

Proposed regulation of Counsellors and Psychotherapists under the Health and Social Care Professionals Act 2005 – Comments from the Professional Standards Authority

November 2016

1. Introduction

- 1.1 The Professional Standards Authority for Health and Social Care promotes the health, safety and wellbeing of patients, service users and the public by raising standards of regulation and voluntary registration of people working in health and care. We are an independent body, accountable to the UK Parliament. More information about our work and the approach we take is available at www.professionalstandards.org.uk
- 1.2 As part of our work we:
 - Oversee nine health and care professional regulators and report annually to Parliament on their performance
 - Scrutinise the final panel decisions in regulator fitness to practise cases
 - Conduct research and advise the four UK governments on improvements in regulation and publish papers on regulatory policy and practice.
- 1.3 We have developed the concept of right-touch regulation which describes the approach that we advocate in developing policy. Right-touch regulation means fully understanding the problem before arriving at a solution. It means ensuring that the level of regulation is proportionate to the level of risk to the public. In line with our right-touch principles we have also developed right-touch assurance, a new model for assessing the level of occupational risk and deciding on the appropriate level of oversight.
- 1.4 Under our legislation we also operate the Accredited Registers programme under which we assess organisations that register health and social care practitioners who are not regulated by law to ensure that they meet our set of standards. There are currently 23 registers accredited under the scheme.¹
- 1.5 We sometimes carry out international commissions and reviews. In 2014 we were commissioned by the Hong Kong Food and Health Bureau to work with the Chinese University of Hong Kong, to explore the viability of a scheme similar to the Accredited Registers programme. The Hong Kong Government has subsequently announced its intention to launch an accredited registers scheme for 'supplementary healthcare professions' this year.² Also in 2014 we

¹ We have accredited 23 registers covering approx. 54 occupations and 72,000 practitioners. Professional Standards Authority, *Our work with accredited registers* [Online]. Available at: <http://www.professionalstandards.org.uk/what-we-do/accredited-registers>. [Accessed 27/10/2016]

² Policy Address, *Healthcare Reform - Healthcare Manpower Planning and Professional Development* [Online]. Available at: <http://www.policyaddress.gov.hk/2016/eng/p235.html> [Accessed: 02/11/2016]

carried out a review of fitness to practise processes for the Nursing and Midwifery Board of Ireland.³

2. Our interest in this issue

- 2.1 We welcome the opportunity to contribute to this consultation from the Irish Government on the regulation of counsellors and psychotherapists. Although we do not have a direct remit of oversight of professional regulation in Ireland as we do in the UK, as mentioned, we have published a number of reports with our ideas on improving regulation and regularly exchange information with colleagues internationally about good regulation.
- 2.2 As highlighted, we also operate the Accredited Registers programme which we note is referenced in the report from CORU, the Health and Social Care Professionals Council on the regulation of counsellors and psychotherapists.⁴ We therefore hope that our comments will be useful to the Irish Government.

3. Right-touch regulation

- 3.1 The Authority has developed the principles of right-touch regulation outlined in our *Right-touch regulation* report which we revised in 2015.⁵ The principles state that regulation should aim to be:
- Proportionate
 - Consistent
 - Targeted
 - Transparent
 - Accountable
 - Agile.
- 3.2 The right-touch regulation principles build on the principles of good regulation as defined by the Better Regulation Taskforce⁶. The addition of the principle of agility seeks to ensure that regulation is able to be forward looking and adapt to anticipated change, such as current and increasing workforce pressures and changes within health services.
- 3.3 When determining the solution needed to tackle a problem, we advocate using these principles and following the right-touch process by defining the problem,

³ Professional Standards Authority 2014, *A review of the fitness to practise processes conducted for the Nursing and Midwifery Board of Ireland* [Online]. Available at:

<http://www.professionalstandards.org.uk/docs/default-source/publications/international-reports/review-of-the-nursing-and-midwifery-board-of-ireland.pdf?sfvrsn=0> [Accessed: 02/11/2016]

⁴ Coru, *Response to Minister for Health on Regulation of Counsellors and Psychotherapists* [Online]. Available at: <http://health.gov.ie/wp-content/uploads/2016/08/Appendix-2-Counsellors-Psychotherapists-regulation-report-CORU.pdf> [Accessed: 02/11/2016]

