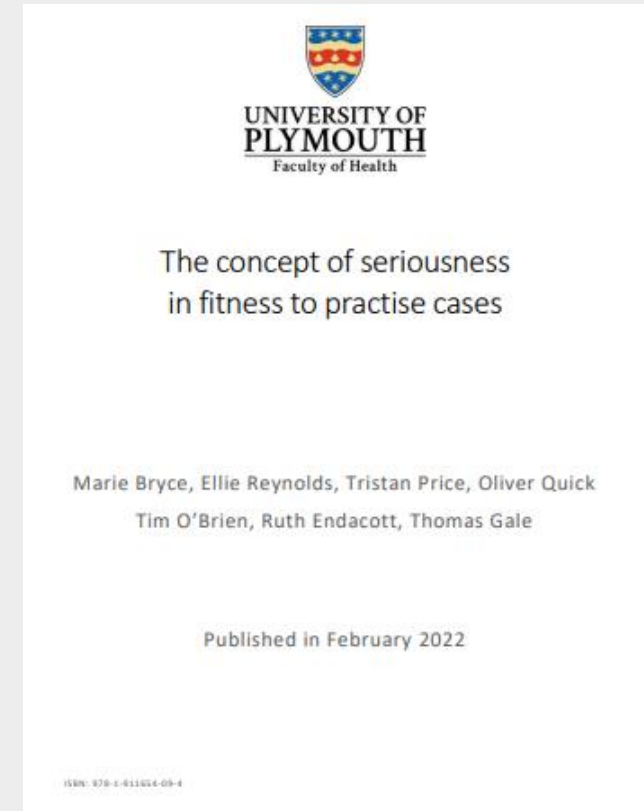


The concept of seriousness in fitness to practise: policy, professional and lay perspectives

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<https://www.gdc-uk.org/docs/default-source/research>



