

Short communication

2012 – The year when BAOMS and its officers prevented closure of all UK shortened medical and dental courses

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Abstract

In Spring 2011 the Department of Health (DH) received a request to review European Union Directive 2005/36 EU – the directive relating to the recognition of professional qualifications. The Department of Health lawyer raised concerns that the existing shortened dental courses may be in breach of EU law. There were three shortened dental courses in the UK: 4 year graduate entry courses in Liverpool/Peninsula and 3-year Dental Programme for Medical Graduates (DPMG) in Kings, London. During the summer the General Dental Council (GDC) was made aware of these concerns. In autumn 2011 the Chief Dental Officer for England with the GDC, told the Dental Deans' Council (DDC) that shortened dental courses were illegal. On 12th Jan 2012 students on the DPMG were told that they would have to complete a full 5-year dental degree. The GDC said that this interpretation of EU law would also impact on shortened medical courses. In view of the potentially enormous impact that this would have on OMFS training, BAOMS engaged all the resources it could and by assembling legal opinions including written contributions from Sir David Edward, whose opinion was being misinterpreted by the GDC and DH, and by sharing these resources with all the stakeholders, BAOMS was able to preserve shortened dental and medical courses. Now that the UK has left the European Union, negotiations around mutual recognition of qualifications may mean this issue will resurface. We should remain vigilant.

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Introduction

The British Association of Oral and Maxillofacial Surgeons is a specialty association whose charitable objectives are to promote Oral and Maxillofacial Surgery and Oral Surgery. It does this by promoting the interests of both specialties with all stakeholders. It has no statutory powers. Any influence or impact arises from assembling a coalition of interested parties who have a common objective. This episode is an illustration of how this can sometimes work.

Background

Within the European Union, specialist qualifications are recognised in the EU Directive 2005/36 EU.¹ The specialties and the countries in which those specialties exist, including specialties within dentistry and medicine, are listed in Annex V of the Directive.² When the European Union began, some European nations had no profession of dentistry. Restorative dentistry including fillings and making crowns/dentures were undertaken by doctors who undertook additional training to become specialists in the medical specialty of Stomatology. Annex V lists Stomatology as a medical specialty in Spain (Estomatología), France (Stomatologie), Italy (Odontostomatologia), Luxembourg (Stomatologie) and Portugal (Estomatologia). As there was no dentistry in these nations no EU dentists could work there and stomatologists could only

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work in nations where Stomatology is a medical specialty. When dental schools were opened in Italy, it transferred stomatologists onto its dental register and continued to do so. This created a conflict with the EU by having two routes of qualification for ‘dentists’. In 1999 this conflict resulted in a legal case by the EU against Italy to establish that only people who completed 5 years of dental training were ‘dentists’ and that stomatologists were not dentists.³ It was this case which the Department of Health lawyers found when the UK was asked to create statutory instruments to implement the latest version of Directive 2005/36 EU in 2011. The lawyers saw the requirement for 5 years of dental training and extrapolated this to conclude shortened courses may be against EU law.

Timeline and links to relevant documentation

The Meeting 18th September 2012 At The Council Of Dental Deans, London⁹

At the meeting Prof Sir David Edward (DE) explained the ruling on which he was the Judge Rapporteur and that applying the ruling to undergraduate programmes was a misinterpretation of his report. DE advised that the Italian verdict he reported on hinged on the fact that in Italy there were two different routes to a dental qualification and that the Commission only approved one route as a transferrable qualification (dental degree). The stomatology qualification for doctors – stomatology is a specialty of medicine recognised in the EU where doctors undertake a qualification to practice dentistry, was not recognised across Europe but only where this medical specialty was present in Annex V of 2005/36 EU Directive.

He concluded that as long as there was only one dental qualification and course in which credit was given for previous educational learning and the course shortened by one or two years in respect of this learning then this would be in keeping with the 2005 EU Directive and its annex V.3.5.3.1. He quoted from another case which illustrated this:

“Case C-110/01 Tennah-Durez v Conseil national de l’ordre des Médecins 2003 ECR 6239.¹⁰ I was also Judge Rapporteur in that case. Dr Tennah-Durez was of Algerian nationality and had acquired the diploma of doctor of medicine from the Algiers Faculty. She then came to Belgium and resumed her medical studies at Ghent. The University of Ghent recognised her Algerian diploma and admitted her to the seventh and final year, on completion of which she was awarded the diploma of “arts” (doctor).” In other words, her prior education in a non-EU country was recognized by the University and she was given credit for this prior learning so that she only had to do one year to achieve a EU registerable degree. The court upheld her fitness to practice medicine in the EU despite only doing one year of study.

