair:** So from Alberto's questioning, both of you would say that Parliament is therefore failing, because we do not have any serious appellate process. You could theoretically argue that the Committee, in our case, is the appeals body after the commissioner has produced her report, but you would be going some way to make that argument.

The individual has the right to say "Well, I've seen the report that the commissioner has produced and I would like to make further representations to the Committee"; they have that opportunity. Then, theoretically, I suppose they have the right of appeal in the Chamber itself—you could argue the case, but it is a pretty thin argument.

Duncan Rudkin: I certainly would not feel qualified to give you advice on the detail of how that would work, in terms of article 6, in the unique context that you are describing. However, I do think that it is possible to have a variety of different forms of decision making that can pass muster, and that the independence of a decision maker is not necessarily a complete guarantee of fairness and credibility.

If we focus, as Anthony said, on the quality of what we are doing in demonstrably producing sensible outcomes in a way that feels fair, then I think that can be done in various different ways, and there is not necessarily a silver bullet in terms of any particular governance structure around that.

Chair: Does anybody else have any other questions? Paul? Rita? Arun? Bernard? Alberto? I cannot see who else is with us. If not, I would like to say an enormous thank you to all three witnesses today. It has been really helpful. Holding ourselves up against the mirror of yourselves, as it were, is very informative for us; we are enormously grateful.

If you do have further thoughts, whether you would like to say them to us more off the record or not, then please do get in touch with us. We want to get this right, and we are conscious that there are areas in which we could definitely improve, so if you suddenly spot something, please do get back in touch.

I will now do something completely inappropriate for this public meeting. In our private meeting earlier, I should have thanked Jim Camp, who has been working with the Committee for several years and is moving on to work for another Committee. I would like to put on the record, on behalf of the whole Committee, an enormous thanks to him. I should have done that in the private meeting, but I am doing it in the public meeting; I hope he does not mind.

Also, a welcome to Arvind Gunnoo, who has just started working with the Committee; we are very grateful to him. That will mean nothing to our witnesses—I am sorry—but none the less, we are grateful to those who do a lot of the hard work on our behalf, and we are grateful to our witnesses today. Thank you very much for your time. Order, order—that means we have finished.