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Jake Armes
Professional Conduct Department
Bar Standards Board
289-293 High Holborn
London WC1V 7HZ

Regent's Place
350 Euston Road
London NW1 3JN

Email: gmc@gmc-uk.org
Website: www.gmc-uk.org
Telephone: 0161 923 6602
Fax: 020 7189 5001

Dear Jake,

Response to your consultation on the introduction of a civil standard of proof

I am writing to respond to your consultation on proposals for the Bar Standard Board to adopt a civil standard of proof for professional misconduct. A response to the three consultation questions is set out below.

Do you consider, in principle, that the BSB should change its regulatory arrangements to allow for the civil standard of proof to be applied to allegations of professional misconduct?

Yes. The principle of civil standard of proof is established in medical regulation. The rationale for this change was upheld by the Law Commission, the Scottish Law Commission and Northern Ireland Law Commission in their Joint Report on the Regulation of Health Care Professionals published in April 2014 (Cm 8839). Recommendation 81 of the Report found that "the civil standard of proof should apply to all fitness to practise hearings". The rationale for this was as follows:

"It was argued by some that the sanctions imposed by the regulators can be so devastating to an individual registrant's livelihood and reputation that the criminal standard of proof must apply. We think this would set the threshold too high and could lead to a situation where a registrant survived a challenge to continued registration, but was not regarded as someone who, for example, the NHS could safely employ to look after patients. It is not acceptable that a registrant who is more likely than not to be a danger to the public should be allowed to continue practising because a panel is not certain that he or she is such a danger." (par 9.63)

Recent case law has also upheld the principle of application of a civil standard of proof in medical regulation. It may be helpful to consider Bhatt v General Medical Council [2011] EWHC 783 (Admin).

A transition to a civil standard of proof may support uniformity across the 'comparable professions', which may in turn lead to more judicial certainty, for example in cases of dishonesty.

Do you consider that the BSB should only change the standard of proof if and when the Solicitors Disciplinary Tribunal also does so?

Appropriate transition arrangements will clearly need to be put in place to support the smooth introduction of a civil standard of proof. This may include consideration of how to deal with any impacts where a different standard of proof is applied by the Solicitors Disciplinary Tribunal, to inform a decision on the timing of any change to approach.

Do you consider that a change in the standard of proof could create any adverse impacts for any of those with protected characteristics under the Equality Act?

No. I am not aware of any evidence that those with protected characteristics would be adversely impacted by the change in the standard of proof.

Yours sincerely

Anthony Omo
Director of Fitness to Practise
Email: anthony.omo@gmc-uk.org
Telephone: 020 7189 5117