CHARITY COMMISSION

DECISION OF THE CHARITY COMMISSIONERS FOR ENGLAND AND WALES MADE ON 2nd April 2001

APPLICATION FOR REGISTRATION AS A CHARITY BY THE GENERAL MEDICAL COUNCIL

1. *The issue before the Commissioners*

The **Commissioners** considered an application by the General Medical Council (**GMC**) for registration as a charity pursuant to **section 3(2) of the Charities Act 1993**. In reaching their determination of the application the **Commissioners** considered:

(i) whether, in the light of the prevailing legal authorities[1], the **Commissioners** had jurisdiction to consider the application for registration or whether they were bound by legal precedent.

(ii) if it was decided that the **Commissioners** can consider the charitable status of the **GMC** as it is currently constituted and operates, whether in the context of the current legal framework relevant to charitable status and the social and economic environment, the **GMC** is established for exclusively charitable purposes.

2. *Determination*

2.1 The **Commissioners** having:-

- considered the case which had been put to them by the **GMC** involving detailed legal submissions and full supporting evidence, and

- considered and reviewed the relevant law and the constitution and activities of the **GMC** and the social and economic environment within which it operates,

concluded that the **GMC** is a charity and accordingly is registrable with the Commission pursuant to **section 3(2) of the Charities Act 1993**.

2.2 In so determining the **Commissioners** concluded as follows:

2.2.1 there had been sufficient changes in the relevant legal framework, to the constitution and activities of the **GMC** and in the social and economic context within which the **GMC** operates, taken together, for them to reconsider the charitable status of the **GMC** despite the prevailing legal authorities.

2.2.2 it was open to them to adopt a purposive construction to the statutory provisions constituting the **GMC** to ascertain the purposes for which it was established.

2.2.3 the **GMC** is established for the charitable purpose of the protection, promotion and maintenance of the health and safety of the community by ensuring proper standards

[1] GMC v Inland Revenue Commissioners [1928] All ER 252
GNC v St Marylebone Borough Council [1959] AC 540

in the practice of medicine.

3. ***The application for registration as a charity***

3.1 *History and general background*

The **GMC** is a statutory body responsible for the registration of qualified and medical practitioners in the UK and for the regulation of training for, and the practice of medicine by, those registered medical practitioners.

The **GMC** was established by the **Medical Act 1858** and incorporated by the **Medical Act 1862**. Its functions were continued and expanded upon in subsequent legislation culminating in the **Medical Act 1978.** All relevant legislation relating to the **GMC** was consolidated within the **Medical Act 1983**. The **GMC** is now governed by the **Medical Act 1983** as subsequently amended.

The statutory functions of the **GMC** fall into three areas, namely:- the registration of qualified practitioners, oversight of medical education and oversight of professional conduct and fitness to practise of qualified practitioners.

The status of the **GMC** as constituted in 1928 was not accepted as charitable for the purposes of taxation by the Court of Appeal in the case of **General Medical Council v Inland Revenue Commissioners [1928] All ER 252**, (the **GMC case**) in a decision based on findings of fact by the Commissioners for Special Purposes of the Income Tax Acts. This decision was affirmed by the House of Lords in the case of **General Nursing Council v St Marylebone Borough Council [1959] AC 540** (the **GNC case**).

In 1999 the **GMC** made an application to the **Commissioners** for the registration of the **GMC** as a charity.

3.2 *The **GMC**'s application*

In summary the **GMC** argued that the Court of Appeal's decision in the **GMC case** was no longer decisive as to whether the **GMC** was now entitled to charitable status having regard to the considerable changes since 1928 to the constitution of the GMC, the legal environment and economic and social circumstances. The **GMC** is now established to serve the public interest in promoting the health of the community. The professional interests of qualified practitioners are incidental to this bearing in mind that in any event these interests are served by the British Medical Association. The **GMC** argued that its objects are now exclusively charitable.

A fuller statement and legal reasoning of the **GMC**'s application is set out in **paragraph 5** below.

4. ***The GMC today – its functions and activities***

The **Commissioners** noted the functions and activities of the **GMC** as set out below.

4.1 *The statutory functions of the **GMC***

These are now to be found in the **Medical Act 1983** and the **Medical (Professional**

Performance) Act 1995.

4.1.1 **The Medical Act 1983**

The **GMC** continues to exist with the functions given to it by the **Medical Act 1983** (the **1983 Act)**. These continue to fall into three areas:

- Registration of qualified practitioners;
- Oversight of medical education;
- Professional conduct and fitness to practise; including review of professional performance and provision of advice.

Registration

Under **section 2** of the **1983 Act**, the **GMC** is to continue to keep a register of medical practitioners containing their names and the qualifications which they are entitled to have registered.

Part III of the **1983 Act** provides for registration of persons with recognised overseas qualifications. **Part IV** sets out the details which the register shall contain and provides for the charging of fees by the **GMC** in connection with making entries on the register, and deals with the printing, publication and sale of the medical register and overseas medical register.

The consequences of registration are set out in **Part VI** of the **1983 Act** as follows:

- Any registered practitioner can recover charges in court for medical advice or attendance or surgery performed or medicine prescribed and supplied;

- Only registered practitioners may hold appointments in:

    - the navy, military or air service;
    - hospitals or other places receiving persons suffering from mental disorder;
    - hospitals within the NHS;
    - any prison;
    - any other public establishment, body or institution.

- Various official certificates are invalid unless signed by fully registered practitioners:

    - death certificates;
    - certificates of still birth of a child;
    - certificate of notification of food poisoning or notifiable disease;

    - certificate that new or expectant mother is unfit to work;
    - prescription of various categories of drug.

An offence of pretending to be registered is retained.

Education

An Education Committee was established by **section 15 of the Medical Act 1978** to have the general function of promoting high standards of medical education and co-ordinating all stages of medical education.

The specific functions of the Education Committee now appear at **sections 6 to 13 of the 1983 Act** and are set out in more detail below. It

- determines the extent of knowledge and skill required for medical qualifications and ensures that tuition at UK universities is sufficient to give students that knowledge and skill;

- determines the standards of proficiency required in qualifying exams;

- determines the patterns of work experience required for full registration with the GMC. This is defined as a year's satisfactory post-graduate work in a hospital with at least two periods in areas of medicine specified in regulations made by the Education Committee;

- can require medical schools to supply it with details of their courses and exams and can appoint visitors of medical schools;

- can make representations to the Privy Council where it finds that courses of study are not sufficient to give students the prescribed knowledge and skill. If the Privy Council finds that the **GMC**'s concerns are upheld it may declare that the examinations of that university/medical school no longer count as qualifying examinations for the purposes of registration as a medical practitioner with the **GMC** under the **1983 Act**.

Professional conduct and fitness to practise; including review of professional performance and provision of advice

Three committees, the Preliminary Proceedings Committee, the Professional Conduct Committee and the Health Committee, were established under **section 6** of the **Medical Act 1978**.

