

Evidence to the Health and Social Care Committee's inquiry into the Department of Health and Social Care White Paper *Integration and Innovation: working together to improve health and social care*

March 2021

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 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 the ten health and care professional regulators and report annually to Parliament on their performance
 - Accredit registers of healthcare practitioners working in occupations not regulated by law through the Accredited Registers programme
 - Conduct research and advise the four UK governments on improvements in regulation
 - Promote right-touch regulation and publish papers on regulatory policy and practice.

2. Summary

- 2.1 We welcome the opportunity to respond to the Health and Social Care Committee's call for evidence on the Department of Health and Social Care White Paper *Integration and Innovation: working together to improve health and social care*.¹
- 2.2 There are many significant proposals in the White Paper, including fundamental reform to the regulation of health and social care professionals. Effective regulation is crucial in ensuring safe, good quality care. The regulatory framework must be capable of accommodating the changes proposed for the health and social care system in this paper and agile enough to support other major changes in the future.
- 2.3 The current framework for regulation of health professionals is outdated, which is why the Authority has called for modernisation.² We welcome the proposal in the White Paper to rationalise the regulatory system including reviewing the

¹ Department of Health and Social Care 2021, *Integration and Innovation: working together to improve health and social care*:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/960548/integration-and-innovation-working-together-to-improve-health-and-social-care-for-all-web-version.pdf

² Professional Standards Authority 2015, *Rethinking regulation*. Available at:

<https://www.professionalstandards.org.uk/docs/default-source/publications/thought-paper/rethinking-regulation-2015.pdf>

number of regulators and ensuring that the right professional groups are statutorily regulated. We have advocated such reforms.

2.4 Alongside this White Paper there are other relevant policy developments. It is important that all changes that will impact on professional regulation and through it, professionals on the front line, are given careful attention so that reforms are aligned. This is the opportunity to provide a coherent regulatory framework that is consciously designed, and no longer a patched together jigsaw.

2.5 In our submission, we propose to:

- Draw the Committee's attention to the parts of the White Paper relating to professional regulation, and the potential benefits of the underlying policy proposals
- Suggest the need to think carefully about the merits or otherwise of using section 60 orders as a mechanism for abolishing regulatory bodies and moving professions in and out of statutory regulation; and suggest safeguards to ensure that these decisions are subject to proper scrutiny and are in the public interest
- Highlight the multiple reform programmes across the health, social care and regulatory frameworks, and risks associated with the complexity and potential for lack of cohesion
- Identify the links between the different reform programmes, and the role that we can play in providing assurance for any professions moving out of statutory regulation, through our revised Accredited Registers programme
- Reiterate that proposals to give the Healthcare Safety Investigations Branch powers to carry out 'safe spaces' investigations need to strike an appropriate balance between learning and accountability, are compatible with the duty of candour and allow regulators to carry out their statutory functions.

3. Proposals relating to professional regulation

3.1 Whilst proposals in the White Paper seeking greater integration of the health and care service have received the greatest focus, we would like to draw the Committee's attention to some of the additional proposals which have relevance to professional regulation.

3.2 Key proposals include those at 5.148-5.156, covering powers to widen the scope and use of section 60 orders and enable the Secretary of State for Health and Social Care to make further reforms including:

- the power to remove a profession from regulation
- powers to abolish an independent health or social care regulator
- powers to remove restrictions regarding the power to delegate functions through legislation
- clarifying the scope of section 60 to include senior NHS managers and leaders and other groups of workers (to allow implementation of the Kark recommendation on regulation of managers if required).

- 3.3 The Authority has previously called for radical reforms to professional regulation and has laid out detailed proposals for change in *Right-touch reform*.³ These include:
- A single assurance body with a single shared register of health and care professionals to improve accessibility and transparency of regulation
 - A proper risk assessment model to indicate which groups should be regulated and the most proportionate form of regulation
 - A common set of standards across all health and care occupations
 - Joint working between regulators and others to recognise and prevent harm occurring
 - A shared independent tribunal service for adjudication on breach of professional standards and consideration of other shared regulatory functions
 - A new less adversarial fitness to practise model with a greater focus on remediation, to lessen the impact on all parties while protecting the public
 - Greater focus on local complaint resolution.
- 3.4 We welcome the commitment in the White Paper to consider the number of professional regulators. There are currently ten regulators under our oversight including seven with a UK wide remit⁴ and three covering different parts of the UK⁵. There are also the devolved social care regulators for Scotland, Wales and Northern Ireland which fall outside of our oversight.⁶
- 3.5 We carried out work for the Department of Health and Social Care in 2012 looking at cost effectiveness and efficiency of the professional regulators and highlighting potential gains to be made from mergers or sharing of different functions.⁷
- 3.6 However, it is important that structural reforms including mergers are not just pursued for cost and efficiency reasons and that the public interest remains paramount. This could include ensuring that any proposed changes would have wider benefits such as supporting multi-professional working in teams, integrated care and promoting a common approach to standards supporting patient safety such as the duty of candour.
- 3.7 We also welcome consideration of which groups should be in or out of statutory regulation. We have made the case for a risk-based mechanism to consider which groups should be statutorily regulated or how best to manage the risks. We have developed a methodology for this purpose described in

