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Regulators' Role in Addressing Racism

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Few would dispute that a regulator should discipline registrants who engage in overtly racist behaviour. However, beyond overt acts, racism also includes unconscious bias, micro-aggressions, and disparate outcomes for patients/clients. In addition, registrants themselves experience racism from their colleagues and clients. What is the role of a professional regulator in addressing this?

To provide some context, the UK regulator for nurses and midwives has recently posted the following information:

> Overall, inequities are directly linked to worse clinical outcomes, including higher mortality, greater disease burden, delays in care, and reduced patient safety. For example:
>
> - Black women are 2.3 times as likely to die from pregnancy-related causes during childbirth or within six months postpartum as White women. Asian women are 1.3 times as likely
> - Black babies are more than twice as likely to be stillborn as White babies; Asian babies around one and a half times as likely
> - Racist stereotypes – such as the false belief that Black women "don't feel pain" or have a "higher pain threshold," or that sickle cell patients seeking pain relief are "drug-seeking" – continue to shape clinical decisions and cause avoidable harm
> - People from racially minoritised groups with learning disabilities face a 190% increased risk of premature death compared to their white counterparts
> - A higher prevalence of racially minoritised service users' being sectioned under the *Mental Health Act*.

Racism and other forms of discrimination not only affect people receiving care, but also many midwifery and nursing professionals who provide it.

Spotlight, the NMC's annual insight report, shows that 40% of nursing

> and midwifery professionals who responded to a survey said they had experienced discrimination in the previous year, most often on grounds of ethnicity or age.

In the UK, an independent report entitled *Lord Mann review of antisemitism and other forms of racism in the NHS and healthcare regulatory system* provides some guidance. Lord Mann is the UK government's independent advisor on antisemitism. However, in conducting this review, Lord Mann addressed all forms of racism in the health care sector.

Mann cites research that "shows racism is deeply pervasive and has reached the stage where it has become normalised in the NHS [National Health Service]. This includes interactions between NHS staff and with patients, their relatives and members of the public." In the case of Jewish patients, Mann "found a specific unaddressed issue of antisemitism within the NHS that is making Jewish patients uneasy about accessing care and Jewish NHS staff feeling that discrimination against them is not being addressed. This means a real fear in seeking care, considering removing religious symbols before seeking treatment, or being uneasy about asking for kosher meals. An environment that allows this fear to persist is never acceptable, and needs real, demonstrable and visible action to address this." Similar concerns were reported by Muslim and Black communities.

Mann says:

> …the central tenets of the approach to tackling racism across health and social care should be:
> - calling out racism, including antisemitism, wherever it occurs
> - supporting its victims
> - treating with kindness those that report having suffered it

Call for a Coordinated Response

The central theme of Mann's review is that all partners in the health care system (especially health administrators, employers and regulators) must coordinate their anti-racism activities. Mann says:

> Employers should be the first line of defense and best understand the context in which patients and professionals are operating. Where behaviour is concerning but may not reach the level of concern that might warrant regulatory action, the employer can and should take appropriate action, which may range from informal interventions to serious disciplinary action. Where an employer or NHS contractor fails to act, or where the complainant remains dissatisfied with the outcome, a referral to the regulator will always remain an option…
>
> If, having considered the issue, an employer believes there to be a case for regulator involvement, they should, and in many cases do, refer the case to the relevant regulator. Strong relationships between regulators and employers are essential to both protecting the public and ensuring consistent approaches and action.

One of Mann's recommendations is that:

> …health and care system and professional regulators should establish a taskforce to clarify and reinforce the appropriate mechanisms, including the emerging concerns protocol, for sharing information about local areas of concern, racist incidents, thematic issues related to antisemitism and other forms of racism, and best practice for employers and regulators to address them. Health and care system and professional regulators

> should co-ordinate actions where more than one regulator has a role to play in responding to issues or incidents…

Inappropriate Resort to Regulators

Mann notes that individuals, employers, and third-party organizations are increasingly referring concerns to professional regulators even where they are more appropriately dealt with at the local level. This is problematic because "[h]igher caseloads may result in delays in cases being heard, increased pressure on regulators and a growing lack of confidence in the regulatory system and the decision making of tribunals." In addition, employers sometimes decline to address concerns that are suitable for local resolution because they are pending before the regulator.

Mann recommends that there should be:

> …a clear, single set of national guidance for employers (in England), clearly defining employers' responsibilities in tackling discrimination incidents and providing guidance and examples of the types of incidents that may require a regulatory referral, to build consistency.