The functions of these Committees were preserved by **section1(3)** of the **1983 Act**. These are set out in **Part V** of the **1983 Act** as follows:-

(i) Preliminary Proceedings Committee

This Committee has the function of deciding whether any case referred to it in which a practitioner is liable to have his name removed from the register or to be suspended or to have conditions imposed upon his registration, should be referred for inquiry by either the Professional Conduct Committee or the Health Committee, or whether there is in fact anything to be considered further by the **GMC**.

(ii) Professional Conduct Committee

This Committee has power to determine whether a doctor has been guilty of serious professional misconduct. Where a doctor has been convicted of a

criminal offence or has been judged by this Committee to have been guilty of serious professional misconduct, then this Committee has power to:

- erase a practitioner's name from the register;
- suspend registration;
- make registration conditional upon compliance with specified requirements;

Professional misconduct is not defined in the legislation, but is essentially a modern re-casting of the "infamous conduct in a professional respect" referred to in the **Medical Act 1858**.

There are provisions for the periods of suspension and conditional registration to be extended. Where registration has been suspended, there is provision for registration to become conditional after the period of suspension has run out, for a period of up to three years, upon compliance with requirements specified by the Professional Conduct Committee. The **GMC** can impose such requirements as it thinks fit for the protection of members of the public or in the individual practitioner's interest.

A practitioner who has been struck off the medical register can apply to be re-registered. The fact that a doctor has been struck off previously, or otherwise suspended/been subject to conditional registration does not appear on the Medical Register.

(iii) The Health Committee

This Committee has power to suspend registration or to impose conditions upon registration in the case of a practitioner judged to be seriously impaired by reason of his physical or mental condition. This is to deal with a situation where a doctor is unfit to practise due to his or her own ill health.

Section 35 of the **1983 Act** continues the **GMC**'s power (originating in **section 5** of the **Medical Act 1978**) to provide advice to members of the medical profession upon standards of professional conduct or medical ethics.

4.1.2 Medical (Professional Performance) Act 1995

The stated purpose of this Act is to amend the **1983 Act** in order to make provision relating to the professional performance of registered medical practitioners and voluntary removal of names from the register.

The **Medical (Professional Performance) Act 1995** created a further two committees of the GMC:- the Assessment Referral Committee (ARC) and the Committee on Professional Performance (CPP). The ARC has power to direct a registered practitioner to undergo an assessment of his or her professional performance where that has been called into question. The CPP has power to suspend a registered practitioner or make registration conditional on compliance with directions where a medical practitioner's standard of professional performance is found to have been seriously deficient. Suspension and conditions on registration may be extended subject to various limitations. Where a practitioner is suspended, such conditions can be imposed on the lifting of a suspension, as the Committee "think fits to impose for the protection of the member of the public or in his (ie the suspended person's)

interest".

4.2 *The GMC's activities in pursuit of its statutory functions*

Registration

The **GMC** continues to maintain a register of qualified medical practitioners. Every graduate of a UK medical school is entitled by law to be entered upon that register. It is in fact necessary to be entered upon the register in order to practise as a doctor within the NHS. A fee is payable upon registration. There are separate categories of registration for overseas qualified practitioners when they are first registered. It is the doctor's primary medical qualification which determines the type of registration for which a doctor may apply.

Separate provisions exist for the registration of doctors who have qualified overseas and outside the UK and European Economic Area; and for doctors who have qualified outside the UK but within the European Economic Area.

The **GMC** is proposing to introduce revalidation of doctors' initial registration. Under this scheme, registered medical practitioners will be required to demonstrate to the **GMC**, on a regular basis, that they are up to date and remain fit to practise in their chosen fields. The **GMC** is currently engaging in a process of consultation upon the revalidation proposal. It is intended that doctors who are unable to show that they are up to date and remain fit to practise will lose their registration. New legislation will be needed in order to introduce revalidation and this can only be sought once the final model for revalidation has been approved by the **GMC**, probably in May 2001.

Education

The UK universities which have medical schools are accountable to the **GMC** for basic medical education. The **GMC**'s publication "Tomorrow's Doctors"[2] contains the **GMC**'s recommendations as to undergraduate medical education. The Education Committee expects broad compliance from the university medical schools with the guidance contained in "Tomorrow's Doctors".

The **GMC** also makes recommendations in relation to newly-qualified doctors in its publication "The New Doctor"[3] which contains recommendations as to the training of pre-registration house officers (ie those who have just graduated from medical school); and makes recommendations on the training for senior house officers in its publication "The Early Years"[4].

The **GMC** also exercises a visitorial role of the UK Medical Schools, enabling it to set procedures in motion, with a view to removing from an unsatisfactory institution its right to grant registrable qualifications. At the end of the procedures the power to remove rights from an unsatisfactory institution is vested in the Privy Council, if it accedes to a "petition" from the Education Committee.

Disciplinary function – Professional Conduct or Fitness to Practise

The **GMC** can take action if it finds that a doctor:-

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2 1993
3 1997
4 1998

- is guilty of "serious professional misconduct" ie conduct which makes the **GMC** question whether a doctor should be allowed to continue to practise medicine without restriction;
- has been convicted of a criminal offence in Courts in the UK or overseas;
- has been "seriously deficient" in his or her professional performance ie there has been a departure from good professional practice which is sufficiently serious to call into question a doctor's registration;
- is seriously ill and that this is affecting his or her ability to practise. Action may be taken in relation to doctors in all branches of medicine, including hospital and general practice, and whether in the NHS or in private practice.

The action may range from a warning letter to, in the most serious cases, restricting or removing a doctor's right to practise medicine.

There are three different procedures available to the **GMC** as follows:

- *The conduct procedures* which allow it to deal with cases where a doctor has been convicted of a criminal offence, or has done something which raises an issue of serious professional misconduct. The conduct procedures date from when the **GMC** was established.

- *The health procedures* provide for the handling of problems where serious illness makes the doctor a danger to patients or doctors. These cases normally involve mental illness, alcohol abuse or some form of addiction. The health procedures were introduced in 1980 (by the **Medical Act 1978**)

- *The performance procedures* allow for assessment of doctors whose general clinical performance is thought to be seriously deficient ie there has been performance seriously falling below the standards expected of doctors in their professional work. The procedures provide for assessment of the doctor's performance, and provides ultimately for suspension or restriction of a doctor's registration in the case of very serious deficiencies in performance. The **GMC** has issued guidance on "seriously deficient performance". The sort of conditions which might be imposed upon a doctor's registration fall into two general categories – restrictions on the scope of the doctor's practice, and conditions requiring the doctor to take action to improve the standard of his or her performance.

The advisory function

The **GMC**'s powers to give advice on "standards of professional conduct and on medical ethics" were conferred by **section 5** of the **Medical Act 1978** and consolidated in the **1983 Act**.

In pursuit of this function the **GMC** produces the book "Good Medical Practice"[5] which sets out the duties and responsibilities of a doctor registered by the **GMC**, and provides the standards against which a doctor will be judged if problems arise which call his or her registration into question. It also produces a range of other booklets covering issues such as confidentiality, serious communicable diseases, the ethical considerations in seeking patient's consent, and the role of doctors in management in

[5] 1998

healthcare. The **GMC** is currently working on two new publications "Good Practice in Medical Research: the Role of Doctors", and "Withholding and Withdrawing Life Prolonging Treatments: Good Practice in Decision Making".