From the meeting summary⁹

“Any 4-year graduate entry course must be shown to be a 5 year programme with exemption from specific subjects within Annex V.3. 5.3.1, study of which amounted to at least one year, that is any candidate admitted to the programme must be shown to have undertaken prior study that overtly includes the required subjects and that the time involved amounted to at least one year. It would not be sufficient simply to state that the person has a specified degree. It must be demonstrated that on admission the School has scrutinised the content of that degree, has confirmed that the subject matter is within Annex V.3. 5.3.1 and therefore need not be repeated in the dental degree.

If this can be done, then it was Sir David’s view that the 4 year graduate entry courses and the shortened three year courses for doctors meet the requirements of the EU directive in that they provide at least 5 years of study under the auspices of a University and they meet the syllabus requirements.”

At the end of the meeting all parties were reassured but despite this reassurance, it was agreed that all possible routes should be explored to ensure that the amendments to the Directive currently under discussion, include an explicit reference to the assessment and crediting of prior learning, rather than specifying ECTS credits.”

E-mail from Dentals Schools Council 19.09.12 to all Dental Schools

Dear Dental School Dean

I am thrilled to tell you that we have discussed the issues around graduate entry dentistry with Sir David Edward, the Judge Rapporteur in the case of Commission vs Italy – and as you will see in the attached meeting note and guidance, it is his view that both the 4 year programmes and the 3 year programmes for doctors meet the requirements of the EU Directive.

Every best wish

Katie Dr Katie Petty-Saphon

Executive Director, The Dental Schools Council

Conclusion

BAOMS was lucky to have a Chair and President who had experience and knowledge, and were able to mobilise their personal and professional contacts. The specialty was lucky in that its objectives were coincident with some of the most significant stake-holders, the Dental Schools running shortened courses and the students part-way through those courses. As Napoleon said, he would much rather a lucky general than a good one.

Although the UK has left the EU, with ongoing discussions about mutual recognition, it is likely that this will not be the

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- 2011 Mar UK Department of Health (DH) receive a request from the European Commission to review the updated text of Directive 2005/36 EU – the one which outlines how qualifications within the European Union are recognised to promote freedom to work across the EU. This request was passed by the DH to barristers' chambers who specialise in EU law. These chambers identify that the Shortened Graduate Entry Dentistry (SGED) courses, which had been created in 2005 just as this Directive was published, may be in breach of EU law, based on the Italian case³.
- 2011 May DH meets the UK Dental Regulator, the General Dental Council (GDC), to make them aware of potential problem with SGED courses lasting less than 5 years. This includes the Dental Programme for Medical Graduates (DPMG was a 3-year dental degree course at Guys, Kings and St Thomas' Dental School - GKT⁴) and the 4 Year graduate entry programmes in Liverpool and Peninsula. These 3 courses started in 2005.
- 2011 Sept In a meeting with Dental Deans Council (DDC), the GDC and DH represented by the Chief Dental Officer (CDO) for England informed the DDC that SGEDs 'are illegal'. This was the first time dental deans were made aware of problem.
- 2011 Sept DDC take legal advice⁵ but are unaware that the legal chambers that they approach are the same chambers that the DH approached. A different barrister was used from these chambers but the opinion, unsurprisingly, was the same. They state that SGEDs *might* be illegal. Please note the two barristers' use of the conditional words "may be illegal" and "might be illegal" whilst the CDO and GDC use the emphatic words "are illegal" referring to the SGEDs.
- 2012 Jan On the morning of 12 Jan 2012 concerns about SGEDs becomes public. BAOMS President is contacted with the news that, as detailed in a press release by GKT Dental School and a meeting with students, all those on SGEDs would have to now complete the full 5 years course rather than the 3 or 4 year course they started. This is the first time anyone outside DH, GDC and DDC were aware of the issue, almost a year after concerns were raised. On the same day, the news is shared with all BAOMS stakeholders including the Junior Trainees Group.
- 2012 Jan BAOMS President and Chair of Council ask for documentation related to the issue from the DH and GDC including their legal advice. The GDC Chief Executive only prepared to talk to BAOMS Chair informally on phone and postpones the already planned January meeting with BAOMS until March. BAOMS starts to assemble facts from medicine and dentistry in Europe contacting the Union of European Medical Specialists – UEMS and EACMFS. UEMS OMFS Section confirms that not only are there shortened dental degree courses in Germany but these are incorporated into OMFS training programme in 'run-through' specialty training for doctors.
- 2012 Jan Dean of GKT Dental School contacts BAOMS and comes to discuss DPMG course.
- 2012 Mar BAOMS assembles all the relevant legal documents. EU Directives^{1,2} including legal precedents³ and impact of subsidiarity (ability of nation states to apply their own rules rather than follow EU directives), how European Credit Transfer System (ECTS)⁶ works to allow credit for previous studies to be applied to a second course, and the specific case law related to the "Bologna declaration" about ECTS (which had been signed by the UK's representative at this summit, Baroness Tessa Blackstone).
- 2012 Mar BAOMS received a letter from Director of Education at GKT which does not advance the situation.
- 2012 Mar Meeting between BAOMS and GDC Chief Executive (CEO) who states that form of words in new draft EU Directive still means that SGED courses are in breach of this Directive. CEO refuses to suggest words which would satisfy them and states "it's Universities' problem". Although she concedes that DGMP has been reviewed by the GDC and found to meet all of its 'First Five Years' requirements and its graduates are fit to practice dentistry in UK. The GDC does not want to raise the issue in Europe. They wish to avoid losing face by admitting that they register dentists from SGEDs. The additional information from this meeting is that the minister for Dept of Business Innovation and Skills – BIS (Vince Cable) is negotiating for UK on new Directive

