

20 October 2020

On 29 November 2019, the Ministry of Health (MOH) Workgroup to Review The Taking of Informed Consent and the SMC Disciplinary Process (Workgroup) issued its Report detailing various recommendations on the taking of informed consent and on the SMC disciplinary process.

The Workgroup's Report was accepted in full by MOH in December 2019, and some of these recommendations have been effected by the newly-minted amendments to the Civil Law Act (Chapter 43) and the Medical Registration Act (Chapter 174) (MRA). These amendments were passed in Parliament on 6 October 2020, and will come into force on a date to be determined by the Minister.

This article focuses on the changes to the SMC disciplinary process by way of amendments to the MRA, and provides our preliminary views on whether the amendments are likely to achieve [the intended objective](#) of strengthening the disciplinary process through more effective enforcement of professional standards, quicker resolution of complaints and greater transparency overall in the disciplinary process, driven by the principles of clarity, certainty and consistency. The authors do recognise that how the new steps are actually implemented and put into practice would play an important part in determining whether the objective is ultimately attained.

We will focus on three main areas of the amendments to the SMC disciplinary process: structure, process and procedure, and mediation.

Improvements to structure

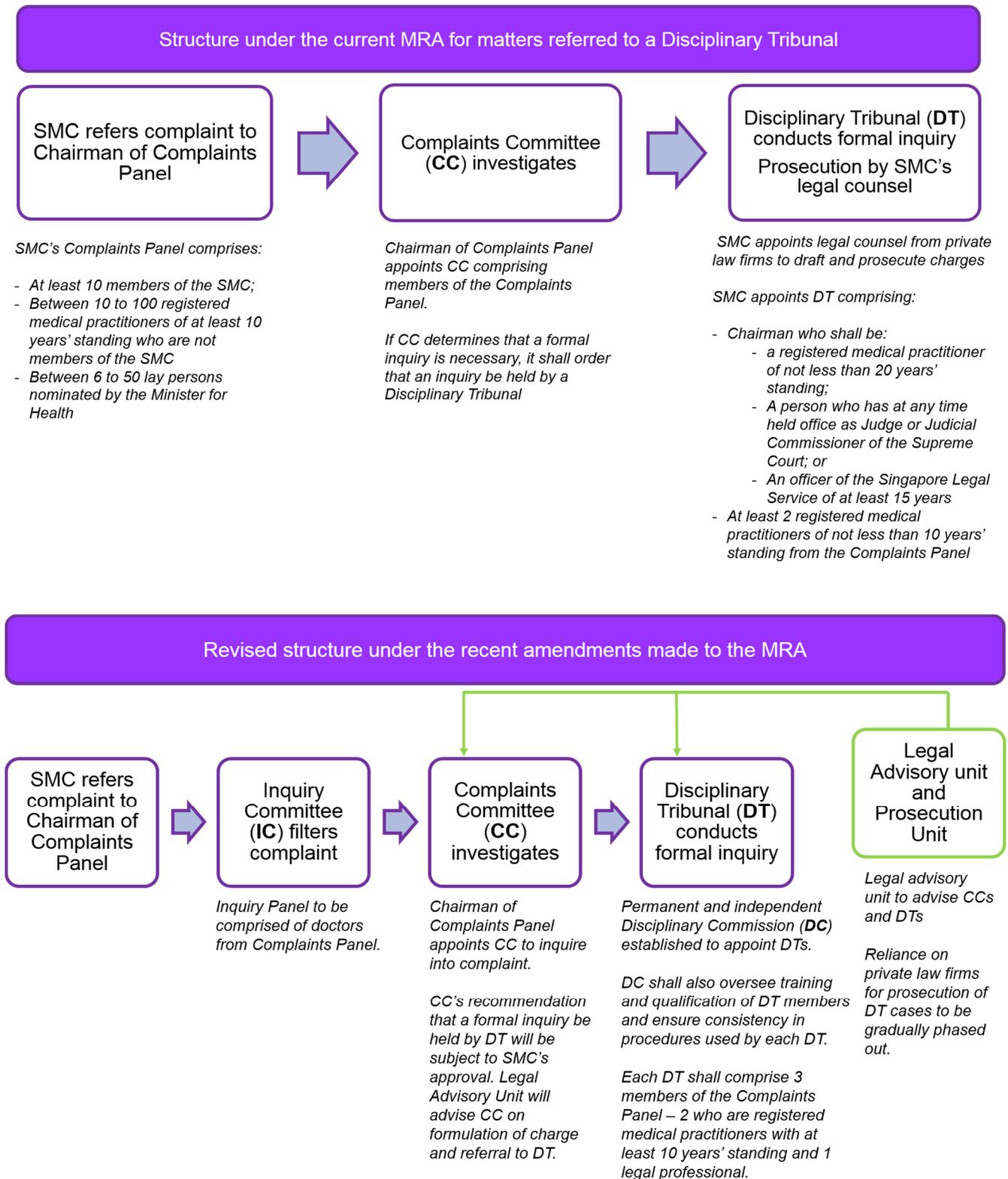
Some doctors have felt that there is a lack of independence between (1) the Complaints Committee (CC) which investigates the complaint, (2) the Disciplinary Tribunal (DT) which presides over the formal inquiry against the doctor, and (3) the SMC which frames and prosecutes the charge(s) against the doctor for the inquiry. This was one of the concerns recognised by the Workgroup in its Report.