When they are first registered with the **GMC** all doctors receive a copy of "Good Medical Practice" and other current guidance. New and updated versions of all guidance booklets are sent to every registered practitioner and guidance is also available on the **GMC**'s website.

The **GMC** also provides contact numbers for those with enquiries about

- professional standards
- revalidation
- regulation policy
- a doctor's fitness to practise
- **GMC** health procedures
- medical education
- registration.

5. The GMC's submission

The **Commissioners** noted the **GMC**'s argued case for registration as a charity.

In summary the **GMC** argued that the Court of Appeal's decision in the **GMC** case was no longer decisive of the **GMC**'s charitable status because:

(i) it was based on finding of facts by the Commissioners for Special Purposes of the Income Tax Acts where the nature of the evidence supporting the case that the objects, aims and activities were direct mainly to the interests of the medical profession was not apparent.

(ii) the finding that the protection of the public against professional incompetence of doctors was not "within the spirit and intendment" of the **Statute of Elizabeth I 1601** was inconsistent with the cases where the protection of human life has been held charitable.

(iii) the finding that the professional interest of doctors was served at least as much as the public interest could not be reached on the present poise of the **GMC**.

(iv) the finding that in 1928 the **GMC** was akin to the **Society for Writers to the Signet**[6] case and pursuing professional objects was not sustainable at the time and cannot be sustained now.

(v) the decision was unduly influenced by the fact that registration by the **GMC** entitled a doctor to pursue a patient for payment of a doctor's fees, thus providing personal benefit to doctors.

The **GMC** argued that it is established to serve the public interest and that the position has changed very considerably since 1928 so that any private benefit from being a registered practitioner is entirely incidental. The **GMC** argued that the main public

[6] Society of Writers to Her Majesty's Signet v IRC (1886) 2 TC 257
(Society held to be established for the professional advantage of its members)

interest promoted is the health of the community and that this object is served by:

- ensuring that only properly qualified people are registered as medical practitioners;
- promoting high standards in medical education;
- raising standards of professional conduct and medical ethics;
- imposing sanctions on those guilty of professional misconduct or criminal offences;
- suspending the registration of, or otherwise supervising, persons whose fitness to practise is seriously impaired through physical or mental illness;
- suspending the registration of, or otherwise supervising, persons whose performance has been seriously deficient.

The **GMC** argued that the public interest element is much more evident today than in 1928 given in particular the introduction of the NHS; the presence of a significant lay element on the **GMC**'s governing body; the **GMC**'s provision of advice on professional standards and medical ethics; the introduction of professional performance procedures in 1997 and enhanced powers of suspension; the introduction of a specialist register (ie for those doctors with specialist qualifications); the development of the education functions; the control of drugs prescriptions and the proposal to introduce a system for the revalidation of registered doctors. The **GMC** also argued that an analysis of its income and expenditure in its accounts supports its contention that its functions are being undertaken to promote the public interest.

The **GMC** also argued that the professional interests of registered medical practitioners were served not by the **GMC**, but by the British Medical Association which was the profession's representative body.

In conclusion the **GMC** argued that it objects are now exclusively charitable as being directed to:

- the furtherance of medical education;
- the improvement of medical ethics which are conducive to the promotion of health;
- the promotion of health and the effective relief of sickness throughout the community by:

    - ensuring only properly qualified people are registered as medical practitioners;
    - raising the standards of medical conduct and ethics;
    - protecting the public from persons guilty of serious professional misconduct, criminal offences, or who are unfit to practise on health grounds;
    - protecting the public from persons of seriously deficient standards of professional performance;
    - the protection of life;
    - establishing and improving standards of training and professional conduct of doctors.

6. ***Issues considered by the Commissioners***

Before considering the merits of the application, the **Commissioners** had to be satisfied as a first step, given the prevailing legal authorities, whether they had the

jurisdiction to consider the **GMC**'s application for registration as a charity (**paragraph 7**).

Only after being satisfied that they had the jurisdiction to consider the application, the **Commissioners** moved on to consider the charitable status of the **GMC**.

In considering whether the **GMC** was entitled to charitable status the approach adopted by the **Commissioners** was to determine as a matter of construction the primary purposes for which the **GMC** can be said to be established (**paragraph 8**). This involved the **Commissioners**:-

- considering the *means* by which the process of *construction* should be arrived at (**paragraph 8.2**).

- by applying the means they had determined, then determining the *overall function* of the **GMC** (**paragraph 8.3**).

- and finally considering what *purpose* that overall function served (**paragraph 8.4**).

Having ascertained the purpose of the **GMC** by the due process of construction, the **Commissioners** then *considered whether these purposes constituted exclusively charitable purposes in law* (**paragraph 9**).

Finally, the **Commissioners** considered whether such purposes, if charitable, *enured for the public benefit* (**paragraph 10**).

7. ***The Commissioners' jurisdiction to consider the GMC's application for registration as a charity.***

7.1 The **Commissioners** noted that the charitable status of the **GMC** as it was constituted under the **Medical Act 1858** was considered by the Court of Appeal in the **GMC case** in the context of determining whether the income of the **GMC** was applied 'to charitable purposes only' within the meaning **of section 37 of the Income Tax Act 1918** and this consideration was based on the facts as found by the Commissioners for the Special Purposes of the Income Tax Acts. The decision in the **GMC case** was affirmed by the House of Lords in the **GNC case**. The **Commissioners** noted that the **GMC case** was decided largely on the basis that the **GMC** operated for the benefit of members of the medical profession and therefore the application of the funds of the **GMC** could not be applied for charitable purposes only, notwithstanding that it had functions which would result in a benefit to the public - in particular by reason of the guarantee that persons on the register were properly qualified and that drugs prescribed would be of the proper quality and standard.

Accordingly the **Commissioners** were concerned as to whether they had jurisdiction to consider the charitable status of the **GMC** and in particular whether they were bound by the issue of *res judicata* and the doctrine of precedent.

7.2 The **Commissioners** noted that *res judicata* is a legal principle which prevents legal proceedings covering the same points of law in relation to particular issues between parties which have been previously determined by a court, from being considered further by the courts. The doctrine of precedent is that the junior courts, and indeed

the **Commissioners**, are bound by the rulings of superior courts.

Having considered carefully the doctrine of res judicata and the doctrine of precedent the **Commissioners** came to the conclusion that they were entitled to look at the charitable status of an institution again even though the courts have previously made a decision in respect of the same institution *provided that there are circumstances which would justify a reconsideration of the case.*

The **Commissioners** concluded it was well established that what the law regards as charitable may change with changing social and economic conditions such that purposes regarded as charitable and beneficial to the public in one age may not be so regarded in a later age and vice versa. (**National Anti-vivisection Society v IRC [1948] AC 31, Lord Simonds at page 74**). The **Commissioners** were satisfied that they can consider again issues of charitable status where an earlier legal decision is distinguishable from the case they are now being asked to consider (even where the same body is involved) if it appears to them that the court itself might take a different view because of changed circumstances. This is reflected in the provisions of **section 4(5)** of the **Charities Act 1993** which enables the question of the charitable status of an institution to be reopened if it was previously treated as charitable but no longer enjoys charitable status or vice versa.

