

The Foster and Donaldson reports – briefing 1: the three key issues for RPSGB

Introduction

The Foster Report – *The regulation of the non-medical healthcare professions* (Department of Health - England, July 2006) – contains 25 decisions/conclusions. Three of them stand out as having particular significance for the RPSGB:

1. The need to clarify the separation of the RPSGB's regulatory and professional lead functions. The Council will need to consider options for clarifying/separating the RPSGB's regulatory and professional lead functions [recommendation 24].
2. Proposed changes to the composition of the regulators' Councils – replacing some/all of the elected professional members with appointees, and possible changes to the future balance of professional and lay council members [recommendations 19 and 20].
3. Proposals for the RPSGB to share functions with PSNI, followed by a formal merger into a single UK body [recommendation 24].

There are other conclusions in the Foster report which the Council will need to respond to. These are covered in Briefing 2.

Finally, the Chief Medical Officer (England)'s report – *Good doctors, safer patients: proposals to strengthen the system to assure and improve the performance of doctors and to protect the safety of patients* (Department of Health – England, July 2006) – makes recommendations for doctors which would have implications for pharmacy regulation if they were widened to the other health professions.

On each of the Foster report's three key recommendations for the Society, the key points for discussion have been set out below. Where a decision will be needed for the RPSGB's response to the Foster and Donaldson reports, this is indicated. The Council will have three opportunities to debate the issues: at a reserve day on 14 September, the 10-11 October Council meeting and 1-2 November. The September discussion will allow for an informal exploration of the issues and options.

This first day will provide the office with a steer on which to begin work on the Society's response to the consultation. An initial draft will be brought to the Council in October.

Key Item 1: Clarifying the separation of the RPSGB's regulatory and professional lead functions

What does the Foster report say on this topic?

- Recommendation 24 says that primary legislation to permit the proposed merger with PSNI would also allow for “any necessary changes [to] be made to clarify the separation of the RPSGB’s regulatory and professional lead functions”.

Chapter 7 of the Foster report expands on this recommendation as follows:

- “Four regulators [including RPSGB and PSNI] currently have a role outside the scope of regulation.”
- They are “charged in law or in a Charter with promoting their profession, in subtly different ways.”
- “While there is no suggestion that they are expected to put the good of the profession before that of the public, these words have caused uncertainty and dispute at times.”
- “Although the roles of professional leadership and promoting the profession, which have been exercised for the public benefit, do indeed benefit the public, there is a tension between their focus inwards on the professions’ interests and the need for the regulator to be seen to be free from such influences.”
- “The implementation of changes following this review will provide opportunities to bring the regulation of these professions into line with the majority.”

The Foster report does not specify exactly what is meant by “clarifying” or “separation” of functions – in particular it does not say whether the Westminster government envisages a separation of functions within the existing organisation or completely separate stand-alone organisations to carry out pharmacy regulation and professional leadership.

Key questions

1. What is at the root of the Foster report’s evident discomfort with the RPSGB’s current role and remit? Is it:
 - Concern that the public will *perceive* there to be a conflict of interest in the Society’s functions, leading to a lack of public confidence, while acknowledging that the RPSGB carries out its regulatory functions very well, leading the field in some respects?
 - A *belief* that there is an inherent and irresolvable conflict of interest in a remit combining regulation and professional leadership functions?
 - Uncertainty about how far the Society’s professional leadership role does and should extend, in particular about how this links to “representation”, and what exactly that means? In what ways, precisely, does the Society represent the pharmacy profession, and does it sometimes take positions that serve professional interests, but work against the public interest?
 - Concern about inconsistency between the RPSGB’s remit and that of other regulators, reflecting a desire to harmonise the functions of all the healthcare professional regulators?
2. Why did the Foster review not accept the Society’s arguments about the benefits of its integrated regulatory and professional leadership role? Were they unconvincing? Did they fail to address the representation issue adequately?

3. What should a future regulatory role look like (regardless of which body, the Society or another created for the purpose) to be credible to government(s) and to the public? What functions should it not do?
4. What should a future professional leadership role, designed to deliver a strategy for pharmacy (recalling that PIANA led the way to the Government strategies) by supporting pharmacists to deliver, look like (regardless of which body, the Society or another created for the purpose) to be credible to government(s) and the profession? What functions should it not do?
5. How might either of these two options be achieved to meet the credibility test?
6. How might our preferred solution be sold to Government?

What are the emerging options?

1. An (increased, and increasing) internal separation of functions within the Society, but keeping the same functions as now.
2. Two separate organisations carrying out pharmacy regulation and professional leadership, covering the existing functions between them.

Key Item 2: Proposed changes to the composition of Council

What does the Foster report say on this topic?

Recommendations 19 and 20 say:

- “Some or all of the elected professional members of Councils should be replaced by appointed professional members. “
- “A clear person specification is required, identifying desirable qualities.”
- “Comments are invited on the future balance of Councils between professional and lay members, with the possibility of either a professional majority of one, a lay majority of one or no change.”

Chapter 7 of the Foster report expands on these recommendations as follows:

- “Public safety has to be reconciled with a sense of professional ownership.”
- “There is no evidence that professional members of Councils and committees in general see themselves as there to serve “selfish” interests of their profession.”
- “There are valid concerns, however. The public perceives regulators as dominated by members of the profession they regulate, and the fact of election plus the possibility of partiality strengthens this unhelpful perception.”
- “A clear person specification is required ... possibly also excluding individuals with a perceived conflict of interests (such as, arguably, those holding national office in representative bodies for the profession or professional defence organisations).”
- “It is worth considering the balance in numbers between the professional members of Council and the rest. Comments are invited on three options: keeping the present distribution (a small, varying, professional majority), aligning all Councils to have a professional majority of one, or moving to the General Social Care Council model where there is a small lay majority.”
- “It would strengthen the public and patient voice, and send a strong message to the public that regulation was a partnership between profession and public.”