³ Professional Standards Authority 2017, *Right-touch reform*. Available at: <https://www.professionalstandards.org.uk/publications/detail/right-touch-reform-a-new-framework-for-assurance-of-professions>

⁴ The General Medical Council, Nursing and Midwifery Council, General Dental Council, General Optical Council, General Chiropractic Council, General Osteopathic Council, Health and Care Professions Council.

⁵ The General Pharmaceutical Council (regulates the pharmacy team in Great Britain), (the Pharmaceutical Society of Northern Ireland (regulates pharmacists in Northern Ireland and is) and Social Work England (regulates social workers in England).

⁶ The devolved social care regulators are not under the Authority's oversight and are outside the scope of the proposals within the White Paper.

⁷ Professional Standards Authority 2012, *Cost effectiveness and efficiency review of the health professional regulators*. Available at: <https://www.professionalstandards.org.uk/publications/detail/cost-effectiveness-and-efficiency-review-of-the-health-professional-regulators>

*Right-touch assurance.*⁸ We used this approach in 2019 to provide advice to Health Education England (HEE) regarding the risk of harm arising from the practice of sonographers.⁹

- 3.8 Government previously consulted on giving the Authority a statutory role advising on which groups within health and care should be regulated which we support.
- 3.9 Our recent public consultation on the future of the Accredited Registers programme, which was originally set up to provide assurance for those choosing services from unregulated roles in health and care, proposed that oversight should be proportionate to risk and further highlighted the need for a mechanism to achieve this.
- 3.10 Whilst we welcome the renewed focus placed on these two areas by the White Paper, the proposal to extend the use of section 60 as a legislative mechanism for abolishing regulatory bodies and moving professions in and out of statutory regulation would reduce the level of scrutiny currently exercised by Parliament on these decisions. This requires careful consideration.
- 3.11 We recognise the desire to provide the Secretary of State with greater flexibility and an agile system, however if taken forward we suggest inserting a safeguard for example, a requirement to seek independent advice or assurance that proposed changes are in the public interest.
- 3.12 Similar safeguards should also apply to decisions to bring groups in and out of statutory regulation to ensure that such decisions are based primarily on risk of harm arising from practice rather than other considerations relating to professional standing or workforce incentives.
- 3.13 In relation to proposals relating to the potential regulation of managers we have previously highlighted in evidence to the Kark Review that management is not a profession in the same way that health and care professions are. There needs to be careful consideration about whether statutory professional regulation would be the most appropriate way of managing the risks arising.

4. A highly complex, fast-evolving policy landscape

- 4.1 As noted, there are currently different areas of developing policy which will impact on professional regulation. Whilst we welcome modernisation of the health, social care and regulatory frameworks we note the risks associated with the complexity and potential for lack of coordination between these different strands of activity.
- 4.2 In addition to proposals already highlighted from the White Paper we have provided below an overview of other key developments for the Committee to be aware of and where possible indicated how they may interlink.

⁸ Professional Standards Authority 2016, *Right-touch assurance: a methodology for assessing and assuring occupational risk of harm*. Available at: [https://www.professionalstandards.org.uk/docs/default-source/publications/right-touch-assurance---a-methodology-for-assessing-and-assuring-occupational-risk-of-harm-\(october-2016\).pdf?sfvrsn=f21a7020_0](https://www.professionalstandards.org.uk/docs/default-source/publications/right-touch-assurance---a-methodology-for-assessing-and-assuring-occupational-risk-of-harm-(october-2016).pdf?sfvrsn=f21a7020_0)

⁹ Professional Standards Authority 2019, *Right-touch assurance for sonographers based on risk of harm arising from practice - Report to Health Education England*. Available at: https://www.professionalstandards.org.uk/docs/default-source/publications/policy-advice/right-touch-assurance-for-sonographers-a-report-for-hee.pdf?sfvrsn=9cfd7420_13