7.3 The **Commissioners** agreed that circumstances which might permit the Commission to reconsider the charitable status of an institution notwithstanding legal precedent to the contrary would be:

(i) changes in the relevant legal framework; and/or
(ii) changes in the constitution and activities of the body concerned; and/or
(iii) changes in social and economic circumstances and the general environment within which the body operates or in which its purposes may be carried out.

The **Commissioners** concluded that they were free to reconsider the **GMC**'s charitable status provided there were significant changes in any of the areas identified. **The Commissioners** proceeded to consider each of these areas in turn.

7.3.1 *Changes in the relevant legal framework*

The **Commissioners** concluded that there had been no *major* changes in the law since 1928 which would call into question the decision of the Court of Appeal in the **GMC case**. It was accepted in the **GMC case** that the function of regulating and supervising the medical profession performed an important administrative function necessary for the proper protection of the public and in public interest. Notwithstanding this, the Court of Appeal concluded that on the facts in front of it such a function operated in addition to confer a benefit on the medical practitioners and had not been recognised in law as charitable. The **Commissioners** noted that this reflects the clearly established legal principle that not everything which is beneficial to the community is automatically charitable (**Williams Trustees v IRC 1947 AC 447 Lord Simonds at page 455**).

However, the **Commissioners** also noted that an institution which has a regulatory function can be a charity as long as any regulatory function performed is not the primary purpose of the body but is a function ancillary to a recognised charitable purpose. (**Royal College of Surgeons of England and Wales v National Provincial**

Bank [1952] AC 631).[7]

The **Commissioners** also noted the approach taken by the Court of Appeal of New Zealand in the case of **Commissioners of Inland Revenue v Medical Council of New Zealand [1997] 2 NZLR 297** (the **Medical Council of New Zealand case**), in reaching its decision that the Medical Council of New Zealand (a body with functions very similar to the General Medical Council) was established for a charitable purpose beneficial to the community by ensuring high standards in the practice of medicine and surgery and the protection of the public. This decision, whilst of persuasive value only in English law, suggested to the **Commissioners** that the judgments in both the **GMC** and **GNC cases** should be examined carefully to determine their application to the purposes and activities of the **GMC** in modern times.

7.3.2 *Changes in the constitution and activities of the **GMC***

The **Commissioners** noted the introduction of the health procedures in 1980 (by virtue of the **Medical Act 1978**) gave the **GMC** power to act in a situation where a doctor is unfit to practise due to his or her own ill-health. The **Commissioners** also noted the introduction of the performance procedures in 1997 (by virtue of the **Medical (Professional Performance) Act 1995)** gave the **GMC** power to act where the professional performance of registered medical practitioners has been called into question and found by the **GMC** to have been "seriously deficient".

The **Commissioners** also noted the introduction of a statutory power to provide advice to registered medical practitioners on matters of medical ethics and professional conduct,(by virtue of the **Medical Act 1978)**.

The **Commissioners** noted these constitutional changes to the **GMC** in terms in of its statutory functions - and attendant activities**.** The **Commissioners concluded** that the **GMC** was now a body which was significantly different to the body constituted under the **Medical Act 1858** and to the body considered in the **GMC case**.

7.3.3 *Changes in social and economic circumstances and the general environment within which the **GMC** operates*

The **Commissioners** noted the introduction of the National Health Service in 1948 which transformed the environment in which medical services were provided, and more recently not only the increased regulatory activity within society generally but also general recognition that regulation of essential public and quasi public functions is necessary and in the public interest. These developments indicated to the **Commissioners** the changed social and economic context within which the **GMC** now operates. The **Commissioners** considered these developments highly relevant to a modern consideration of the purposes for which the **GMC** can, today, be said to be legally established.

7.3.4 The **Commissioners** concluded that by virtue of –

- the persuasive legal authority of the **Medical Council of New Zealand case** which recognised the equivalent New Zealand body as charitable,

[7] College found to be charitable for the promotion of the study and practice of the art and science of surgery, the professional protection of its members provided by its regulatory functions being ancillary to that object.

- the changes to the statutory functions of the **GMC** introduced pursuant to the **Medical Act 1978** and the **Medical (Professional Performance) Act 1995** and the activities which it pursues in furtherance of its functions,

- changes in the provision of medical services to the general public through the **National Health Service** since **1948** and the developed perception since 1959 that regulation is public benefit centred rather than private benefit centred,

there exists a sufficient basis for the Commission to reconsider the charitable status of the **GMC** despite the prevailing legal authorities.

8. ***The purpose for which the GMC may be said to be established***

8.1 *Generally*

8.1.1 The **Commissioners** noted, particularly in the case of statutory bodies, that the purposes of such a body are not always expressed or designated within its constitutional document. Where the purposes are not expressed or designated the court and the **Commissioners** must as a process of construction identify the primary purposes for which the institution is established before they can come to a view as to whether these purposes might be charitable. The **Commissioners** noted that while as a general rule of construction the courts do not normally look beyond the plain language used in the governing document establishing the body, they may, where necessary and appropriate, look at the circumstances in which a body came into existence and the sphere in which it operates in order to come to a view about the purpose for which it is established. See **Incorporated Council of Law Reporting for England and Wales v AG [1972] Ch 73, Sachs LJ at page 91**.

8.2 *The process of construction*

8.2.2 The **Commissioners** considered the process of construction they should follow in considering the purpose for which the **GMC** may be said to be established. The **Commissioners** noted that in the **GNC case** Lord Keith, with whom Lord Tucker agreed, said that the only way by which the main objects of the General Nursing Council can be ascertained is by looking at the objects as set out in the **Nursing Act 1957** and the language used through which Parliament has expressed its intention and it is with the objects for which the Council is immediately and directly constituted that the court is concerned and not with the results of the activities second or third hand.[8] Lord Keith indicated that the court is not concerned with indirect consequences nor entitled to speculate on what the ultimate purposes, if any, Parliament had in view.[9]

Lord Keith concluded that under the legislation, the General Nursing Council was created to provide a register and roll of nurses and impose rules to secure that they were properly qualified for admission. He had no doubt that the Nursing Act 1957 was of public benefit - as one must assume most legislation to be - but the question is whether what the Council was created to do, and does, is charitable. The test was to consider the content or character of the functions discharged by the Council and to ask whether these are charitable. He was unable to hold that they were.