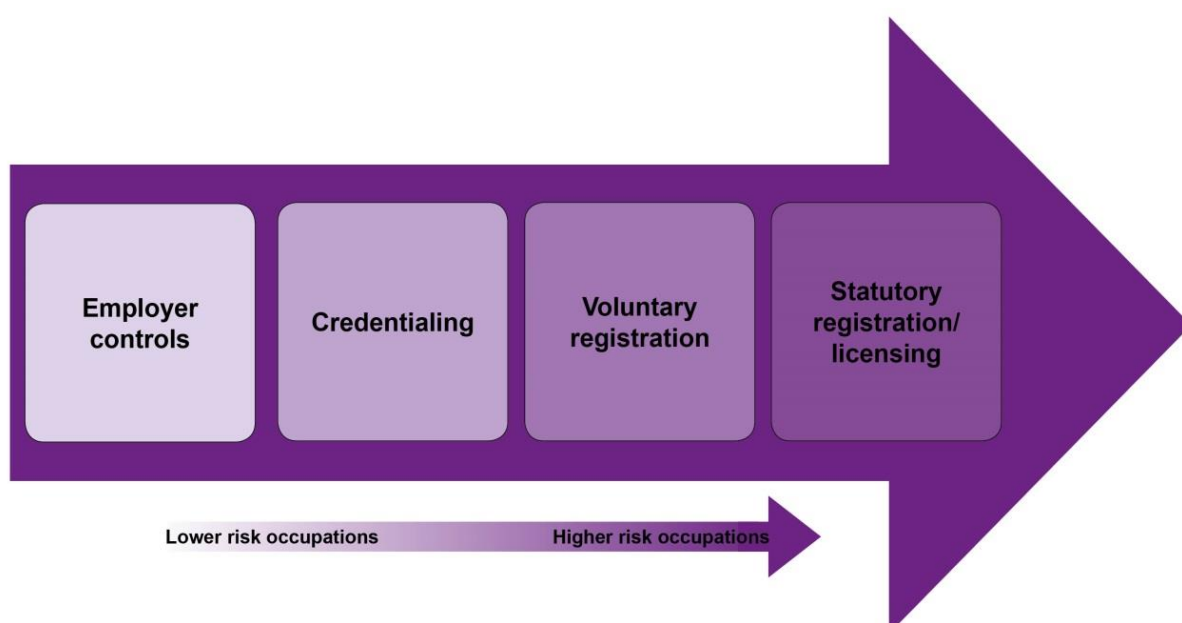
⁵ Professional Standards Authority, *Right-touch regulation (2015)* [Online]. Available at: <http://www.professionalstandards.org.uk/what-we-do/improving-regulation/right-touch-regulation> [Accessed: 14/11/2016]

⁶ Better Regulation Task Force, *Principles of Good Regulation*. [Online]. Available at: <http://webarchive.nationalarchives.gov.uk/20100407162704/http://archive.cabinetoffice.gov.uk/brc/upload/assets/www.brc.gov.uk/principlesleaflet.pdf> [Accessed: 01/11/2016]

evaluating the risk, focusing on outcomes and ensuring that any action taken is proportionate. This method helps to ensure that the minimum regulatory force is used to achieve a desired effect. In the context of health and social care this also means ensuring that the interests of patients and service users are at the heart of decisions around regulation.

- 3.4 As part of our thinking in this area we have developed the idea of a continuum of assurance meaning that as the level of risk increases, the 'regulatory force' required to manage that risk also increases. The diagram below helps to demonstrate how this can be applied to the regulation of health and care professionals.