The Foster report does not go into details about the person specification for appointed professional Council members. The appointments process, while not specified in the report, is likely to be that used for public appointments (as for the current lay members of Council).

The initial regulatory impact assessment (RIA) for the Foster Report (Appendix 3 to the report) states that the objectives of the proposals on governance and accountability are to:

- “Increase the accountability of the different regulatory bodies.”
- “Ensure that the members of their Councils are not beholden to any specific constituency and that they bring the appropriate mix of skills to the Council.”
- Address current negative perceptions of regulators in these respects through a demonstrable break with the past.”

It goes on to say that changes already made to the governance of the regulators (increasing the proportion of lay Council members and distancing the Council members from operational functions such as fitness to practise hearings) “do not yet appear to have improved the faith of the public or the profession in the organisation, and the concept of Council members ‘representing’ specific constituencies lingers.”

The RIA sets out four options on governance and accountability. Option 2 is the Department of Health (England)’s preferred option:

“Establish new Councils appointed by a transparent independent process, such that Council members have the specific skills required to lead strategically and hold the executive to account. Ensure that effective and regular external scrutiny is paid to the performance of the regulators through Parliament.”

Key questions

1. Does the Foster report make a convincing case for a move from elected to appointed professional members of Council? (This point could be considered from the viewpoints of different stakeholders - patients and the public, the pharmacy profession, etc.)
2. Could the appointment of Council members have any benefits for the profession (e.g. for sectors which currently have no representation on Council)?
3. Would the Council support any change in the current balance between the number of professional and lay members of Council?

What are the emerging options?

(a) On elected vs. appointed professional members of Council

1. No change.
2. The entire Council to be appointed according to criteria as yet to be specified.
3. A compromise: one third elected professionals, one third appointed professionals, one third lay members.

(b) On the balance between professional and lay Council members

1. No change.
2. Professional majority of one.
3. Lay majority of one.

Clearly some combinations of (a) and (b) are linked: option a3 is linked to option b1.

Key Item 3: Proposals for the RPSGB to share functions with PSNI, followed by a formal merger into a single UK body

What does the Foster report say on this topic?

Recommendation 24 says:

- The Pharmaceutical Society of Northern Ireland should remain as an independent body for the time being but with shared functions with the RPSGB.”
- “In the longer term, however, the two societies should amalgamate into a single UK body, following the passage of the necessary primary legislation.”

Chapter 7 goes on to say:

- “We considered carefully the arguments for mergers between any of the existing regulators.”
- “While the discussion above [paragraphs 12-20 which consider arguments for and against reducing the number of regulators] makes a reasonably good theoretical case for having fewer regulators, we have decided against this on practical grounds.”
- “The evidence available to us is that regulators today, including *the smallest UK ones*,¹ are able to carry out their functions effectively.”
- “In relation to the future of pharmacy regulation in Northern Ireland, the Department of Health Social Services and Public Safety has recommended that the Pharmaceutical Society of Northern Ireland should remain as an independent body for the time being but with shared functions with the [RPSGB].”
- “In the longer run, the question of whether there should be further progress towards fewer regulatory bodies will be kept under review – with the intention being to hold a formal review of the position after five years, in 2011.”
- “It may be that in practice the need for further structural change can be avoided by closer collaboration and harmonisation between all the remaining regulatory bodies.”

Key questions

1. What advantages would there be for RPSGB in “sharing functions” with PSNI in the near future?
2. What risks and potential disadvantages could be foreseen in this proposal?
3. Does the Council have enough information about the functioning of PSNI to make a quick decision on this issue?
4. What if Northern Ireland rejects the proposal for merger?

What are the emerging options?

1. Accept the government’s proposals for “sharing of functions”² and eventual merger with PSNI.

¹ Our italics. The endorsement does not therefore extend to the PSNI.

2. Reject the proposals.
3. Commission an external person with appropriate stature and skills/experience³ to undertake a baseline assessment of PSNI's functions, effectiveness, capacity, costs, financial position etc., culminating in a report to the RPSGB Council on the logistics and potential benefits, risks and costs of "sharing functions" between RPSGB and PSNI in the short term, and merger in the longer term. Such an exercise could not be commissioned and carried out in time for the response to the Foster and Donaldson reports (it would probably take about 12 months), but the Council could set out its plans on this area in the response (i.e. to accept the proposals, reject them, or carry out a review of PSNI, etc).
4. Option 3 could potentially also include a review of the Society's functions "outside the scope of regulation", enabling the Council to come to its own view, with the assistance of independent appraisal and evidence-gathering, on this matter. The Council could then make its own proposals to government on the Society's future role and remit, including its views on sharing functions and eventually merging with PSNI.
5. If Northern Ireland rejected the proposal for merger, would there be any point in pursuing the proposal for sharing functions?

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² The Council would need to consider what this might mean – e.g. RPSGB carrying out functions for PSNI under a contract.

³ A person such as Sir Bryan Carsberg who carried out the review of the Royal Institute of Chartered Surveyors, Sir David Clementi (regulation of the legal profession) or Morris (actuaries)