8.2.3 However, the **Commissioners** also noted that the majority of the judges in the **New**

[8] [1959] AC 540, Pages 559

[9] at page 561

Zealand Medical Council case (a case of persuasive authority only in English law), having considered the authority of the **GMC** and **GNC cases**, and accepting that these decisions should be accorded respect and enjoy considerable influence in New Zealand, did not think that they should be accepted as being decisive if it appeared to the New Zealand court to be unsatisfactory. The majority approach was to regard the emphasis placed on the immediate statutory functions of the councils in question in both the **GMC case** and the **GNC case** as narrow and misplaced and that a more purposive approach to the construction of the statute creating the Medical Council of New Zealand should be adopted. This purposive approach led the majority to conclude that the Medical Council of New Zealand was charitable. The **Commissioners** noted in particular the approach taken on the question of construction by Mr Justice Thomas where he said that the focus should be on the wider purpose Parliament sought to discharge in enacting the legislation creating the Medical Council of New Zealand rather than the immediate functions under the legislation.[10]

8.2.4 The **Commissioners** considered whether they were bound by the approach to construction as set out by Lord Keith in the **GNC case** and, if so, whether they were consequently confined only to looking at the direct and immediate effects of the designated statutory functions of the **GMC**, or whether they could adopt a purposive approach to the designated statutory functions adopted in the **New Zealand Medical Council case** in order to arrive at the purpose for which the **GMC** was established. The **Commissioners** considered whether the courts would approach this question of construction today in the narrower way indicated by Lord Keith or take a purposive construction favoured in the **New Zealand Medical Council case**.

8.2.5 The **Commissioners** recognised it was not uncommon in the case of statutory bodies for the purposes of the organisation not to be expressed within the statutory provisions which were confined to the designated functions the body was required to carry out. In the case of the **GMC** the statutory provisions did not designate a purpose for which the body was established. The **Commissioners** noted that although there are clear rules governing the circumstances where the court would give a purposive construction to statutory provisions[11], there is little legal authority relating to whether a purposive approach could be taken to the construction of statutory bodies for the purpose of determining charitable status. By contrast the court had taken a purposive approach to the construction of non-statutory corporate bodies where there was no designated purpose but the designated functions were not charitable in themselves. See **Incorporated Council of Law Reporting for England and Wales v AG [1972] Ch 73**[12]**, Sachs LJ** at **Page 91 (**referred to in **paragraph 8.1.1** above**)**.

However the **Commissioners** did note that in other areas the courts were prepared to take a purposive approach. For example in **Pepper (Inspector of Taxes) v Hart [1993] AC 593**, the House of Lords held that the courts may refer to reports of proceedings in Parliament in order to discover Parliamentary intention when faced with statutory provisions which were ambiguous or obscure or where giving words their literal meaning would lead to absurdity. The **Commissioners** also noted that under **section 3** of the **Human Rights Act 1998** there was a requirement to construe

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10 Commissioners of Inland Revenue v Medical Council of New Zealand [1997] 2 NZLR 297 at Page 316 10 to 45

11 Halsbury's Laws of England Vol. 44(1) paras 1475-1482

12 Council held to be charitable for furthering the sound development and administration of the law by the preparation and publication of law reports. The memorandum of association referred only to the function of preparation and publication of law reports at moderate price and did not expressly state the overall purpose for which the Council was established.

legislation compatibly with the European Convention on Human Rights so far as it was possible to do so. This seemed to the **Commissioners** to be a further example of a trend towards a purposive approach to the construction of statutes where appropriate.

8.2.6 The **Commissioners** concluded that the courts would consider the purpose for which a statutory provision was made as part of the process of construction and where necessary, and in defined circumstances, the court would adopt a purposive approach to the construction of statutes in order to arrive at the legal meaning and effect of a statutory provision. The concept of a purposive construction was not new and its application by the courts in modern times has increased. The only contemporary authority which has recognised a charitable purpose as a consequence of applying a purposive construction to a statutory body would appear to be the **Medical Council of New Zealand case,** which is persuasive authority only.

8.2.7 The **Commissioners** considered that the rules of construction by which the charitable purpose of a body fall to be ascertained should be applied consistently and even handedly irrespective of the legal structure governing the body in question. Accordingly, they concluded, that it would be appropriate to adopt the same purposive approach when construing the purposes for which a statutory body is established whose designated functions were set out in the statute but not its purpose as is adopted by the courts when construing the purposes of a non statutory corporations. In the case of statutory bodies this would mean identifying the purpose of the organisation, from the statutory provisions and where this was not apparent, from ministerial statements during the passage of the legislation, or from earlier Green or White papers, or in suitable contemporary material. In cases where this material did not exist the **Commissioners** might need to consider very carefully any authoritative statements made after the passage of the legislation. Other sources might include acceptance by Government, authoritative sources or the general public of the purposes for which an organisation may exist and the social and economic context in which it operates. Care would be needed to ensure that any subsequent statements – which would be able to take account of any significant change in social and economic circumstances since the passage of the initial legislation – were indeed probative evidence of the organisation's purposes.

In cases where specific legal authority (as here) suggested a narrow approach to construction, the **Commissioners** would need to give due weight to these judicial precedents in determining the purposes of a particular organisation and clear and cogent evidence would be needed in order to depart from earlier decisions. Nevertheless, if the weight of the extraneous evidence of the purposes suggested that the court would not follow the original approach then it was open to the **Commissioners** to depart from it

Once the purposes of the statutory body have been so identified, the **Commissioners** would, in their normal way, consider whether those particular purposes were in fact charitable.

8.3 *The overall function of the GMC*

8.3.1 The **Commissioners** proceeded to consider the overall function for which the **GMC** may be said to be established before considering what purposes, if any, that function served and then whether those purposes could be charitable.

8.3.2 The **Commissioners** considered the statutory functions of the **GMC** as set out in the **1983 Act** and the **Medical (Professional Performance) Act 1995** and the activities carried out in pursuance of such functions as referred to in **paragraph 4** above.

The **Commissioners** considered that the designated functions of the **GMC** were clear and no particular difficulties arose in relation to their meaning. The **Commissioners** considered that the **GMC** continued to have three functions :- registration, oversight of education and oversight of medical professional conduct, and fitness to practice. In the view of the **Commissioners** the principle function is maintaining the register and thereby licensing doctors to practise medicine in the UK. The other two functions of education and fitness to practise were both directly linked to the registration function and supportive of it.

In relation to the educational function only those who have graduated from one of the medical schools specified in the legislation may be entered on the **GMC**'s register. The **GMC** has a role in ensuring that the courses of study and qualifying exams at those schools are appropriate to qualify students to practise medicine in the UK and to be entered on the **GMC**'s register. Graduation from a UK medical school automatically entitles a graduate to registration with the **GMC**. Similarly, in relation to doctors qualified abroad, the **GMC** is concerned to establish that they are suitably qualified to be entered on the register.

The **Commissioners** concluded that apart from its advisory work the **GMC** does not engage in direct educational activity itself. It does not itself provide training or education to doctors or aspiring doctors. It does not publish educational material except in an advisory context. Rather it oversees the provision of medical education by others and sets the required standard of qualification to practise as a doctor in the UK.

Further the **GMC** did not itself engage in the promotion of scientific research in medicine nor does it provide funds for such research.

In relation to the 'fitness to practise' procedures, the **Commissioners** concluded that these all have a direct impact on a doctor's registration. If a doctor's fitness to practise is found by the **GMC** to be questionable whether on grounds of misconduct, health, or deficient performance, this has direct consequences on the doctor's registration, which may be removed, suspended, made conditional or subject to limitations. In addition, the **GMC**'s publication "Good Medical Practice" was explicitly linked to doctor's registration.