The key structural changes made to the SMC disciplinary process are as follows:

1. Establishment of an Inquiry Committee (IC) to filter out, at an early stage, complaints that are frivolous, vexatious, misconceived or lacking in substance;
2. Allow the SMC to make the final determination, upon the CC's recommendation, whether a case should be referred to a DT for a formal inquiry;
3. Establishment of a Disciplinary Commission (DC), a separate and independent body from the SMC, to professionalise and preserve the independence of the DTs; and
4. Creation of a Legal Advisory Unit to provide improved access to legal resources for CCs and DTs, and the establishment of an in-house Prosecution Unit to conduct prosecutions on behalf of the SMC instead of private law firms.

Our comments

We set out the structure of the various key bodies under the SMC disciplinary process as provided for in the MRA before the latest amendments and compare it to the recent round of amendments in the diagrams below.



The amendments are, in our view, a welcome change, as they clarify and safeguard the independence of the CC and DT from the SMC. The provision of better legal support and training to members of the IC, CC and DT should also help to achieve just outcomes more expeditiously.

The SMC's increased control over the type of cases to be referred to a DT for a formal inquiry will help to ensure that a consistent standard is applied across the board. Only cases involving cause of sufficient gravity will be referred to DTs, and the standard for referrals to a DT for formal inquiry will also be clarified (see page 1 of [Annex A of the MOH's press release dated 6 October 2020](#)).

Separately, as there may be an understandable concern that the creation of the IC adds another layer to the disciplinary process (thereby potentially lengthening the amount of time of the overall process), a mechanism should be put in place to avoid as far as possible overlaps in investigations by the IC and CC that may draw out the proceedings.

Since the IC's function is to winnow out the clearly unmeritorious complaints and those which fall outside the proper scope of the disciplinary regime, any additional time taken by the IC process in individual cases may possibly be outweighed by savings in time and resources in the overall disciplinary process. Dismissal of unmeritorious complaints at an early stage will result in fewer complaints progressing to the CC stage, which may then help to expedite the disciplinary process as a whole. However, in order to perform their function effectively, the ICs must be robust in dismissing unmeritorious complaints, and its members should be trained to identify (in accordance with objective legal criteria) complaints which are frivolous, vexatious, misconceived or lacking in substance.

