

Council, 6 July 2016

Chief Executive's report

Executive summary and recommendations

Introduction

The attached provides an update about the two issues that are currently accounting for a significant proportion of the Chief Executive's time – the creation of a new social worker regulator and proposals for regulatory reform.

Decision

This paper is to note.

Background information

None.

Resource implications

None as a result of this paper.

Financial implications

None as a result of this paper.

Appendices

- Summary of Lords debate on 16 June 2016
- Letter from Ben Gummer MP to Elaine Buckley, dated 26 May 2016

Date of paper

24 June 2016

Chief Executive – Marc Seale

Meetings 19 May to 22 July 2016

Visit from INPTRA	19 May
World Health Professions Regulation Conference, Geneva	21 May
Visit from Dental Council, New Zealand	23 May
MoU Jersey	25 May
Meet the HCPC, Jersey	25 May
Chief Executives Legislation Group (CELG) meeting	27 May
Meet the HCPC, Belfast	7 June
Children and Social Work Bill, House of Lords	14 June
Visit from Dato Tan Yoke Hwa, Ministry of Health in Malaysia	16 June
Department of Health pre-consultation stakeholder event teleconference	16 June
Visit to Ministry of Health in Toronto Canada	20 June
Department of Health pre-consultation stakeholder event teleconference	23 June
IMD Orchestrating Winning Performance Programme, Lausanne	27 June

Scheduled Meetings

Department of Health pre-consultation stakeholder event, London	11 July
Social Work Reforms meeting	11 July
Meet the HCPC Watford	12 July
Department of Health pre-consultation stakeholder event, Leeds	13 July
EMT Away Day	14 July
Chief Executives Steering Group (CESG) meeting	18 July
Department of Health pre-consultation stakeholder event, Cardiff	20 July
Health and Social Care Regulators Forum	21 July

Chief Executive's report

1.1 The following provides an update about the regulation of social workers in England and proposals for regulatory reform.

New social worker regulator

1.2 The Children and Social Work Bill was published on 19 May 2016. The UK Parliament website provides more information about the progress of the Bill through the House of Lords and House of Commons and includes information about what happens at each stage.¹

1.3 The following provides a summary of the steps involved in the passage of the Bill through the House of Lords.

- The Bill received its first reading in the House of Lords on 19 May 2016. This is the formal introduction of the Bill into Parliament.
- The second reading took place on 14 June 2016. This is the first opportunity for the principles of the Bill to be debated.
- The next stage is the Committee stage. This is where line-by-line examination of the Bill first takes place. Amendments can be put forward and voted on. Part 2 of the Bill (which relates to regulation) will be considered on 30 June 2016 and 4 July 2016.
- The report stage allows all members to scrutinise the Bill (as amended as appropriate by the Committee) and to propose and vote on further amendments.
- The third reading is the final scrutiny ('tidying up') stage before consideration by the House of Commons.

1.4 The consideration of the Bill is likely to continue into the next session of parliament from September 2016.

¹ <http://services.parliament.uk/bills/2016-17/childrenandsocialwork.html>

- 1.5 The House of Lords Select Committee on the Constitution published a report on the Bill on 13 June 2016.² The Committee raised two chief concerns about part two of the Bill.
- The appropriateness of introducing legislation which would give powers to create a regulator of social workers to the Secretary of State via regulations, rather than setting out the detail to some degree on the face of the Bill. The Committee said: 'We would expect the creation of a significant statutory body, such as a regulator, to be enacted by primary legislative provision to enable proper parliamentary scrutiny.'
 - The lack of detail in the Bill about the creation of future criminal offences, leading to concerns about the ability of the House to scrutinise those offences.
- 1.6 These concerns about the use of delegated powers in relation to establishing the new regulator were raised by a number of peers during the second reading. A number of peers also questioned the Government's decision to establish a new regulator, and a number highlighted the HCPC's good performance as the regulator of social workers in England. A summary of the debate is appended and a link is provided below to the full Hansard record.³
- 1.7 A report from the House of Lords Delegated Powers Committee recently made similar findings to Constitution Committee, criticising part two of the Bill for not including anything about 'the identity of the regulator, or about its membership and constitution'.⁴
- 1.8 A background brief on the Bill was circulated to the Council recently and has been published on the HCPC website.⁵
- 1.9 A meeting with Department of Health and Department for Education officials to discuss the planned reforms to social worker regulation is currently scheduled for 11 July 2016.

Regulatory reform

- 1.10 The following provides an update about the forthcoming consultation from the four country governments on the principles informing reform of the regulators' legislation. We anticipate a consultation from autumn 2016.
- 1.11 Ben Gummer MP, Parliamentary Under Secretary of State for Health, who has responsibility for professional regulation, wrote to the regulatory body chairs on 26 May 2016 (appended). His letter confirms a forthcoming policy consultation.