The **Commissioners** considered that the registration function of the **GMC** remains the main function, supported by the 'educational' and 'fitness to practise' functions, as was the case in 1928. The 'educational' and 'fitness to practise roles' are facets of the regulatory machinery – the maintenance of a register of those licensed to practise medicine in the UK.

The advisory function is primarily related directly to the doctors' professional performance rather than to the health of the patient, although the outcome of a doctor following **GMC** advice would be of benefit to patients.

The centrality of the registration function, and its primary purpose were also clear from the **GMC's** consultation document upon the proposed 'revalidation' process whereby registered medical practitioners would be required to show (every few years)

that their continued registration is justified.

The **Commissioners** were of the view the proposed revalidation process is also supportive of the **GMC**'s regulatory activity.

The **Commissioners** noted that the **GMC** itself is not involved with tending the sick, or otherwise directly providing healthcare.

8.3.3 The **Commissioners** concluded that the direct and immediate overall function of the **GMC** in carrying out its designated functions was the regulation and supervision of the medical profession. That this was achieved by the maintenance of an accurate and up to date register of those qualified and licensed to practise medicine in the UK and by reference to which the **GMC** :

- registered those duly qualified
- specified, and monitored, the educational requirements for entry on the Register and thus for the practice of medicine in the UK and;
- terminated, suspended or otherwise limited the registration of those whose fitness to practise medicine in the UK is, after investigation by the **GMC**, is found to be in question for a variety of specified reasons;
- advised registered medical practitioners about the standards of professional conduct and medical ethics appropriate to their work as registered medical practitioners.

8.4 *The purposes of the **GMC***

8.4.1 ***The approach to be adopted on the issue of construction***

8.4.1.1 Having decided that the direct and immediate overall function of the **GMC** is the regulation of medical practitioners, the **Commissioners** noted and accepted, following the relevant authorities (the **GMC** and **GNC cases**), that a purpose of regulating a profession, although it might be seen as beneficial to the public, was not itself a charitable purpose in law and was only capable of being an acceptable function of a charity if it was subordinate or otherwise ancillary to an accepted charitable purpose.[13]

8.4.1.2 The **Commissioners** noted that at the core of the three judgments in the **GMC case** was the acceptance on the evidence that the purpose of the regulatory function was to operate equally for the advantage of the medical profession (Lord Hanworth[14]), to operate primarily for the benefit of the medical profession (Sargeant LJ[15]) and primarily to secure the privileges of the medical profession for their own benefit (Lawrence LJ[16]). As a consequence the **GMC** was viewed by the Court of Appeal in the context of a professional body established for the advantage of its members and on this basis the **GMC** was not a charity.

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13 Royal College of Surgeons of England and Wales v National Provincial Bank Ltd [1952] AC 631

14 [1978] All ER 752 at page 260

15 at page 261

16 at page 261

8.4.1.3 The **Commissioners** also noted that these conclusions were based essentially on findings of fact by the Commissioners for the Special Purposes of the Income Tax Acts and came before the courts by way of a case stated for the opinion of the court and without an independent review of facts.

8.4.1.4 The **Commissioners** also noted that in the **GNC case** (which affirmed this decision), Lord Morton[17] accepted and applied the reasoning of Lawrence LJ in the **GMC case** and found that the purpose of both bodies was to operate for the benefit of the professions concerned, Lord Cohen[18] found that a principal object was the enhancement of the quality and status of nurses, Lord Keith[19] (in so far as he said he was allowed to look further at the effect of the legislation as distinct from considering only the actual functions imposed) found that the purpose was to raise the professional status of nurses and to protect them in their profession and Lord Somervelle[20] found that a principal object was the enhancement of the status of nurses.

8.4.1.5 The **Commissioners** also noted in the **GNC case** that apart from Lord Keith and Lord Tucker, the majority of the Law Lords were prepared to look at the broader effect of the legislation in order to ascertain the purposes of the General Nursing Council, but in so doing they found these purposes substantially benefited the nursing profession and the body could not therefore be charitable.

8.4.1.6 The **Commissioners** therefore concluded that the essence of the decisions in both the **GMC case** and the **GNC case** was that the regulation of the respective professions on the evidence at the very least operated also substantially for the benefit and advantage of the professions themselves.

8.4.1.7 The **Commissioners** noted the purposive approach to the issue of statutory construction taken by the majority in the **New Zealand Medical Council case**.

8.4.1.8 The **Commissioners** considered that since the **GMC case** and **GNC case** had been decided there has developed a broadly based acceptance that regulation of public, quasi public and sometimes commercial activity is necessary and in the public interest. ***Depending on its nature much regulation is viewed now more as a means of protecting the public rather than as a means of protecting and promoting for their benefit those professions, organisations or businesses which are subject to the regulation.*** By contrast the relevant legal authorities (no doubt in part because of the relatively narrow focus for regulation at the time and the expectations of that regulation) saw regulation as a function of primary benefit to those being regulated rather than as a protection to the public.

8.4.1.9 The **Commissioners** noted that both the constitution and activities of the **GMC** and the social and economic environment within which it operates today was significantly different from that which obtained in 1928 when the charitable status of the **GMC** as it was then constituted was first considered.

The particular functions conferred in by the **Medical Act 1978** (and consolidated with other legislation in the **1983 Act**) and **the Medical (Professional) Performance Act 1995** significantly affected the functions and activities of the **GMC** – see **paragraph 4** above.

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17 [1959] AC 540, at pages 554/5

18 at page 557

19 at page 562

20 at page 565

The creation of the National Health Services (NHS) in 1948 recognised the public interest in the health of the community and the existence of a properly regulated medical profession was seen as an integral underpinning to this service.[21] Most members of the public received medical care through the NHS and only registered medical practitioners are allowed to practise in the NHS.

8.4.1.10 The **Commissioners** noted finally that the British Medical Association is the body established to promote and enhance the profession of medical practitioners and the interests of its members. The role of the **GMC** - and the perception of the role - is not, other than incidentally, directed to the promotion and protection of medical practitioners.

8.4.1.11 Given all these factors the **Commissioners** decided that they would be justified in looking beyond the direct and immediate effect of carrying out the designated functions of the **GMC** as set out in the legislation to establish the purposes for which the **GMC** was now established notwithstanding what was said by a minority of the Law Lords in the **GNC case**. In the **Commissioners** view the courts would adopt such an approach if the charitable status of the **GMC** were to be considered by the courts today.

8.4.1.12 The **Commissioners** therefore considered that they should look for the reason for constituting the regulatory regime as established by Parliament and as constituted in the **GMC**.

