20 December 2018

Dr Sarah Wollaston MP
Health and Social Care Committee
House of Commons
London SW1A 0AA

Dear Sarah,

The GMC’s right of appeal

I am writing to update you following the Health and Social Care Committee’s inquiry into patient safety and gross negligence manslaughter in healthcare.

One of the points of discussion during the Committee’s evidence session was the GMC’s right of appeal. Sir Norman Williams’s review found that the GMC’s use of the right of appeal was not excessive, and that it can be argued that the successful appeals have improved patient safety. As discussed with the Committee, the Williams review recommended, however, that the Government should legislate to remove the GMC’s right of appeal. In its written response to the review, the UK Government stated that it agrees with this recommendation but that it could take approximately 18 months to bring forward the necessary legislation, subject to parliamentary time.

The review recommended that ahead of the legislative change needed to remove our power of appeal, we should review our processes for deciding when to refer a decision of the Medical Practitioners Tribunal Service. The Government indicated it agrees with this recommendation. The Committee also asked us to consider delegating or deferring to the PSA our right of appeal while we undertook this review.

We have now undertaken the review. As part of the review we obtained independent legal advice from Sir Robert Francis QC. We were keen to seek his advice as someone who is not regular counsel for the GMC, has expressed his views on the topic and is a recognised expert in clinical negligence, medical ethics, healthcare regulation and patient safety. Sir Robert’s advice was clear:

- It would not be lawful to impose a moratorium on our right of appeal. The fact that the Government has stated that it intends to legislate to remove it does not allow us to ignore our statutory duties. We would be acting unlawfully if we did not give due consideration to the exercise of our powers to appeal a decision where the decision could reasonably be considered to be insufficient to protect the public.
We cannot lawfully delegate the consideration of whether to appeal to the PSA (or any other body), even though the PSA itself also has a right of appeal.

However, these findings do not prevent us from making a range of improvements to our guidance and decision making processes, including changes to increase openness and transparency. We committed to improving these aspects of our appeal processes and I am pleased to now outline actions we will be taking to do this:

a The guidance on appeals decision-making will be updated to reflect the learning from recent judgments and Sir Robert’s advice, particularly the Court of Appeal’s clarification of the thresholds that should be applied when considering whether to appeal and consideration of context and systemic issues.

b Decision-making in prospective appeals involving decisions of Medical Practitioners Tribunals will be delegated to a three person Executive Panel comprising: the Chief Executive and Registrar as Chair; the Medical Director and Director of Education and Standards; and the Director of Fitness to Practise (or their nominated Deputies if not available).

c We will increase transparency by publishing panel decisions.

d We will seek the views of the PSA as part of our consideration of appropriate clinical misconduct or deficient performance cases.

This of course remains a developing area and we will continue to evaluate our own processes and how we use our right of appeal as part of our duty to protect the public and uphold public confidence in the profession. Alongside this we are engaging with the Department of Health and Social Care on the proposed legislation to ultimately remove this right.

We will be publishing this letter on our website and I would be happy to provide further information on any of the above points if this would be helpful to you or the Committee.

Yours sincerely

Charlie Massey

Copied to: Rt Hon Matt Hancock MP, Stephen Hammond MP, Jeane Freeman MSP, Vaughan Gething AM, Richard Pengelly, Sir Robert Francis QC, Professor Sir Norman Williams and Alan Clamp.