Figure 1: Continuum of assurance



- 3.5 The Accredited Registers scheme sits on the continuum to provide an appropriate level of oversight for occupations which don't require statutory regulation. Whilst it may be concluded that some occupations ultimately require statutory regulation, the programme is designed as a proportionate alternative approach for the majority of groups that are accredited under the scheme.
- 3.6 The UK Government in its paper 'Enabling Excellence', which outlined the rationale for the creation of the Accredited Registers programme stated: *'In a limited number of cases therefore, statutory regulation may be the only way of effectively mitigating against risks to people using services, although it would need first to be clear that assured voluntary registration would be insufficient to help guide choices by commissioners and patients.'*⁷

⁷ Department of Health, *Enabling Excellence Autonomy and Accountability for Healthcare Workers, Social Workers and Social Care Workers* [Online], Pg. 8-9. Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/216580/dh_124374.pdf [Accessed: 10/11/2016]

4. Right-touch assurance

- 4.1 In our ideas outlining the need for a right-touch approach and a continuum of assurance, we highlighted the importance of ensuring that decisions on the type of oversight required are based on risk of harm to the patient or service user. In the past, decisions on regulation have sometimes been the product of lobbying by the occupation in question, as there is a tendency to view professional regulation as being related to professional status or 'readiness' to be regulated.
- 4.2 To assist with making decisions on whether to regulate certain groups, the Authority has developed a new tool⁸ for assessing the risk of harm presented by different health and care occupations. Recommendations resulting from the methodology will indicate what form of assurance/oversight is needed to manage the risk of harm to patients and service users arising from the practise of an occupation.
- 4.3 The model has two parts. In the first stage, we create a risk profile for the relevant role; by assessing the intrinsic risks of harm arising from the practice of a particular occupation or profession. This involves examining evidence of harm in three areas: intervention (the complexity and inherent hazards of the activity); context (the environments in which the intervention takes place); agency (service user vulnerability or autonomy).
- 4.4 In the second stage, evidence under a number of extrinsic factors is also examined, to assess the type of oversight needed to manage the risk of harm. Extrinsic factors include the different types of oversight available, risk perception and need to retain the confidence of stakeholders and the public, the potential effect on labour supply of the chosen method of oversight as well as possible unintended consequences of any action to be taken.
- 4.5 We believe that this model provides a basis for objectively assessing the need for regulation for different groups. The UK Government has stated that it remains committed to *"the principle of proportionate regulation of healthcare professionals"*⁹ and is imminently due to consult on a range of reforms to the system of professional regulation in the UK. We have also recently been working to pilot the model with the UK Department of Health on the new role of Nursing Associates being developed for use in England.¹⁰
- 4.6 The model could also be developed as a method for assessing risk of harm in other contexts, for example for use by regulators in targeting continuing fitness to practise activity or in considering the need for annotations on the register. There is also the potential to adapt the model for use in other sectors.

⁸ Professional Standards Authority 2016, *Right-touch assurance: a methodology for assessing and assuring occupational risk of harm* [Online]. Available at: <http://www.professionalstandards.org.uk/publications/detail/right-touch-assurance-a-methodology-for-assessing-and-assuring-occupational-risk-of-harm> [Accessed: 10/11/2016]

⁹ Department of Health, *Regulation of Health and Social Care Professionals: Written statement - HCWS417* [Online]. Available at: <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2015-12-17/HCWS417/> [Accessed: 16/11/2016]

¹⁰ Professional Standards Authority 2016, *Interim report on oversight of Nursing Associates* [Online]. Available at: <http://www.professionalstandards.org.uk/publications/detail/interim-report-on-oversight-of-nursing-associates> [Accessed: 25/11/2016]

5. Accredited registers scheme

- 5.1 The Health and Social Care Act 2012 passed in the UK gave the Authority the powers to accredit UK based voluntary registers of health and care practitioners. The programme, referred to previously as Accredited Voluntary Registers is now known just as the Accredited Registers programme.
- 5.2 The Act gives the Authority power to set standards for voluntary registers and to accredit those that meet them. The Authority is required to undertake an impact assessment before accrediting a register, and as part of this consider whether a particular occupational group is suitable for a voluntary registration process – and therefore whether such a register should be accredited.
- 5.3 In order to be accredited and to be able to use the quality mark of the Accredited Registers scheme, bodies holding registers of practitioners must demonstrate that they comply with all of the standards set by the Authority. The quality mark shows that an organisation is committed to protecting the public and is working to good practice. These standards are:
- Hold a voluntary register of health and care practitioners
 - Be committed to protecting the public
 - Understand, monitor and control risks
 - Be financially sound
 - Inspire public confidence
 - Develop the knowledge base of the occupation/s covered by the register
 - Provide strong and effective governance
 - Set good standards for practitioners on the register
 - Ensure appropriate education and training for practitioners
 - Run the register well
 - Manage complaints fairly and effectively.¹¹
- 5.4 Registers who are accredited by the scheme are reviewed annually to ensure that they still meet all of the relevant standards. Those making any significant changes to their processes throughout the year must also notify the Authority of any changes and go through an assessment to ensure that they are still in compliance with the standards. All registers also complete a risk assessment to demonstrate that they have identified and are managing any risks to the public.