8.4.2 Ascertaining the purpose of the GMC

8.4.2.1 The **Commissioners** considered that little assistance could be gleaned from the relevant statutory provisions or from Parliamentary material available in relation to the relevant legislation, although there is some suggestion in the Parliamentary debates on the Medical (Professional Performance) Bill[22] that the functions of the **GMC** were to protect the public and to maintain standards of medical care. The **Commissioners** also noted that in a recent legal decision[23] involving the **GMC**, the

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21 Report of the Committee of Inquiry into the Regulation of the Medical Profession (The Merrison Report' HMSO 1975)

22 Medical (Professional Performance) Bill 1995 in the House of Commons. Secretary of State for Health Second Reading 'This is an important Bill. Its purpose is to ensure that high quality, professional performance is maintained by all doctors…. It will help ensure that patients receive the standard of caring and up-to-date professional practice that they have the rights to expect.' '….the standards demonstrated by a small number of practitioners will from time to time fall below what patients have a right to expect. In those cases proper procedures must exist that will enable action to be taken to protect patients and raise the quality of care'

23 R v GMC, Ex parte Toth [2000] 1 WLR 2209, Lightman J at page 2217
'The provisions in the Act and Rules to which I have referred are designed to protect the public from the risk of practice by practitioners who for any reason (whether competence, integrity or health) are incompetent or unfit to practice and to maintain and sustain the reputation of, and public confidence in, the medical profession. The public have higher expectations of doctors and members of other self-governing professions, and their governing bodies are under a corresponding duty to protect the public against the incompetent as well as the deliberate wrongdoer; serious professional misconduct includes serious negligence; and whether the treatment of a patient constitutes serious professional misconduct is to be judged by the proper professional standards in the light of the objective facts about the individual patient: see McCandless v General Medical Council [1996] 1 WLR 167. The Act and Rules set out to provide a just balance between the legitimate expectation of the complainant that a complaint of serious professional misconduct will be fully investigated and the need for legitimate safeguards for the practitioner, who as a professional person may be considered particularly vulnerable to and damaged by unwarranted charges against him'.

judge referred to the relevant legislation constituting the **GMC** and commented that it was designed to protect the public from incompetent medical practitioners and to secure the reputation and public confidence in the medical profession.

8.4.2.2 The **Commissioners,** following the approach set out by **Sachs LJ** in the **Incorporated Council of Law Reporting case** (as referred to in **paragraph 8.1.1** above), proceeded to consider the consequences flowing from the activities of the **GMC** in carrying out its designated regulatory functions in order to ascertain the purposes for which the **GMC** was established and, subsequently, whether these might be charitable. The **Commissioners** considered those consequences to be

(i) as a result of the **GMC**'s regulatory activities, the general public has the assurance that their doctors are registered by the **GMC** and should as a result be properly qualified and educated to an appropriate standard to practise medicine; and that there is machinery to act if their doctors fall short of accepted standards

Patients are therefore protected from those falsely claiming to be doctors and from doctors who are found to be incompetent or professionally inadequate

(ii) doctors who fall short of the appropriate standards of professional conduct or performance can in appropriate circumstances be helped to improve their performance - for example through further education and training or health treatment. This ensures a minimum standard of competence which enures for the protection of the public and the preservation of health.

(iii) doctors who are registered by the **GMC** can practise and earn their livelihood as doctors within the UK, whether in NHS, in private practice or a combination of the two. Additionally there is a statutory power for registered medical practitioners to sue for the payment of fees relevant to the practice of private medicine.

(iv) the **GMC's** activities may protect the reputation and status of the profession – medical practitioners are regulated and only those properly qualified may practise medicine both within the NHS and privately; the profession is protected from those falsely claiming to be doctors.

The **Commissioners** concluded that whilst in theory it is possible to practise medicine privately without being registered with the **GMC**, in reality that is not possible because much private medicine is funded through insurance companies which will only pay the fees of registered medical practitioners.[24] It is therefore necessary to be a registered medical practitioner in order to practise as a doctor in the UK.

8.4.2.3 The **Commissioners** considered the potential impact on the community of the regulatory functions of the **GMC**. These they found to be as follows:

- *To ensure through regulation that the competence of medical practitioners is*

[24] In addition, all graduates of UK medical schools are entitled to registration with the **GMC** and provisional registration is in fact required before the new graduate can start the first year of post-graduate medical training namely employment of the pre-registration house officer in the NHS. That is because registration with the **GMC** is a legal requirement for employment as a doctor within the NHS. On successful completion of that pre-registration health officer the registration with the **GMC** becomes "full registration".

such that they cannot adversely directly affect the life, wellbeing, or health of patients. A doctor who is not properly qualified, or who whilst properly qualified engages in serious professional misconduct or whose professional performance is otherwise seriously deficient (whether on grounds if ill-health or otherwise), clearly has the potential to do damage and harm in the community.

- *To ensure through regulation that medical practitioners who are not adequately qualified or their professional conduct or performance is not up to standard in some way that they are not able to properly treat health problems of their patients does not arise*. The **GMC's** education and fitness to practise functions guard against this situation arising.

- *To ensure that medical practitioners acquire the knowledge and skill they need first to embark upon a medical career and that their knowledge and skill is up to date and adequate to allow them to continue to practise.* The **GMC**'s educational role, through setting standards of knowledge needed for graduates from a UK medical school and making recommendations as to graduate training and through proposed revalidation, relate to this purpose.

- *To ensure that patients are protected from those who are shown to have fallen short in a specific area of practice.* The **GMC**'s fitness to practise functions cover the spectrum of erasing a doctor from the register; prohibiting practice for a period by means of suspension from the register; limiting the practice of a doctor in a particular area for example providing that he or she might practise only under supervision or that he or she might not practise in specified areas of medicine whilst specifying that the doctor must engage in further education and training with a view to getting the doctor back up to standard in a particular area.

- *To maintain the value in the nation's medical practitioners.* Training a doctor is a costly exercise and an investment by and for the nation. The **GMC**'s fitness to practise functions and particularly those relating to doctors deemed unfit to practise on grounds of their own ill health enable the **GMC** to suspend their registration or make continued registration conditional, usually upon the receipt of medical treatment or further training. Therefore if a doctor can be enabled to practise again in a fit and proper way this is of benefit both to the doctor's immediate patients and to the community more generally.

- *To establish and maintain the public's confidence in its doctors*. The public increasingly expect to obtain proper standards of medical treatment from its doctors (whether hospital doctors or GPs). The **GMC**'s own literature emphasises the importance of a doctor/patient relationship, for example in connection with confidentiality. The educational and fitness to practise functions of the **GMC** coupled with the necessity to be registered with the **GMC** in order to practise medicine in the UK either within the NHS or privately, supports the proposition that one purpose of the **GMC**'s functions is to maintain public confidence in the nation's doctors.

8.4.2.4 The **Commissioners** concluded that the regulation of medical practitioners by the **GMC** is a necessary and essential feature underpinning, and directed to securing, proper standards in the provision of medical services in the community both within the NHS and in private practice through which public confidence in the medical

treatment provided to the community is secured. Whilst the **Commissioners** recognised that the system of regulation also conferred benefits on the profession through the ability to practise and through regulatory procedures which might afford protection to the reputation of medical practitioners generally and which in the case of privately provided medical treatment entitled them to sue for fees they did not accept that to the extent these beneficial consequences might exist they could be said to be a purpose for which the **GMC** was established.