Research design

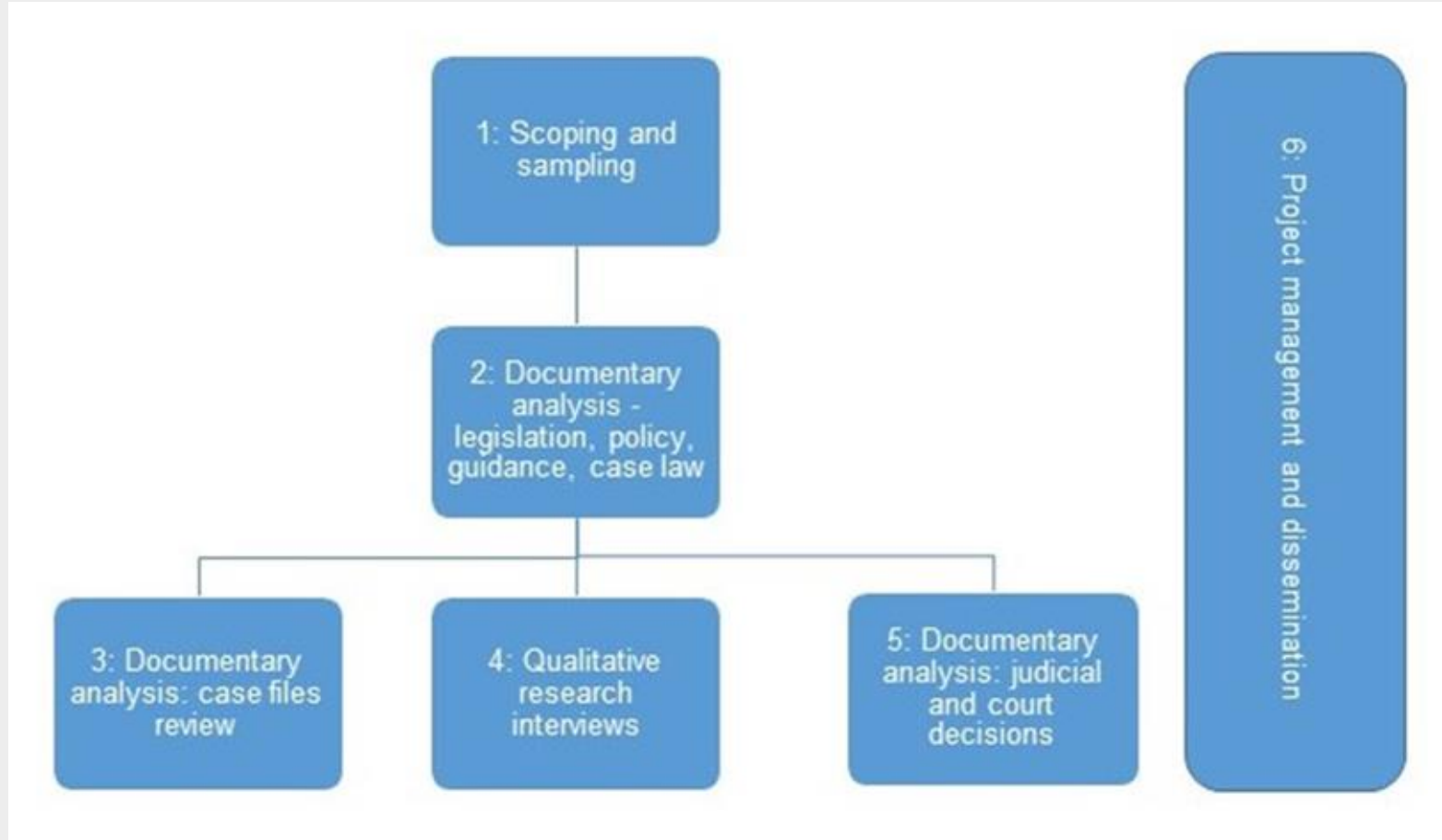


Research objectives:

- To develop an understanding of how the concept of seriousness in relation to misconduct is defined and applied by professional regulators, and to identify the considerations that influence that application.
- To achieve a clearer understanding of the similarities and differences in approaches across regulation and reasons for these.
- To describe the relationship between professional misconduct, enforcement actions and the statutory objectives of healthcare regulation.



Study design



Interviews – recruitment and participants

- 21 Participants recruited (10 female, 11 male)
- Regulatory experience ranged from six months to several decades.
- Several worked across multiple organisations – the ‘regulatory roundabout.’
- Lay people – professional backgrounds including policing, criminal law, and the probation service.

| Participant ID | Role | Organisation(s) |
|----------------|------------------------------|---------------------|
| P001 | Case Examiner (lay) | 1 |
| P002 | Case Examiner (clinical) | 1 |
| P003 | In-house legal team | 2 |
| P004 | Panel member (clinical) | 1 |
| P005 | Case Examiner (lay) | 2 |
| P006 | FTP Lead | 1 |
| P007 | Case Examiner (clinical) | 2 |
| P008 | Panel chair & member (lay) | 1, 2, + other |
| P009 | FTP Lead | 3 |
| P010 | Chair/lay panel member (lay) | 2, 6, 8, + others |
| P011 | FTP Lead | 2 |
| P012 | Panel chair & member (lay) | 2, 5, 7 + others |
| P013 | Panel chair & member (lay) | 1, 4, 5, 7 + others |
| P014 | Panel chair & member (lay) | 4 |
| P015 | Panel member (clinical) | 4 |
| P016 | Panel member (clinical) | 4 |
| P017 | Panel Chair (clinical) | 2 |
| P018 | In-house legal team | 4 |
| P019 | FTP expert | Other |
| P020 | FTP Lead | 5 |
| P021 | Legal Assessor | 2, 3, 5, 7 + other |



Methods – data collection & analysis

- Data collection
 - February - June 2021
 - Remote semi-structured interviews (Zoom/MS Teams)
- Data analysis – framework analysis
 - Coding framework developed from guidance and case files then applied to, and refined for, interview data



Findings



Subjectivity in decisions

- Decisions about misconduct and seriousness described as subjective
- Underpinned by regulators' guidance and case law
- Lack of definitions of seriousness and challenge of developing such definitions