Reforms to health professional regulator legislation

- 4.3 Government is shortly due to consult publicly on proposals to make changes to the legislation of the nine health professional regulators covering their main functions (fitness to practise, registration and education and training) and governance. Government previously consulted in 2017/18 on a range of proposals drawing on the earlier Law Commissions Bill (2015) and our recommendations set out in *Rethinking regulation*.¹⁰
- 4.4 In July 2019 Government published its response¹¹ to the consultation laying out plans to make changes to the regulators' legislation in some key areas. These included:
- Introducing a new less adversarial fitness to practise (FtP) model across the health professional regulators
 - Making changes to regulator governance including implementing consistent duties across the regulators and replacing regulators Councils with smaller unitary Boards (we provided advice to the Department of Health on Board size and effectiveness in 2011¹²)
 - Providing regulators with powers to set their own operating procedures through rules.
- 4.5 The consultation has not yet been published. At this point in time, however, it seems likely that these proposals will include changes to fitness to practise proceedings that will allow regulators to make decisions about serious conduct and competence matters in private without a public hearing, in agreement with the professional.
- 4.6 The Government response to the consultation did not specify what oversight of fitness to practise decisions we would be given in a reformed system. Currently the Authority can challenge any decisions made by Panel hearings which do not protect the public using its section 29 appeal powers. Decisions made in private currently fall outside of our jurisdiction. Without changes to our legislation, extending the regulators' powers to decide all cases by consent could remove a significant tranche of cases from our oversight which we believe would reduce public protection.
- 4.7 The Secretary of State reiterated the Government's support for these reforms as part of the announcement on the outcome of the *Busting Bureaucracy* exercise in November 2020.¹³ Some of the reforms are to be based on powers given to Social Work England.

¹⁰ Professional Standards Authority 2015, *Rethinking regulation*. Available at:

<https://www.professionalstandards.org.uk/docs/default-source/publications/thought-paper/rethinking-regulation-2015.pdf>

¹¹ Department of Health and Social Care 2019, *Promoting professionalism, reforming regulation - Government response to the consultation*. Available at:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/820566/Promoting_professionalism_reforming_regulation_consultation_reponse.pdf

¹² Professional Standards Authority 2011, *Board size and effectiveness: advice to the Department of Health regarding health professional regulators*. Available at:

https://www.professionalstandards.org.uk/docs/default-source/publications/advice-to-ministers/board-size-and-effectiveness-2011.pdf?sfvrsn=d1c77f20_12

¹³ Department of Health and Social Care, *Busting bureaucracy: empowering frontline staff by reducing excess bureaucracy in the health and care system in England*. Available at:

<https://www.gov.uk/government/consultations/reducing-bureaucracy-in-the-health-and-social-care->

- 4.8 Changes to the regulators' legislation are expected to be made sequentially starting with the General Medical Council (GMC) which will also be given responsibility for regulating Physician Associates and Anaesthesia Associates.
- 4.9 Whilst the Authority has concerns about certain aspects of proposals these changes to modernise regulators' legislation are long overdue. Their impact is likely to be significant and the opportunity to reform well should be seized. We hope they will receive the attention and scrutiny they deserve.

Reforms to the system for recognition of international qualifications and principles for domestic regulation of professions

- 4.10 In parallel the Department for Business, Energy and Industrial Strategy (BEIS) is developing proposals for a new system to replace the (cross-sector) Recognition of Professional Qualifications Directive (RPQ) as well as principles to guide the domestic approach to regulation of professions. The UK was previously subject to the RPQ Directive as part of EU membership and it formed the basis of the approach to recognising professional qualifications.
- 4.11 BEIS issued a call for evidence in August 2020¹⁴ seeking information to support their work. We understand that this covers four main areas:
- Recognition of professional qualifications from other countries (to develop a replacement for the RPQ and provide a framework for recognition arrangements with other countries following the end of the standstill arrangements with the EU)
 - Implementing UK trade agreements (removing barriers for regulators to enter into Mutual Recognition Agreements with regulators in other countries if they wish)
 - Recognition of professional qualifications in the UK Internal Market (ensuring professionals are able to move and operate across England, Wales, Scotland and Northern Ireland)
 - Domestic regulation of professions (proposed principles or duties for professional regulators to ensure a transparent and proportionate approach to domestic regulation of professions).
- 4.12 The Authority responded to the BEIS call for evidence in October 2020 highlighting the need for any approach to take account of the specific characteristics of health and social care professional regulation and the specific risks associated with different professions. We also called for alignment between BEIS and DHSC on different workstreams and to ensure clarity and certainty for regulators, employers, registrants and the public on the future policy framework.¹⁵