8.4.3 The overall purpose of the GMC

From this analysis the Commissioners concluded that the overall purpose for which the GMC was established was ***to protect, promote and maintain the health and safety of the community by ensuring proper standards in the practice of medicine*** thereby securing public confidence in the practice of medicine.

9. ***Whether the protection, promotion and maintenance of the health and safety of the community by ensuring proper standards in the practice of medicine is a charitable purpose in law.***

9.1 Having determined that the purpose for which the **GMC** is established is the protection, promotion and maintenance of the health and safety of the community by ensuring proper standards in the practice of medicine, the **Commissioners** considered whether such a purpose is charitable in law. In so doing the **Commissioners** took into account the impact on the community of the regulatory functions of the **GMC** as identified in **paragraph 8.4.2.3** above in assessing whether this purpose can be regarded as charitable.

9.2 The **Commissioners** also had regard to their general approach in recognising new charitable purposes. The Commission's approach was originally set out in 1985.[25] The **Commissioners** considered that they will take a constructive approach in adapting the concept of charity to meet constantly evolving social needs and new ideas through which those needs can be met. Acting within the legal framework which governs the recognition of new charitable purposes, the **Commissioners** would aim to act constructively and imaginatively.

In considering new purposes as charitable the **Commissioners** would look closely at those purposes which have already been recognised as charitable either under the **Preamble to the Statute of Elizabeth** or in subsequent decisions of the court or the Commission. The **Commissioners** would also look at the contemporary needs of society and relevant legislation passed by Parliament and, where Convention rights are an issue, to the European Convention on Human Rights and decisions of the European Commission and the Court of Human Rights.

In identifying a new purpose as charitable the **Commissioners** would, following the legal framework, need to be clear that there exists a sufficient correlation between those new purposes and purposes already accepted as charitable. Whilst in most cases a sufficiently close analogy may be found, in others an analogy may be found by following the broad principles which may be derived from the scope of the **Preamble** or from decided cases of the court or the **Commissioners**.

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[25] Commissioners Annual Report 1985 paras 24-27

In addition, the **Commissioners** would need to be clear that the purpose was not a political purpose as understood in charity law and that the purposes are expressed with clarity and certainty to facilitate any future monitoring by the **Commissioners** and any subsequent control by the court should that be necessary.

9.3 The **Commissioners** therefore considered whether any analogies existed to purposes already accepted as charitable which may be relevant to the purpose for which they had decided the **GMC** was established. The **Commissioners** identified two purposes. The first is the protection of human life. The second is the promotion of health.

9.4 The protection of human life as a charitable purpose

The **Commissioners** noted and recognised that it was well established that the protection of human life and property is accepted as a charitable purpose in law falling within the scope of the Preamble[26] and recognised by the courts. The **Commissioners** noted that gifts for the Royal National Lifeboat Institution[27] and a voluntary non profit fire brigade[28] had been held to be charitable on the grounds of protection of human life. The **Commissioners** also noted that they had registered a number of bodies whose purpose were directed at the prevention of damage to and loss of life.[29]

9.5 The promotion of health as a charitable purpose

The **Commissioners** noted and recognised that it was well established that the promotion of health is accepted as a charitable purpose falling with the scope of the Preamble[30] and recognised by the courts. The **Commissioners** noted that the provision of hospitals, even private hospitals, had been accepted as charitable[31] and even a rest home for nurses had been held to be charitable[32] since it provided a means for restoring the efficiency of nurses in the performance of their hospital duties.

9.6 The **Commissioners** concluded that the potential impact of the regulatory functions of the **GMC** referred to in **paragraph 8.4.2.3** above supported the purpose to protect, promote and maintain the health and safety of the community by ensuring proper standards in the practice of medicine as charitable in law by way of analogy with the charitable purposes of the protection of human life and the promotion of health.

10. ***Whether the charitable purposes of the protection, promotion and maintenance of the health and safety of the community by ensuring proper standards in the practice of medicine as discharged by the GMC was for the public benefit.***

10.1 The **Commissioners** noted that the public interest in, and benefit flowing from, the regulation of medical practitioners had been accepted in both the **GMC case** and in the **New Zealand Medical Council case** and concluded that the regulation and supervision of the medical profession performed an important administrative function established under Parliamentary authority and which must have been perceived by

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26 Reference to the repair of sea banks which protects both life and property from encroachment by the sea

27 Re David (1889) 43 ChD 27, CA

28 Re Wokingham Fire Brigade Trusts [1951] Ch 373

29 The Royal Society for the Prevention of Accidents

30 Reference to the maintenance of sick and maimed soldiers and mariners and the relief of aged or impotent persons as charitable.

31 Re Resch's Will Trusts [1969] 1 AC 514

32 Re White's Will Trusts [1951] 1 All ER 528

Parliament to be necessary for the proper protection of the public and in the public interest.

10.2 The **Commissioners** further considered whether any of the consequences of the work of the **GMC** identified in **paragraphs 8.4.2.2** and **.3** above which enured for the benefit of medical practitioners and the profession, that is to say, the ability to practise, protection to reputation and the ability to sue for fees, could be said to be a substantial purpose of the **GMC**.

The **Commissioners** followed the approach taken **in McGovern v Attorney General [1982] Ch 321**, by Mr J Slade at **pages 340/1** to the effect that purposes of an otherwise charitable nature do not lose it merely because, as an incidental consequence of the activities pursued, there may enure benefits of a non-charitable nature. He quoted as an example the approach taken in the case of **Incorporated Council of Law Reporting** case where the Court of Appeal had rejected contentions that the Council of Law Reporting was a non charitable body merely because publication of law reports supplied members of the legal profession with the tools of their trade.

10.3 Having considered the extent of benefits to medical practitioners the **Commissioners** concluded that

- the purpose of the regulation of medical practitioners by the **GMC** was primarily for the benefit of the public and not for the benefit of medical practitioners or the medical profession.

- where benefit to practitioners or to the profession did arise, in particular, the ability to practise, to the protection to reputation which the regulation provided and the ability to sue for fees in the case or private medical treatment, these were ancillary or incidental to the purpose set out in **paragraph 8.4.3** above.

10.4 Having decided that the purpose of the regulation was for the benefit of the public as opposed to the benefit of the medical practitioners being regulated, and that any benefits to medical practitioners or to the medical profession were of an ancillary or incidental kind the **Commissioners** concluded that the **GMC** was established for the public benefit.

11. ***Conclusion and determination***

11.1 The **Commissioners** concluded that the **GMC** was established both for the charitable purpose of the protection, promotion and maintenance of the health and safety of the community by ensuring proper standards in the practice of medicine and also for the public benefit, and that the overall regulatory function of the **GMC** was the essential method of achieving such a purpose but nevertheless subservient to that purpose.

The **Commissioners** concluded therefore that the **GMC** was a charity in law.

11.2 The **Commissioners** reached their conclusion in relation to the **GMC** on its own particular facts and by applying the relevant law only to the constitution, functions and activities of the **GMC** as they now are.

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