AHPF response to DoH Consultation: "Promoting Professionalism, reforming regulation". (Consultation closes 23 January 2018).

The Allied Health Professions Federation (AHPF) is made up of twelve professional bodies representing Allied Health Professionals (AHPs). There are 158,000 working in a range of settings including hospitals, people's homes, community clinics, GP surgeries, the justice system, local authorities, private and voluntary sectors and primary, secondary and tertiary education. As such, AHPs are trusted professionals performing a crucial function in the NHS and social care.

The AHPF has a number of significant concerns about the proposals in this consultation.

Q1: Do you agree that the PSA should take on the role of advising the UK governments on which groups of healthcare professionals should be regulated?

Disagree

The suggestion that the PSA is the only body, or the lead body, is in our view a conflict of interests. For one body to be the one that suggests that a profession should or should not be regulated in a certain way and then is the same body that sets the standards, undertakes the reviews and publishes reports, seems to be a direct conflict. One of the principles of regulation is that the regulator is completely free from any bias and instead represents the interests of the public. This suggested role seems to fly in the face of these general principles.

In particular, we question whether the increasing use of accredited public registers may be a conflict of interest with its public protection objectives, given these are used to generate income and in effect duplicate a role of professional bodies. This seems a significant risk when the PSA is able to accredit multiple registers that relate to the same area of practice; its accreditation of registers forms an income stream for itself; and it actively promotes (to employers and others) the value and currency of its accredited registers. *(nb this text may need to go in the comments box for Q2 as there is no comments box for Q1)*

Q2 What are your views on the criteria suggested by the PSA to assess the appropriate level of regulatory oversight required of various professional groups?

Criteria - while we agree with the proposed criteria in broad terms, we would caution against interpreting criteria such as risk and intervention too narrowly. Some Allied Health Professions are involved in acute interventions that may not be widely known and risk occurs in non-acute and non-NHS settings and may be social and psychological as well as physical.

We would also suggest some additional elements:

- whether practitioners are responsible an accountable for their decisions, action and commissions – if a group is not autonomous and has their practice overseen by others, they may not require statutory regulation

- How a group is typically employed to deliver a service. A group that is either wholly or primarily self-employed or has more than one type of employment contracts may present more of a risk than a group employed in relatively "standard" ways subject to local clinical governance
- The diversity of a group's practice
- Whether practitioners are already subject to statutory regulation
- The extent to which a group's scope of practice and activity is distinct from other groups and professions and how it is likely to evolve

It is also important that there is a shared and informed understanding of any final criteria, how they could be applied and what they are intended to mean. These need to be applied consistently across professional groups.

Scale of risk- if the risk of harm to the patient is high, we would not agree that workforce size or user group size should determine whether a profession is regulated. Section 4 of the consultation proposes economies of scale by having larger numbers of registrant per regulatory body. This means there is no reason why smaller professions could not continue to be regulated where there is significant risk of harm to patient groups. Smaller professions also need specialist education that has to be accredited. Voluntary registers are just that and provide little reassurance to patients where the risk of harm is high.

The continuing regulation of AHPs is vital for the protection of service users. It offers crucial reassurance at a time when they may be most vulnerable, ensures quality of care and safe practice when receiving care from an AHP and helps them to have a voice. Regulation helps to ensure vulnerable clients have access to a fair and free process when serious professional breaches of conduct have occurred.

Q3: Do you agree that the current statutorily regulated professions should be subject to a reassessment to determine the most appropriate level of statutory oversight? Which groups should be reassessed as a priority? Why?

Disagree

There is concern that this consultation and a number of other developments might be used as a justification to deregulate certain professions. We would be concerned if the HCPC model were to be changed as we think it works effectively and is appropriate for AHPs. **It is very important that all AHPs continue to be regulated in the way they are at present.** There are 158,000 AHPs working within hospitals, people's homes, clinics, surgeries, the justice system, local authorities, private and voluntary sectors and primary, secondary and tertiary education. AHPs are qualified and trustworthy professionals performing a crucial function in the NHS and social care. To deregulate or "water down" the regulation of any AHP would potentially place the public at risk, reduce public and colleagues' confidence (eg if working in an integrated or collaborative team or service), impact on roles and responsibilities and risk losing experience and expertise within a multidisciplinary workforce.