² <http://www.publications.parliament.uk/pa/ld201617/ldselect/ldconst/10/10.pdf>

³ [https://hansard.parliament.uk/Lords/2016-06-14/debates/16061450000449/ChildrenAndSocialWorkBill\(HL\)](https://hansard.parliament.uk/Lords/2016-06-14/debates/16061450000449/ChildrenAndSocialWorkBill(HL))

⁴ http://www.publications.parliament.uk/pa/ld201617/ldselect/lddelreg/13/1304.htm#_idTextAnchor001

⁵ <http://www.hpc-uk.org/aboutregistration/socialwork/>

- 1.12 The four country governments are arranging a series of five 'pre-consultation events' in the four countries with stakeholders to inform the content of the consultation. These events will take place in July and August 2016 and one of the regulators will give a short address at each of the events. The HCPC is supporting the event in Cardiff on 20 July 2016, with Marc Seale speaking. We are also attending each of the other events.
- 1.13 A Department of Health meeting of the regulators to discuss so-called 'upstream measures' was scheduled to take place on 6 July 2016. This is a reference to the ongoing debate about the role the regulators might be able to play in 'prevention', for example, activity which might help prevent fitness to practise problems later on. Our recently commissioned research looking at the prevalence of fitness to practise concerns about paramedics and social workers engages this agenda. The role of regulators in prevention was discussed in the PSA's 'Rethinking regulation' and is likely to be a theme addressed in the forthcoming consultation.

Summary of House of Lords debate on the Second Reading of the Children and Social Work Bill – issues relating to regulation

Tuesday 14 June 2016

Parliamentary Under-Secretary of State at the Department for Education Lord Nash opened the debate and stated that the Bill reflects “the firm commitment of government to offer the promise of a better future to children” and is part of a wider programme of measures designed to improve the life chances of children.

When discussing Part 2 of the Bill, Nash said that the “new bespoke regulatory body dedicated to social work...will represent a much more substantial approach to supporting the profession”. He added that, “the change to the system of regulation of social workers is in no sense a criticism of the HCPC. I commend the work that it has carried out since taking on the regulation of social workers in August 2012. Rather, it is a reflection of the unique position of social workers.”

Lord Watson of Invergowrie (Lab) responded to the Minister’s opening remarks by expressing concern about the Bill between Clauses 20 to 40 and skeleton nature of the legislation. Watson referenced the report from the Constitution Select Committee which called into question the lack of opportunity for proper parliamentary scrutiny, given the paucity of detail in the legislation. In his closing remarks Watson pointed to the cost of setting up a new regulator at a time of budget cuts but also to the proposed lack of independence of the new body, saying that the Bill must be amended to rectify this.

Baroness Pinnock (Lib Dem) said that the “proposal to give power to the Secretary of State or an undefined regulator is contrary to accepted best practice, which is that those who may have to challenge the state are not controlled by the state. This proposal must be significantly amended.”

Lord Bishop of Durham welcomed the Bill in the main, however referred to a conversation with a senior judge “who suggested that to really raise the esteem of social work, a college or academy of social work—perhaps even a royal college or a royal academy—would be far better than the proposed government regulatory body.” Support for an independent royal college was later given by **Baroness Walmsley (Lib Dem)** following appropriate parliamentary scrutiny.

Baroness Dean of Thornton-le-Fylde (Lab) asked whether the government are willing to amend Clause 20 and require that a new regulator be set up by primary legislation.

Lord Warner (Non-Afl) began by talking about the abolition of the General Social Care Council (GSCC), including the cost of doing so, as well as the lack of detail in the legislation. He then mentioned the work the HCPC are doing in revising the standards of proficiency and standards of education and training. “We are entitled to have reasonable confidence in [the HCPC] because the independent body that oversees the work of all health and care

Regulators, the Professional Standards Authority (PSA), says that the HCPC has consistently been among the best performing regulators within its statutory framework and against the standards of good regulation in annual performance reviews. It also has the lowest annual retention fee of all professional regulators.” Warner finishes by commenting on the disconnect between the Department for Education (DfE) and the Department of Health (DH) and the conflicting agendas of the two departments, particularly with regards to health and care regulation. He also points to the role of adult social workers, under the remit of DH, a view that is echoed later by **Baroness Lister of Burtersett (Lab)** who says that “the Bill is far too vague and is drafted as if adult social work simply does not exist”. **Lord Richard (Cross Bench)** also expressed sympathy for Warner’s comments on Part 2.

Baroness Pitkeathley (Lab) – full speech can be found [here](#) - expressed her incredulity at the Bill at the start of her speech before going onto praise the work of the HCPC: “the HCPC is now assessed by everybody who knows this field as doing an excellent job, and doing it most efficiently and cost effectively”.

Pitkeathley’s first concern echoes that of Warner, and surrounds the conflict between the DfE and the DH and the lack of reference in the Bill to public protection. This, she says, runs contrary to the principles of better regulation and to the DH’s approach to reform at a time of striving for greater integration of health and social care. Further to this her second concern relates to the independence of the proposed regulator. The proposals contradict well established principles that regulators should be independent of government but directly accountable to Parliament. Pitkeathley also raises the point that the Bill also makes no reference to the PSA. The final concern related to cost, which would either have to be borne by social workers, or the government. In his closing remarks, Lord Nash said “we do not anticipate any immediate changes to the registration fees paid by social workers”.