Regulatory Reform

In addition to better coordination, Mann suggests that a current proposal for regulatory reform to introduce "accepted outcomes" should proceed. Accepted outcomes would enable the complaints-screening body to impose disciplinary outcomes (e.g., conditions, suspensions, and even removal) where the registrant consents (thus avoiding a discipline hearing).

Mann considers additional aspects of regulatory and governance reform arising out of his review of evidence submitted by Jewish and Muslim associations. The themes from these submissions included concerns that there is a perceived "hierarchy of discrimination" that results in "unequal outcomes faced by under-represented groups in disciplinary and regulatory processes." Further themes included the need for transparency, particularly for complaints closed at an early stage, stronger accountability mechanisms (i.e., appeals) of individual decisions, and improved education and understanding by decision-makers about racism, particularly about antisemitism and anti-Muslim hostility.

Mann suggests that the oversight body, the Professional Standards Authority (PSA), should have the right to appeal interim orders (e.g., terms, conditions and limitations, suspensions) to the courts where they do not adequately protect the public interest. The PSA should also have the power to compel regulators to provide information that would assist the PSA in performing its oversight functions.

Additional Strategies

Apart from its specific disciplinary role, regulators should also, collectively, support employers in dealing with all forms of discrimination including those not amenable to regulatory disciplinary action. Regulators should also have a more active role in educating registrants who are not part of the public health care system (e.g., chiropractors).

Mann also says that regulators and other system partners should engage with community organizations to understand how racism is experienced, develop policies and procedures, and help design educational programs for all participants. This engagement should include adopting consistent, clear definitions of racism and religious hatred to help individuals and organizations know how to respond effectively to incidents of discrimination. The same applies to "guidance for reporting and

investigating incidents of racism and religious hatred."

> The UK health and care system and professional regulators currently use multiple definitions of racism. This is not a sustainable or acceptable approach, and this inconsistency should be addressed.

Further, Mann calls for coordination amongst regulators to ensure consistency in decision making. The PSA:

> …should convene fitness to practise staff across health and care professional regulators to probe their approach to cases involving racism, including antisemitism and discrimination. With complaints potentially arising from staff, patients, volunteers, contractors, students and members of the public, consistency is required.

In addition, Mann suggests that regulators secure "expert advice on relevant fitness to practise decisions, particularly where they involve matters relevant to those with protected characteristics, to support cultural awareness and learning among relevant decision makers."

Mann also recommends that training programs for registrants should not only include anti-racism instruction in the curriculum, but that they must model such behaviour within their institutions including disciplinary sanctions for both educators and students exhibiting racist behaviour.

On a related note, Mann says that "health and care professional regulators should work with patient representative groups to develop material that is clear, brief, and helpful for navigating the system."

System partners need to collect data on workforce indicators of inequality "such as workplace discrimination, career progression, bullying and harassment, and entry into disciplinary processes. Organisations are expected to use this data to develop and implement actions to address identified workforce race inequalities." In addition, organizations should be rated on their race equality and staff experience metrics, which results should be made public.

Freedom of Expression

Mann discusses how the freedom of expression of registrants fits into anti-racism guidance. He indicates that limitations are justifiable:

> What is acceptable or allowable by employers for staff in other settings is not automatically transferable to the NHS. The risk factor is both higher and more critical. A patient failing to present for or seek care because of their avoidable perception of an NHS service, of a perceived bias of a medical practitioner or other employee, is not acceptable.

Mann recommends that all employers publish consistent and precise policies as to what types of expression are acceptable in the health care setting. This could include not wearing health care uniforms on political marches or using the NHS logo or brand in association with third party organizations. Similarly, political badges, clothing or other identifiers should not be permitted in the health care context. However, a uniform policy should not inhibit religious expression.

In terms of political expressions in one's personal life, Mann says:

> This is not to say that healthcare professionals should be discouraged from or cannot express political beliefs in their personal life, but they must be particularly mindful of doing so lawfully and in a way that does not undermine public confidence.

Needless to say, it will be challenging to implement policies that appropriately balance the freedom of expression with the rights of patients, colleagues and other members of the public. Mann's suggestions require delicate application.

Racism by Patients

Mann's discussion on protecting health care workers from racist actions by patients is comparatively brief. He supports guidelines for "when staff face violence or discrimination from patients or the public. This should include clear, context-specific guidance on how, in non-life threatening situations, [institutions] support staff to refuse access to services (to protect their safety and dignity)."

Conclusion

In Mann's view, regulators have an important role to play in combatting racism, even if the employer is considered the first line of defence. Most Canadian jurisdictions see anti-racism initiatives as part of the mandate of regulators, with the notable exception of Alberta. Lord Mann's review provides suggestions as to what role regulators can play where anti-racism is viewed as part of their mandate.

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