Response to the Department of Health consultation on the draft Health and Care Professions (Public Health Specialists and Miscellaneous Amendments) Order 2015

November 2014

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 We welcome the opportunity to respond to this consultation[1] which invites views on proposed legislation, the main effect of which would be to introduce statutory regulation for non-medical public health specialists.

2. General comments

2.1 Now that there is a system of accreditation for voluntary registers in the healthcare sector, there is a framework of workforce assurance options which should limit the introduction of statutory regulation of new groups to only when the risks that that group poses necessitate it.

2.2 In *Enabling Excellence*, the Government stated: 'The extension of statutory regulation to currently unregulated professional or occupational groups, such as some groups in the healthcare science workforce, will only be considered where there is a compelling case on the basis of a public safety risk and where assured voluntary registers are not considered sufficient to manage this risk.'[2] This policy was recently repeated in the Government's response to the House of Commons Health Select Committee report on the Health and Care Professions Council (HCPC) annual accountability hearing.[3]

2.3 Given this policy we would have expected the consultation paper, and the Government announcements it references, to explain if and why the Government considers that the register operated by the United Kingdom Public

[1] https://www.gov.uk/government/consultations/public-health-specialists-regulation

[2] February 2011. *Enabling Excellence - Autonomy and Accountability for Healthcare Workers, Social Workers and Social Care Workers* Cm 8008, para 4.12 https://www.gov.uk/government/publications/enabling-excellence-autonomy-and-accountability-for-health-and-social-care-staff

[3] Department of Health. October 2014. *Government Response to the House of Commons Health Committee Report of Session 2014-15: accountability hearing with the Health and Care Professions Council*, p.4. https://www.gov.uk/government/publications/health-and-care-professions-council-accountability-hearing

Health Register (UKPHR) is insufficient to manage the potential minimal risk of poor practice among non-medical public health specialists.

2.4 As may be recalled, we stated in our response to the Government's 2011 consultation *Healthy Lives, Healthy People* that we agreed with the Government's preference at the time for a voluntary registration system of assurance for public health specialists. We explained that in our view Dr Scally's recommendation that all public health professionals should be regulated by the HCPC would be an overly burdensome solution for a risk that had not been properly identified or quantified.

2.5 Subsequently in September 2011, when the Department of Health asked us for further evidence 'which would be relevant to a decision to adopt regulation as the only effective means of public protection', we set out evidence that indicated that while there may on occasions be high risk associated with poor practice in the field of public health, the incidence of such risks is low and well controlled by existing methods.

2.6 Professional regulation is in any event inappropriate to deal with the potential risks of public health failures. Public health failures are population based and the consequence of strategic policy and practice errors; for instance the acknowledged failure of WHO to respond in a timely and adequate manner to the Ebola outbreak in West Africa has not resulted in any individual public health doctor being held to account.

2.7 Since 2011 we have not seen any evidence that would lead us to alter our position. Indeed our confidence that the minimal risks posed by public health specialists are well controlled has been strengthened by the evidence which has satisfied us that the UKPHR meets the challenging standards for accreditation.[4] These are the standards we apply in the accredited registers programme we have established to implement the corresponding new function assigned to us by Health and Social Care Act 2012[5]. Details of that evidence can be found in the Authority's decision to accredit the UKPHR in March 2014.[6]

2.8 We note that an economic assessment of the impact of this proposal to regulate non-medical public health specialists has not been prepared, as it is thought that the proposal will have no impact on business. In our view, the impact on the UKPHR should be considered. We believe that they have contingency plans in case public health specialists were to become statutorily regulated by the HCPC. Nevertheless there will be a detrimental impact on the UKPHR, whose residual register of public health *practitioners* is significantly smaller than its register of public health specialists.

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[4] Professional Standards Authority. 2013. *Standards for organisations holding a voluntary register for health and social care occupations*. http://www.professionalstandards.org.uk/library/document-detail?id=fb70dc37-7acd-4e48-bbdd-fc1b909662f0

[5] Health and Social Care Act 2012, section 229

[6] Professional Standards Authority. March 2014. *Accredited Voluntary Register Panel Decision on the renewal application from UKPHR* http://www.professionalstandards.org.uk/docs/default-source/voluntary-registers/uk-public-health-register-avr-panel-decision.pdf?sfvrsn=2

2.9 More broadly, we wish to highlight that the contradiction in Government policy created by this proposal to regulate what is a small low risk group, seriously undermines the success of the framework of assurance that Government has set up. The Government's approach to public health specialists is already discouraging some occupational groups from establishing voluntary registers and striving for accreditation, as they believe that statutory regulation is an option open to them and are focusing their efforts on campaigning for that instead. This has the potential to increase risks to the public as these groups remain outside the assurance framework. In our view it would be helpful for all concerned if the Government discouraged this by more actively communicating its policy and the framework of assurance, including accredited registers, that it has established.

3. Response to specific consultation questions

3.1 In light of our general comments above, we have no comments to make on the proposed arrangements for introducing statutory regulation which is not necessary for public protection.

Composition of the registration appeal panel (Question 8)

3.2 Question 8 asks whether the requirement for a Council member to chair the Registration Appeal Panel of the HCPC should be removed. We support this proposed change. However we are unclear why this proposal does not appear to match a similar proposed change to the registration appeal panel of the Nursing and Midwifery Council (NMC), which we understand would go further so that Council members can no longer play any part in a registration appeal panel.[7] In the interests of achieving clear separation of duties between the operational and governance functions of the HCPC, we would like to see this proposal modified so that HCPC council members can no longer either chair or sit on the panel.

3.3 Although it is not mentioned in the consultation paper, it appears to us that the draft Order will remove the requirement for a doctor to sit on the appeal panel in cases involving health issues. We would support such a change. There is no need for the panel to include a doctor: any medical advice the panel requires is better provided by an appropriate expert witness (as we understand happens at other regulators).

Striking-off orders in health and competence fitness to practise cases (Question 9)

3.4 We agree that the HCPC should have the power to make a striking-off order in a lack of competence case, provided the registrant has been the subject of a continuous substantive suspension or conditions of practise order for at least two years.

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[7] Department of Health, April 2014. *The Nursing and Midwifery Council – proposed changes to the governing legislation* , p.14 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/304575/nmc-governing-legislation-consult.pdf

3.5 For well-established fairness and equality reasons we would not normally support a regulator having the power to make a striking-off order in cases where a practitioner's fitness to practise is impaired on the grounds of adverse physical or mental health (and no other ground) and they have already been the subject of a continuous substantive suspension or conditions of practise order for at least two years. We would normally suggest the regulator should instead have the power to indefinitely suspend such a registrant, but only if they have already been the subject of a continuous substantive suspension or conditions of practise order for at least the preceding two years.

3.6 However, in common with the NMC, the HCPC is in the unusual position of possessing a legal power to review a striking off order should the registrant's health improve.[8] This means that the registrant would be in the same position as someone who has been indefinitely suspended. In light of this, we are able support the HCPC having a power to strike a registrant off the register for health reasons, provided he or she has been the subject of continuous suspension or conditions of practice for at least the preceding two years.

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:

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[8] Health and Social Work Professions Order 2001, Article 30 (7)