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A COMMENTARY ON LEGAL ISSUES AFFECTING PROFESSIONAL REGULATION

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Witness to Harm

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Research has been published in the UK on the impact of the complaints and discipline process on public participants (e.g., complainants and witnesses): [Witness to Harm-Holding to Account. Improving patient, family and colleague experiences of Fitness to Practise proceedings: a mixed-methods study](#). The research is related to recent work by others (e.g., [Grey Areas, November 2025](#)) and reinforces recommendations by Canadian advocates on options other than criminal charges for gender-based violence (e.g., [Grey Areas, January 2026](#)).

The research involved interviewing participants who had faced harm in the course of receiving health and social services about their experience in regulatory processes. The research also included examining the regulatory processes themselves (including attending discipline hearings) and regulatory communications, including websites, reviewing related literature, and discussing their findings and learnings with focus and advisory groups.

The authors found that public participants were often dissatisfied with the complaints

and discipline processes (known as “Fitness to Practise” or “FtP” in the UK):

“Participants ... were left dissatisfied with why their case had not progressed if it was disposed of pre-hearing. Interviews with the public witnesses at a hearing felt that the interests of the professional were being placed above those of service users/patients. Their experiences of FtP often resulted in their causes for concern not forming the basis of the FtP investigation and/or hearing. They concluded that their legitimate concerns were thus not important to the regulator. Given the purpose of FtP described above, this reflects a mismatch of expectations and what regulators are required to do to bring a FtP case. Additionally, their experiences of the conduct of the hearing process itself left them feeling that little weight was given to their testimony or concerns, often due to registrants’ representatives’ adversarial cross-examination. The impact of the incident on them was

not shared. In effect, there was 'disposal' (in the general rather than legal sense) of their testimony and the resulting perception that their perspective and concerns were being disrespected.

We found that most witnesses experienced FtP as being onerous, difficult and disappointing in terms of outcomes and processes. For some witnesses, engagement in FtP was potentially retraumatizing... Collectively, these experiences have the potential to undermine public trust in regulators and regulatory processes."

Generally, communications were seen to be infrequent, insensitive, overly complex, and legalistic. Regulatory websites were often seen as unreadable, inaccessible and difficult to navigate. Few public participants used the witness support offerings, and those who did were dissatisfied.

Public participants had different views on the value of apologies and those who received apologies where not satisfied with how they were given.

The authors discussed the fundamental incompatibility between the current legal structure of regulatory processes and the needs and expectations of public participants. Once a complaint was made "the 'case' was no longer theirs, and they could find their concerns were not addressed...." They were often "required to repeat their story to different people at different stages of the process." The focus was on the registrant's behaviour and not the harm the public participants experienced.

The initial harm event was compounded by the process, especially by cross-examination at a discipline hearing. "These experiences of eroded trust and distrust are indicative of low psychological safety, which is central to raising concerns." The authors wondered

whether alternative processes, such as mediation, should be trialled.

The authors made several recommendations to improve the existing regulatory processes. Some related to compassionate regulation concepts that have been [discussed within the regulatory world](#) for some time now. Specific recommendations that may be of interest to Canadian regulators include the following:

- Guide prospective complainants to alternative processes, including: "inquests, civil proceedings, NHS complaints, social services complaints and criminal cases."
- Ensure regulators have a "holistic understanding" of how the process is experienced by complainants and witnesses, "their motivations for making a complaint, the impact of the unfamiliarity of these processes, the work involved for the referrer and harm caused by communications that may be experienced as overly legalistic or disrespectful."
- Regulators should "expand the opportunities for witnesses to explain to regulators and hearing panels about the personal impact of the case, for example, using victim personal or impact statements."
- Establish feedback mechanisms to identify and learn from the experience of public participants.
- "Provide clearer public-facing information, coproduced with members of the public" about the regulatory processes and options including on regulatory websites.
- Work with employers of registrants to facilitate the better handling of concerns locally where appropriate.
- Communications should clearly explain the process, including why some concerns might not be proceeded with, ensuring that the public participant's concerns were heard, establishing and employing

the public participant's preferred means and timing of communications, updating participants regularly, and ensuring that decisions are appropriately communicated so that participants can make sense of the outcome.

Detailed recommendations were made about cross-examinations:

“The process of cross-examination can generate additional harm for witnesses. Regulators should support witnesses to understand what it is like to be a public witness and go through cross-examination, including: clearly explaining what happens at a hearing; the purpose of cross-examination and what sort of questions they may be asked in cross-examination; what actions witnesses can take when giving evidence, such as asking for breaks and for questions to be rephrased; and acknowledgement that cross-examination is broadly understood to be inherently stressful and difficult.

Panel members (especially, the Panel Chair) and legal advisers should better understand the experience of public witnesses and

intervene in inappropriate and distressing cross-examination.

Where appropriate, and in conjunction with the public witness, consider whether alternative or modified approaches to cross-examination may be possible within existing FtP processes. More broadly, consider whether alternatives to the adversarial approach can be sought out and evaluated.”

The report sets out new research on the impact of the complaints and discipline process on the members of the public who seek it out. The report also provides links to many other resources. Regulators may benefit from reviewing it in detail.

See: Wallace L, Ryan S, Searle R, Hughes G, Sorbie A, Ryan-Blackwell G, et al., “Witness to Harm-Holding to Account. Improving patient, family and colleague experiences of Fitness to Practise proceedings: a mixed-methods study” *Health Soc Care Deliv Res* 2025;13(44). <https://doi.org/10.3310/SSPP1118>.

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