'What it really boils down to is people's judgement, gut reaction, experience.'
(P010, Lay Chair + FtP panellist)

'It's more art than science...' (P003, Regulatory lawyer)



Patient/public safety and risk

- Risk of harm
- Concept of impairment
- *'...the fact that somebody died does not mean this is automatically a serious case and is automatically impairment and sanction. There's a pressure to do that, which flies in the face of the intention behind FtP hearings, which is to protect the public and not to punish.'* (P008, Lay Panel Chair)
- Registrant response – central to decisions about risk



Risk and remediation

- Some types of misconduct deemed more inherently remediable than others
- Decision-makers often view remediation as a proxy indicator of practitioner insight
- Remediation typically fed into decisions about impairment

Price et al. 2024. 'Role of remediation in cases of serious misconduct before UK healthcare regulators: a qualitative study.'

BMJ Qual Saf <https://qualitysafety.bmj.com/content/early/2024/08/06/bmjqs-2024-017187>



Clinical & lay decision-maker mix

- Role of clinical decision-makers is to translate medical jargon ('translation work' - Jones, 2021)
- Balance of power in regulation

*'I think there is some value in terms of sometimes it's very helpful to understand a medical complex report if you happen to have somebody who understands the terminology I can interpret that into lay terms. **But that's about generic medical understanding, not about expertise in interpreting or providing opinion on medical information.** I think where there is value I suppose, and probably the reason underlying the inclusion of requirement within the legislation is the balance between the public and the profession, both sides of the equation are represented and that therefore, maybe tenuously perhaps but it does represent that balance of interests in that decision being made about very important matters, both to the registrant and to the complainant in that circumstance.'* (P009, FtP Lead)



Clinical & lay decision-maker mix

- Decisions about misconduct and seriousness shaped by dialogue between clinical and lay decision-makers.
- Clinical decision-makers use their expertise to contextualise conduct and lay colleagues look to them for this advice.
 - Lay expertise (in disciplinary fields) not so evident

'I think as a chair I'd tend to put quite a lot of weight on what the registrant panel colleague thinks about it, because they're in a position to know whether doing X, [...] is that something if it's only one which is egregious and awful and something no professional would do, or is it something that you might find yourself doing on a bad day. So I would bounce it off the registrant panel member' (P010, Lay Panel Chair)



Maintaining public confidence in the professions

- Interviewees offered differing interpretations of ‘maintaining public confidence’
 - If known, would allowing a registrant to continue practising unrestricted risk negatively impacting on individual patients’ decisions to access healthcare?
 - Maintaining public confidence a wider judgement linked to maintaining professional standards.

‘I think one of the things that the [regulator] guidance has tried to do, and I think it’s possibly rather too prescriptive in this particular area, is say that it needs to be something that’s so serious that members of public may think twice about seeking [healthcare] services because of what you’ve done. Now those cases to my mind are so few and far between it’s beyond belief, you’re talking Harold Shipman...’

(P005, Lay Case Examiner)



Maintaining public confidence in the professions

- More interpretations...
 - Public confidence decisions as a 'marker' of poor conduct, and about regulatory action being seen to be done.
 - Media coverage was also mentioned as the means by which the public would learn about FTP decisions, as a lens through which decisions could be viewed.
 - The idea of 'the well-informed' or 'reasonable-minded' member of the public as an abstract figure - difficult to apply meaningfully.

'It's a long-winded way of saying you stand back and you think what would your average member of the public think about that, I sometimes think of it as The Daily Mail test, which I shouldn't, if this appeared in the paper what would people think.' (P010, Lay Panel Chair)



Conclusions



Conclusions

- FtP links to patient safety agenda through regulatory objectives and focus on risk/impairment but remains focused on individuals' conduct and behaviour
- Post-Shipman rebalancing of power in regulation between clinical & lay interests evident in decision-making structures, **but** actual power relations much more nuanced and complex.
- FtP decisions serve as boundary-keeping in decisions on maintaining professional standards and public confidence in professions **but** these decisions shaped by interpretation.



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