Response to Scottish Government consultation – A National Care Service for Scotland

November 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[1]

- 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.   General comments

2.1   We welcome the opportunity to respond to this consultation. While our oversight does not cover the statutory social care regulators outside of England, we take a keen interest in the regulation and assurance of professions in both health and care across the United Kingdom. We have also published influential policy papers that provide guidance on risk-based regulatory policy-making.

2.2   Our response focuses on the questions about regulation or other forms of assurance of occupational groups and professions.

2.3   Overall, we support the principles for regulation and scrutiny set out on page 109, and in particular the focus on public protection, risk-based approaches,

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[1] This includes regulators with a UK-wide remit including the General Chiropractic Council, the General Dental Council, the General Medical Council, the General Optical Council, the General Osteopathic Council, the Health and Care Professions Council and the Nursing and Midwifery Council and regulators covering different parts of the UK including the General Pharmaceutical Council (which regulates the pharmacy team in Great Britain), the Pharmaceutical Society of Northern Ireland (which regulates pharmacists in Northern Ireland) and Social Work England (which regulates social workers in England). The devolved social care regulators for Scotland, Wales and Northern Ireland are not under the Authority's oversight.

and involvement of people with lived experience. We were also pleased to see the commitment to separation of the regulatory bodies from the National Care Service itself (pages 108 and 109).

2.4   We note the proposal to set up a compulsory central register of personal assistants (PAs), but that there is currently no commitment to regulate this group by statute. We support this cautious approach. Our approach as laid out in *Right-touch assurance*[2] sets out that decisions about whether or how to regulate a particular group, should be based on evidence of public protection risks associated with the activity, context and agency/vulnerability of the service users. Alongside this some understanding of the numbers of practitioners and service users is needed to assess the overall scale of the risks.

2.5   Setting up a non-statutory register would be a first step towards developing an evidence base for future assurance of this group of social care workers, as well as potentially creating an opportunity to support the workforce.

2.6   The Authority runs a UK-wide accreditation scheme for registers of unregulated healthcare occupations, which could offer assurances that any non-statutory register of personal assistants was meeting minimum standards for areas such as governance, complaints handling, education and training and registration.[3] This approach would seem to be in line with the health and social care integration agenda in Scotland. Our standards for registration also allow registers to make use of equivalence routes for demonstrating competence outside of formal qualifications.

3.   Answers to specific questions

Core principles for regulation and scrutiny

Question 75: Are there any other changes you would make to these principles?

3.1   Overall we found the principles summarised the role of regulation and scrutiny well. Our main comment is on principle 7, which in our view could make a stronger statement about the role of regulation in protecting all users of social care services, rather than focusing more narrowly on 'vulnerable people.'

3.2   The Authority and the regulators we oversee,[4] including Social Work England, share an over-arching objective, based on the three limbs of public protection established in case law:

> *The over-arching objective of […] in exercising its functions is the protection of the public.*

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[2] Professional Standards Authority 2016, *Right-touch assurance: a methodology for assessing and assuring occupational risk of harm.* Available at: https://www.professionalstandards.org.uk/publications/detail/right-touch-assurance-a-methodology-for-assessing-and-assuring-occupational-risk-of-harm
[3] Our work with Accredited Registers: https://www.professionalstandards.org.uk/what-we-do/accredited-registers
[4] With the exception of the Pharmaceutical Society of Northern Ireland.

The pursuit by […] of its over-arching objective involves the pursuit of the following objectives—
(a) to protect, promote and maintain the health, safety and well-being of the public;
(b) to promote and maintain public confidence in [the regulated professions];
(c) to promote and maintain proper professional standards and conduct for members of those professions;

3.3   In the context of this ambitious reform programme, the Scottish Government may wish to consider whether it would be beneficial to move towards something similar for the Scottish Social Services Council (SSSC). This would bring it in line with healthcare professional regulation as it applies to Scotland, as well as regulation of social workers in England. This would ultimately support closer working between regulators, which we know is beneficial to patient and service user safety.

Enhanced powers for regulating care workers and professional standards

Question 83: Would the regulator's role be improved by strengthening the codes of practice to compel employers to adhere to the codes of practice, and to implement sanctions resulting from fitness to practise hearings?

3.4   We are not opposed to these approaches in principle, however, in line with the principles of right-touch regulation,[5] we would have liked to see evidence of the public protection problems they are intended to solve, as well as some consideration of the risks, benefits, and potential unintended consequences. As it stands, we do not feel we have enough information to take a position on whether these measures are necessary or desirable, particularly as the regulators we oversee do not have these powers.

Question 84: Do you agree that stakeholders should legally be required to provide information to the regulator to support their fitness to practise investigations?

3.5   Yes. Other professional regulators such as the General Medical Council (GMC) have these powers, and in our view, they are an important part of an effective fitness to practise function.

Question 86: What other groups of care worker should be considered to register with the regulator to widen the public protection of vulnerable groups?

3.6   As set out in our introduction, we advocate for an approach to regulatory decisions of this type, based on evidence of occupational risk. Our approach is

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[5] Professional Standards Authority, *Right-touch regulation*. Available at:
https://www.professionalstandards.org.uk/what-we-do/improving-regulation/right-touch-regulation

set out in *Right-touch assurance*.[6] It involves a qualitative and quantitative assessment of the severity and type of risks associated with the activities and contexts of the practice in question, as well as the agency or vulnerability of the service users. This ensures that the type of regulatory oversight selected is both proportionate to the risk of harm and tailored to the nature of the risk.

3.7 In the absence of evidence suggesting the need for statutory regulation, but if there is nonetheless a concern about public safety, our Accredited Registers programme offers a non-statutory route for quality-assured registration of unregulated healthcare occupations.

Valuing people who work in social care

Question 94: Do you agree that all personal assistants should be required to register centrally moving forward?

3.8 We would support a cautious approach to bringing in any kind of regulatory framework around personal assistants, as there is currently little understanding of the nature and level of risks they present (as mentioned above).

3.9 Setting up a non-statutory register would be a first step towards developing an evidence base for future assurance of this group of social care workers, as well as potentially creating an opportunity to support the workforce.

3.10 The Authority runs a UK-wide accreditation scheme for registers of unregulated healthcare occupations, which could offer assurances that any non-statutory register of personal assistants was meeting minimum standards for areas such as governance, complaints handling, education and training and registration. This approach would seem to be in line with the health and social care integration agenda in Scotland. Our standards for registration also allow registers to make use of equivalence routes for demonstrating competence outside of formal qualifications.

4. Further information

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

Professional Standards Authority for Health and Social Care
157-197 Buckingham Palace Road
London SW1W 9SP

Email: policy@professionalstandards.org.uk
Website: www.professionalstandards.org.uk
Telephone: 020 7389 8030

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[6] Professional Standards Authority 2016, *Right-touch assurance: a methodology for assessing and assuring occupational risk of harm.* Available at:
https://www.professionalstandards.org.uk/publications/detail/right-touch-assurance-a-methodology-for-assessing-and-assuring-occupational-risk-of-harm