6. Proposed regulation of counsellors and psychotherapists

- 6.1 A decision on the regulation of counsellors and psychotherapists is a matter for the Irish Government and we offer no opinion. However, we suggest that the government might wish to make use of our *Right-touch assurance* model to assist them in determining whether or not the role should be regulated.

¹¹ Professional Standards Authority, *About Accredited Registers – Our Standards* [Online]. Available at: <http://www.professionalstandards.org.uk/what-we-do/accredited-registers/about-accredited-registers/our-standards> [Accessed: 29/11/2016]

- 6.2 We would suggest that further consideration could be given to the proposal from CORU, the Health and Social Care Professionals Council of bringing the professions of counsellor and psychotherapist under a system of accredited voluntary registration, at least as an initial stage.
- 6.3 The process to bring an occupation into a system of statutory regulation can be a lengthy and complex one. We also note that there are a number of issues yet to be resolved regarding the regulation of counsellors and psychotherapists which may further lengthen the process. If it has been established that there are risks to the public from the practice of counsellors and psychotherapists, then implementing a system of accredited voluntary registration could be a quicker and easier way to manage these risks and provide public reassurance whilst the case for statutory regulation is considered.
- 6.4 As we note that there are mixed views about whether counsellors and psychotherapists should be regulated as one group or two, accredited voluntary registration could also be beneficial in bringing these groups together and introducing consistent standards of education and training. This would assist with readiness to be regulated so that the process to bring the groups under statutory regulation should ultimately be quicker and more straightforward. This may also provide further clarity on the differences and similarities between the scopes of practice for the two groups ahead of a decision on whether to regulate as one or two professions. It is worth noting that not all of the counselling and psychotherapy registers which are accredited under the Accredited Registers programme in the UK draw a distinction between the roles of counsellor and psychotherapist.
- 6.5 We do not have a view on whether the Health and Social Care Professionals Act 2005 would be the correct legal mechanism if the decision is taken to regulate, however we note that the Act requires a defined scope of practice. It is unclear whether this currently exists for counsellors and psychotherapists in Ireland. We would highlight that when carrying out an assessment of the emerging role of Nursing Associates with our right-touch assurance model, lack of clarity on scope of practice made it difficult to fully assess the level of risk and therefore decide the correct level of oversight. We took the decision to provide an interim recommendation of voluntary registration rather than statutory regulation until the role has been better defined and tested.¹²
- 6.6 Whilst we are not able to comment directly on the qualification level that should be set for existing practitioners to come into regulation, it is worth highlighting that a blanket minimum level qualification (whether through protecting title, scope of practise or otherwise) may have the unintended consequence of closing off the profession to those practising in certain roles or working within certain types of charity or voluntary organisation. A case study to consider related to this point is Counselling and Psychotherapy in Scotland (COSCA) which is part of the Accredited Registers programme and is Scotland's professional body for counselling and psychotherapy. Alongside those on its register qualified to practise independently as counsellors or psychotherapists, there is a secondary tier of membership for those who have received the

¹² Professional Standards Authority 2016, *Interim report on oversight of nursing associates* [Online]. Available here: <http://www.professionalstandards.org.uk/publications/detail/interim-report-on-oversight-of-nursing-associates> [Accessed: 28/11/2016]

Counselling Skills Certificate and are able to work in certain contexts within organisations (e.g. voluntary bodies) where there is a greater level of oversight and structured supervision than is in place for those working as an independent practitioner.

- 6.7 Finally, there are a number of counsellors and psychotherapists who are on registers accredited under the Accredited Registers programme based in Northern Ireland, some of whom may work in the Republic of Ireland. It may therefore it may be worth considering the potential impact the introduction of any restrictions on practice would have on this group.

7. Further information

- 7.1 Please get in touch if you would like to discuss any aspect of this response in further detail. You can contact us at:

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