It is evident there is insufficient understanding of the role and importance of AHPs in the NHS, social care and beyond and this leads to misapprehensions about how they can be regulated and the potential for professions' loss of confidence in a Regulator. For example, Harry Cayton (CE PSA) suggested to the Health Select Committee on 13 June 2016 that some health professions might not require statutory regulation in the future. He cited art therapists, incorrectly quoted their number of FtP cases and also said that music therapists were not regulated - they are for good reason as are other AHPs.

The continuing regulation of AHPs is vital for the protection of service users. It offers crucial reassurance at a time when they may be most vulnerable, ensures quality of care and safe practice when receiving care from an AHP and helps them to have a voice. Regulation helps to ensure vulnerable clients have access to a fair and free process when serious professional breaches of conduct have occurred. Please also see the comments on risk in Q2.

Q4. What are your views on the use of prohibition orders as an alternative to statutory regulation for some groups of professionals?

Prohibition orders should not replace statutory regulation, but would be useful to manage un-regulated healthcare practitioners, eg support workers.

Q5: Do you agree that there should be fewer regulatory bodies?

Agree

(This question has no text box for comments)

Q6. What do you think would be the advantages and disadvantages of having fewer professional regulators?

Advantages

The AHPF welcomes the proposal to review the number of regulatory bodies in principle. This needs to be predicated on a review of the most effective and efficient way in which statutory regulation can be exercised to fulfil its primary function of public protection.

Disadvantages

Starting the exercise from the question of whether there are too many regulatory bodies seems overly simplistic. We would be concerned if the HCPC model were to be changed. This model works effectively and is appropriate for AHPs.

Q7. Do you have views on how the regulators could be configured if they are reduced in number?

See answers to Q6

Q8. Do you agree that all regulatory bodies should be given a full range of powers for resolving fitness to practise cases?

A broad range of powers to promote a more flexible approach would be helpful, but this depends on the exact nature of those powers. Please see also answers to Q9.

Q9. What are your views on the role of mediation in the fitness to practise process?

Mediation is cost effective in resolving cases that do not need to go through a full regulatory process. It would be helpful to clarify how practitioners working in private practice would be able to access mediation support.

Q10. Do you agree that the PSA's standards should place less emphasis on the fitness to practise performance?

Yes

Q 11. Do you agree that the PSA should retain its powers to appeal regulators' fitness to practise decisions to the relevant court, where it is considered the original decision is not adequate to protect the public?

Yes

Q12: Do you think the regulators have a role in supporting professionalism and if so how can regulators better support registrants to meet and retain professional standards?

Agree

The AHPF supports the proposals for regulatory bodies to work with professional bodies and others to focus more on supporting professionalism. AHPs have been working with the HCPC in this way for a number of years. As professional bodies, AHPs support the activity of the regulator in providing specific guidance across multiple clinical areas to ensure safe practice and help members understand how HCPC

standards relate to their day-to-day practice. For example the HCPC uses professional body guidance and resources to investigate complaints and AHPs play a significant role in assuring the quality and relevance of pre-registration education, which strengthens the HCPC role.

We think there needs to be a distinction between a Regulator's role in promoting professionalism and contributing to registrants' fulfilling regulatory requirements and any work supporting registrants to meet and retain profession standards where this may overlap with Professional Bodies' responsibilities. Regulators are not currently set up or resourced to undertake activity in these areas, this would imply a significant shift in their purpose and role, how they were funded and how they deployed their resources.

In particular, as we have said in answer to Q1, we question whether the increasing use of accredited public registers by the PSA may be a conflict of interest with its public protection objectives, given these are used to generate income and in effect duplicate a role of professional bodies. More broadly the proposals effectively blur the line between a regulatory body's responsibilities and independent Professional Bodies' responsibilities for ensuring the good standing of their profession, working for their members, ensuring appropriate standards, levels of practice and training including CPD.

Q 13. Do you agree that the regulators should work more closely together? Why?

Agree

The AHPF does support the idea of regulators working more closely together to ensure the consistency of approach and shared professional standards. This is important as many professions sit in generic roles, such as Mental Health Practitioner or Discharge Co-ordinator, Registered Manager.