2012 April	BAOMS President meets Chair of DDC and phones and has further discussions and email exchanges with Chair and Chief Executive of DDC. Some key documentation is shared ^{5,7} . There were already threats of legal action from students who had entered and were paying for 3 and 4 year courses and whose studies were being extended for 1 or 2 year. So the universities were on the horns of a dilemma – be sued by the students or risk EU fines and GDC/DH action for behaving illegally. The university Vice Chancellors prepared to ignore legal advice and maintain courses and DDC are supportive of maintaining SGED programmes.
2012 May	BAOMS and DDC draft joint letter to MEPs and agree wording of article in BAOMS President’s Newsletter. Baroness Blackstone, who led the UK representation at the Bologna Declaration on ECTS is disturbed by the legal opinions flying in the face of ETCS recognition. She is appalled by the prospect that dental (and) medical students on shortened courses might not have ETCS applied and have to spend 2 years repeating studies that were part of a previous degree. She agrees to attend meetings and be a court witness to Bologna Declaration on our behalf; speaks to Baroness Kinnock re mobilizing health MEPs; and Baroness Williams re lobbying Vince Cable and Foreign Minister.
2012 May	President writes letter to Higher Education Minister in BIS and asks him to meet with DDC and BAOMS).
2012 June	Reply from Higher Education Minister in BIS reasonably positive.
2012 May	BAOMS President seeks alternative legal opinions at different chambers if court case required and contacts Professor Sir David Edward (DE), who was on European Court of Justice in 2001 and was rapporteur on key case quoted by GDC/DDC legal opinions in opposition to SGEDs. DE supplies his opinion on the matters ⁸ .
2012 Aug	After a series of e-mail exchanges, meetings and telephone discussions during June and July, BAOMS invites all relevant parties to a meeting: GDC, CDOs, DDC, and Ministers Higher Education Minister in BIS. CEO of GDC and Chief & Deputy CDO can’t make it!!
2012 Sept	Meeting detailed below. Outcome 3 year and 4 year dental graduate programmes are legal under EU law.

Attendees: Paul Speight – Dean of Dental School in Sheffield Chair Dental Schools Council Callum Youngson - Dean of Dental School in Liverpool Katie Petty-Saphon - Executive Director, The Dental Schools Council Margie Taylor CDO Scotland representing all CDOs Frances Low representing GDC Simon Bowen from DH Iain Hutchison – BAOMS President Ian Martin – BAOMS Chair Professor Sir David Edward (Judge Rapporteur in the European Court of Justice case C-202/99 of the Commission v Italy as well as a number of other cases involving professional registration issues in the EU) – currently sitting on the UK Commission on a UK Bill of Rights with amongst others Baroness Helena Kennedy QC.

last time EU regulations may have an influence on dental or medical education and training.

Conflict of interest

None except all are or have been on Council of BAOMS

Ethics statement/confirmation of patients’ permission

None needed.

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