[system-call-for-evidence/outcome/busting-bureaucracy-empowering-frontline-staff-by-reducing-excess-bureaucracy-in-the-health-and-care-system-in-england](#)

¹⁴ Department of Business, Energy and Industrial Strategy, *Recognition of professional qualifications and regulation of professions: call for evidence*. Available at: <https://www.gov.uk/government/consultations/recognition-of-professional-qualifications-and-regulation-of-professions-call-for-evidence>

¹⁵ Professional Standards Authority 2020, *Response to Department for Business Energy and Industrial Strategy call for evidence on recognition of qualifications and regulation of professions in the UK*. Available at: https://www.professionalstandards.org.uk/docs/default-source/publications/consultation-response/others-consultations/2020/authority-response-to-beis-consultation-on-recognition-and-regulation-of-professions.pdf?sfvrsn=3a4f7620_4

- 4.13 Whilst the BEIS work is cross-sector we remain concerned to ensure that there is full consideration of the potential overlap between this work, the ongoing work by DHSC to reform professional regulation and the proposals within the White Paper.

Changes to the Accredited Registers programme for unregulated health and care occupations

- 4.14 Our Accredited Registers (AR) programme provides the only system designated by legislation for independent oversight of health and care roles that are not subject to statutory regulation. These includes roles that are key to mental health provision; around 55,000 counsellors and psychotherapists can currently display our quality mark. Other roles included in the programme are sports therapists, public health practitioners, sonographers and foot health practitioners amongst many others. The scheme offers assurance to the public as well as employers, commissioners or GPs who may wish to refer patients on, about the practitioners on these registers.
- 4.15 We recently concluded a public consultation as part of a strategic review of the AR programme. Our plans are also designed to ensure that the programme can help deliver NHS workforce aims, as set out in the NHS Long Term Plan for England. We think that assurance of the new roles that are being introduced, such as care co-ordinators and psychological support workers, is essential to ensure assurance about standards of this expanding workforce and are currently working with NHS England/Improvement, Health Education England and others to achieve this.
- 4.16 We have been grateful to have input from Government and other stakeholders on how the programme might develop in the future to support mutual objectives around providing assurance for unregulated groups and protecting the public. The Covid-19 pandemic has further highlighted the importance of recognising all roles within health, and we need continued support and recognition from employers for the programme to be effective. We also think that it is essential for Accredited Registers to be able to access enhanced DBS and other safeguarding checks.
- 4.17 We believe that any thinking about how the structure of professional regulation might develop in the future must include consideration of the role currently played by the AR programme in mitigating the risks associated with unregulated practitioners. This is particularly important when thinking about which professions should move in and out of statutory regulation and how regulators might be reconfigured if this occurs.

Proposals to provide the Healthcare Safety Investigations Branch with safe space investigation powers

- 4.18 We note the proposals within the White Paper to place the Healthcare Safety Investigations Branch on an independent, statutory footing and provide it with powers to conduct safe space investigations.
- 4.19 We recognise that there is great support for the safe space model and we agree that a focus on learning and providing a safe and supportive environment is a key part of encouraging staff to speak up to improve patient safety.
- 4.20 We would however sound a note of caution to the Committee on the need to ensure that these proposals are sufficiently joined up with equally important

requirements for regulators and professionals. Whilst learning to support improvements in patient safety is crucial and a culture of fear and blame is never helpful, an appropriate balance must be struck between learning and individual accountability.

- 4.21 Work is underway (through the reforms to regulator powers) to ensure that fitness to practise processes are less adversarial and more focussed on remediation and learning. It will be important to ensure that regulators are still able to carry out their public protection role unhindered. There is also the need to consider how the safe space powers interact with the pre-existing professional duty to be candid with patients and families when something has gone wrong. At least two public inquiries recommended candour as essential to an effective patient safety system.
- 4.22 We have previously highlighted these issues in our evidence to the Joint Committee which scrutinised the draft Health Service Safety Investigations Bill in 2018.¹⁶ Whilst we do not believe these issues are insurmountable it is important that support for the concept of a safe environment for professionals to speak up and ensure learning and improvements does not obscure the equally important need for accountability – both are necessary to protect the public.

5. Further information

- 5.1 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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¹⁶ Professional Standards Authority 2018, *Evidence to the Joint Committee on the Draft Health Service Safety Investigations Bill*. Available at: https://www.professionalstandards.org.uk/docs/default-source/publications/consultation-response/others-consultations/2018/professional-standards-authority-evidence-on-draft-health-service-safety-investigations-bill.pdf?sfvrsn=a0397220_4