Improvements to process and procedure

One often-cited criticism of the SMC disciplinary process is that it is plagued by unreasonable delays. The Court of Three Judges had noted as far back as in the case of *Low Cze Hong v Singapore Medical Council* [2008] 3 SLR 612 that unjustified delay unnecessarily prolongs the anxiety of the doctor being investigated and causes the process to itself become the punishment for the doctor involved. Such delays may compromise the quality of the evidence, and also frustrate complainants who are understandably keen for their complaints to be resolved in a more timely manner.

A slate of amendments to the MRA have been introduced to reduce delay and facilitate quicker resolution of complaints, and some key amendments include:

1. Introducing stricter mechanisms to control the overall timelines;
2. Early triaging by the IC and filtering of complaints that are frivolous, vexatious, misconceived or lacking in substance;
3. Providing early notification to the doctor when a complaint is made and introducing strict criteria for the submission of relevant documents and evidence in relation to complaints;
4. Introducing a limitation period (time-bar) against the filing of complaints of stale cases with the SMC; and
5. Replacing the current process for appeals against the CC's decision to be made to the Minister for Health, with an application for review of the CC's decision by a newly constituted Review Committee (RC).

Flowcharts summarising the framework of the revised disciplinary process published by the MOH may be accessed [here](#).

Our comments

Stricter controls on timelines and on the requirement for all relevant documentation and information to be provided by the complainant at an early stage will hopefully go a long way towards cutting down unnecessary delays.

While the introduction of a limitation period against complaints of stale cases arguably assists to provide more procedural fairness to the doctors, we await further guidance as to what situations the DC would consider in the public interest for a time-barred complaint to nevertheless be referred to the Complaints Panel. Further, there may be some uncertainty over the utility of this amendment given that the limitation period for the SMC itself to make a complaint is 6 years from the earliest date on which the SMC had knowledge or could have discovered the relevant conduct or act, notwithstanding that the patient in question may have had the requisite knowledge much earlier.

As for the new review process, we note that the scope of the RC's review is limited to whether the CC had properly observed the procedural and regulatory requirements of the disciplinary process. The amended MRA states that the RC may consider any new evidence that is material to the complaint or matter at the review stage. However, in our view, in exercising this power, the RC should consider whether such new information could reasonably have been submitted by the time of the proceedings before the IC and CC. If the new evidence could reasonably have been adduced earlier in the process but was not, the RC ought to require the party submitting the evidence to explain why the evidence was not put before the IC or CC, and then decide on whether to include the evidence in its consideration. Further, given the limited scope of its review, our view is that a RC ought to exercise its power to order further investigations (which may actually entail making some judgment on the merits of the CC's decision) very sparingly and with caution.

Enhancing the role of mediation in the disciplinary process

In recognising that mediation may sometimes be a more effective method of resolving a complaint, the role of mediation in the SMC disciplinary process has been enhanced by allowing both the IC and CC to refer suitable cases for mediation. Further, in exercising its discretion to order costs against a complainant for matters which are frivolous, vexatious, misconceived or lacking in substance, the IC or CC may also take into account the parties' conduct in relation to any attempt to resolve the matter by mediation.

Our comments

ICs and CCs need to be selective as to the type of complaints that are directed towards a mediation. In some cases, the conduct complained of may not amount to professional misconduct, but the complainant may seek redress against the doctor by way of a SMC complaint due to some miscommunication, misunderstanding or mismatch in expectations. In situations where the doctor-patient relationship has broken down, the introduction of a neutral mediator can help to facilitate an amicable resolution. Early mediation may possibly not only be a suitable avenue to resolve such complaints, but may also avoid unnecessary resources being expended at the CC stage.

However, as rightly pointed out by the Workgroup in its Report, mediation should not be used as a backdoor option for complainants to obtain compensation from the doctor through the disciplinary process. This must be made clear to complainants who participate in mediation.

Conclusion

As a whole, our opinion is that the recent amendments to the MRA can promote a more expeditious regulatory system that is fair to both doctors and patients and does also improve the perception of independence of the process. We understand that the SMC is working to implement the legislative amendments to the MRA and other changes based on the Workgroup's recommendations, and doctors should continue to keep a keen eye on developments on this front.

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