Lord Storey (Lib Dem) when talking about Part 2, questioned whether removing functions from one body and establishing them in another is the best way of achieving the desired aim of enhancing the status of social workers.

Lord Hunt of Kings Heath (Lab) - full speech can be found [here](#) - began by expressing doubt about the “unsatisfactory nature of the skeletal provisions in Clauses 20 to 40”. Hunt touches upon the abolition of the GSCC in favour of the HCPC as it was deemed satisfactorily independent. He then continued by questioning the wisdom of reversing this move by establishing a new regulator answerable to the Secretary of State: “I had reservations about the HCPC taking over this role, but I have to admit it has done it very well indeed. In fact, as my noble friend Lady Pitkeathley said, it has done an outstanding job. Why is this being done? I know from listening to Ministers that they continually focus on the professional development and leadership of the profession. I get that. I agree with it. But that is not the role of regulation, which, as my noble friend said, is about public protection.”

Hunt concluded by saying that the Bill will not pass through the Lords in its current guise and suggests that Clauses 20 and 21 be withdrawn leaving regulation of social workers with the HCPC. This, Hunt says, will allow DfE to await the DH consultation on reform of regulation and then subsequently establish a royal college of social work with a focus on professional development and leadership.



Department
of Health

POC 1035878

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26 May 2016

REFORMING HEALTHCARE PROFESSIONAL REGULATION – CONSULTATION

You will be aware from the meeting I held on 17th December 2015 with the Chairs and CEOs of the regulatory bodies and from the Written Ministerial Statement (WMS) of that same day that the Government remains committed to reform of the regulation of health and (in England) social care professionals.

The general objectives will be to create a system of professional regulation that enshrines the principles of better regulation, allows regulatory bodies to take a more agile and proportionate approach, and which is more cost-effective.

Following on from the WMS, my officials have been working with the professional regulators and officials across the UK to plan a four country policy consultation for the autumn on how the legislative framework surrounding professional regulation could be reformed. I am now keen that we should make further progress with this work, looking particularly at a number of themes:

- purpose (Better regulation/purpose of regulation);
- agile regulation; and
- cost effectiveness.

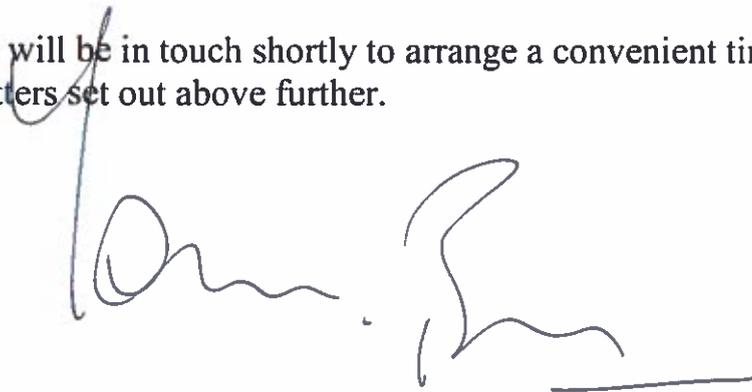
I am proposing that the focus of the consultation should be to address those themes, identifying how we can deliver better regulation, greater cost efficiency and increased autonomy for you as regulators so that future demands on professional regulation can be met without yet more amendments to primary legislation.

Early and effective stakeholder engagement across the UK, in advance of the formal public consultation, will assist in achieving a broad consensus on the content of the proposed consultation. In order to maximise the benefit of the consultation and to ensure that views and ideas of a broader range of stakeholders are taken into account I have asked my officials to hold a series of pre-consultation engagement events to take place May–August 2016.

Finally, I am aware that in the past, the Government has expressed a view on registration fees and the expectation that they should not increase beyond their current levels, unless there is a clear and robust business case that any increase is essential to ensure the exercise of statutory duties. This is still absolutely my view and I am keen you should be aware of this.

I do, of course, recognise that as an independent, statutory body, you are required to keep your fees under review so that you can remain financially viable and continue your vital role of protecting the public. I also know that you will be keen to make efficiencies wherever you can in order to keep fees as low as possible. I am sure that this is already a strong consideration for you and I would urge you to continue your focus on keeping fees low. I would appreciate sight of any commitments you would be prepared to make on this matter, in particular whether you would consider a public commitment to not raising fees above their current levels during the period of this Parliament.

My private office will be in touch shortly to arrange a convenient time for us to meet to discuss the matters set out above further.

A handwritten signature in black ink, appearing to read 'Ben Gummer', with a horizontal line underneath.

BEN GUMMER

C.c Marc Seale, Chief Executive, HCPC