

The Role of Council Members

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Introduction

A number of Council members have raised questions in recent months about the role of Council members and, in particular, about how the balance is struck between the lay and professional interests which they represent and the need for the four home countries of the United Kingdom to be represented on the Council.

This paper seeks to provide a brief overview on these issues and will form the basis of an agenda item for the Council meeting on 18 July 2002.

A member's primary role

The Health Professions Order 2001 (the Order) makes no distinction between the roles of lay and registrant¹ Council members and all are expected to participate in and work towards fulfilling the Council functions. The Order makes it absolutely clear that the Council's principal functions are:

“to establish ... standards of education, training, conduct and performance for members of the relevant professions and to ensure the maintenance of those standards”

and that its main objective in exercising those functions is:

“to safeguard the health and well-being of persons using or needing the services of registrants.”

As a public body, the Council is under legal duty to exercise its powers on a *bona fide* basis, in good faith and for their proper purpose. As the “controlling hearts and minds” of that body, Council members have a similar duty and, in exercising their functions as such, need to always ask themselves the question:

is what I am doing, being asked to do or wish to do consistent with the Council's functions and objectives as set out in the 2001 Order?

Members are representatives not delegates

The reasons for introducing lay representation on professional regulatory bodies are well established, the most significant reason being the widely held belief that regulation by one's peers alone is an ineffective model of regulation in this day and age. Given that background it is important for any body like the Council to avoid drifting into a “them and us” way of thinking, with the registrant members feeling that they need to look after

¹ these terms are used in their ordinary sense rather than as strictly defined in the 2001 Order to include lay members during the transitional periods and thereafter and registrant or practitioner members and their alternates

their peers and for the lay members to feel that their job is to keep the registrant members under control.

Clearly registrant members and lay members will take differing views from each other on some issues but that is the reason for having a balanced membership in the first place. Both groups have an invaluable contribution to make as long as they recognise that they are there to *represent* registrant or lay interests but are not the *delegates* of those interests.

This distinction was first made by the 18th Century politician, Edmund Burke, who drew a distinction between a delegate who is mandated to act in a certain manner by those who appoint or elect him or her, and must slavishly follow their wishes, and a representative who must apply his or her own judgement about what action to take. In Burke's words:

“Your Representative owes you, not his industry only, but his judgement; and he betrays, instead of serving you, if he sacrifices it to your opinion”

Thus, both registrant and lay members are there to ensure that the Council makes properly informed decisions about the professions it regulates but they must contribute to the proceedings with an open mind, not simply espousing the views of those they represent but properly directing themselves and coming to their own view consistent with the Council's statutory functions and objectives.

Home country representation

Similar considerations apply to those members who are elected or appointed to fulfil the obligation that each home country in the United Kingdom is represented on the Council.

The regulation of health professions is a “reserved matter” under the various devolution enactments and therefore remains a UK wide competence. Consequently, the Council must exercise its functions consistently throughout the UK but taking account of local differences where they have an impact on the Council's role.

The purpose of the home country representation requirement is to ensure that the Council is a truly UK-wide body but the members from each of the home countries are not there simply to look out or speak for the interests of that country. They must participate in the Council's UK-wide remit but, in the same way that the registrant members' professional knowledge assists the Council to exercise its functions, they bring local knowledge – for example about differing education or legal systems or the recognition of languages - into the decision making process.

In relation to home country representation it should be noted that the arrangements during the transitional periods are not as onerous as they will be once the Council's election scheme is in place.

Although the Privy Council was obliged to appoint at least one of the (1) practitioner and alternate members and (2) lay members from each home country, if any member resigns during the transitional period the Privy Council does not have to appoint another person from the same home country. Once the election scheme is in place resigning members – whether elected or appointed – will have to be replaced by a person from the same home country.