Q14. Do you think the areas suggested below are the right ones to encourage joint working? How would those contribute to improve patient protection? Are there any other areas where joint working would be beneficial?

Other areas:

- Seeking a professional view much earlier in the process to ensure misunderstandings do not inform the case
- To improve the operational management of the case
- To reduce legal inconsistencies
- To reduce timescales to more effectively support public protection and reduce stress for the individuals involved

Q15. Do you agree that data sharing between healthcare regulators including systems regulators could help identify potential harm earlier?

Yes

Q 16. Do you agree that the regulatory bodies should be given greater flexibility to set their own operating procedures?

It is important to have consistent approaches for all regulators.

Q 17. Do you agree that the regulatory bodies should be more accountable to the Scottish Parliament, the National Assembly for Wales and the Northern Irish Assembly, in addition to the UK Parliament?

We think the current arrangements work well, however opportunities for further input by devolved Parliaments and Assemblies to identify differences in approach should be explored. It is important that the same regulatory requirements apply across the whole of the UK.

Q. 18. Do you agree that the councils of the regulatory bodies should be changed so that they comprise of both non-executive and executive members?

It is not clear why the executive members need to be on the Council if the purpose of the governance structure is to assure progress against a strategic and operational plan and hold the executive to account. It is important to look at competency frameworks for Council members and to build effective relationships between the executive and non-executive.

Q.19 Do you think that the views of employers should be better reflected on the councils of the regulatory bodies, and how might this be achieved?

Protection of the public is the primary objective, so we think the approach should be more about improving communications with employers rather than representation on councils. It is difficult to see how one employer could represent the views of others comprehensively.

Q20. Should each regulatory body be asked to set out proposals about how they will ensure they produce and sustain fit to practise and fit for purpose professionals?

The HCPC already cover all the main functions we expect of a professional regulator, including setting standards. HCPC recently reviewed its Standards of Proficiency, setting out standards for each of the

registrant groups. It also recently reviewed common professional standards. We expect the profession-specific Standards of Proficiency will continue to be needed. Professional bodies already add significant value to the work of the Regulator in this area and we hope this will continue, albeit with a clear understanding of respective responsibilities.

It is important that the value and impact of current regulators' approaches are evaluated as these use different principles and approaches and make different demands on registrants. The approach of different regulators needs some consistency in the light of evolving roles across healthcare. Care is needed not to create restrictive approaches that work against workforce flexibility. Unless there are good reasons for public protection, any developments should not impose any unnecessary bureaucratic requirements on registrants eg if individual professionals had to hold different forms of registration.

Q21. Should potential savings generated through the reforms be passed back as fee reductions, be invested upstream to support professionalism, or both? Are there other areas where potential savings should be reinvested?

Fee reduction

The AHPF also supports a reduction in fees from the Regulators. Each Professional Body already supports the professionalism of its members and they should not be subject to extra financial costs for this.

Q22. How will the proposed changes affect the costs or benefits for your organisation or those you represent? - an increase - a decrease - stay the same. Please explain your answer and provide an estimate of impact if possible.

On the assumption that the HCPC continues to be the Regulator for AHPs, we would expect little change. As we said previously we think the HCPC model works well for both the public and AHPs and we would be concerned if it were changed.

Q23. How will the proposed changes contribute to improved public protection and patient safety (health benefits) and how could this be measured?

The impact will depend on what changes are implemented and how. We would hope to see greater consistency in quality standards for regulators. As we've said previously, particularly in response to

Q3, we are concerned that any reduction in regulation for AHPs would adversely impact on patient safety, the diversity of the professions and promote cultural bias.

Q 24 Do you think that any of the proposals would help achieve any of the following aims: - Eliminating discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010 and Section 75(1) and (2) of the Northern Ireland Act 1998? - Advancing equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it? - Fostering good relations between persons who share a relevant protected characteristic and persons who do not share it? If yes, could the proposals be changed so that they are more effective? If not, please explain what effect you think the proposals will have and whether you think the proposals should be changed so that they would help achieve those aims?

Impact would depend on how the proposals were implemented. For example, any reduction in the regulation of AHPs would impact on service user with protected characteristics under the Equality Act 2010 and Northern Ireland Act 1998 including children and young people and adults with disabilities and/or gender reassignment.