

Psychotherapists and Counsellors Professional Liaison Group (PLG),
29 April 2009

Protecting the title 'counsellor'

Executive summary and recommendations

Introduction

The attached brief paper discusses protecting the title 'counsellor'.

Decision

The PLG is invited to agree the recommendation on page five.

Background information

- Minutes for PLG meeting on 28 and 29 January 2009
- Structure of the Register and protected titles, considered by the PLG on 28 and 29 January 2009

www.hpc-uk.org/aboutus/professionalliaisongroups/psychotherapistscounsellors_archive/index.asp?id=442

Resource implications

None

Financial implications

None

Appendices

- Excerpts from 'Structure of the Register and protected titles' considered by the PLG on 28 and 29 January 2009.

Date of paper

17 April 2009

Protecting the title 'counsellor'

Introduction

At its meeting on 28 and 29 January 2009, the Group discussed whether it would be possible to protect the title 'counsellor' or whether it would only be possible to protect this title as part of an adjectival title.

The Group agreed that the 'stem' title 'counsellor' should be protected if possible, as it was widely used by a large number of practitioners and widely understood by the public. The Group agreed that, if it was not possible to protect the title 'counsellor', without an adjective, 'registered counsellor' might be protected instead, but that this should be the subject of further discussion.

Call for Ideas

A number of arguments were put forward in the Call for Ideas for and against protecting the title 'counsellor'

The arguments for protecting the title 'counsellor' included:

- The title has wide currency and is used by a large number of practitioners.
- The title is readily recognised and understood by members of the public.
- The title is not widely used outside of therapeutic settings.
- If the title 'counsellor' was not protected this would mean that a significant number of practitioners would not need to register and might choose not to.

The arguments against protecting the title 'counsellor' / for protecting 'counsellor' as part of an adjectival title included:

- The title is often misunderstood and is in use outside of therapeutic settings.
- The title cannot be protected because of its use outside of therapeutic settings.
- Adjectival titles suggested in the Call for Ideas/discussed in the last meeting included therapeutic counsellor; psychotherapeutic counsellor; and registered counsellor.

Excerpts relevant to this topic from the paper considered by the Group at its meeting on 28 and 29 January 2009 are included as an appendix to this paper.

Use of the title ‘outside of therapeutic settings’

In the Call for Ideas we asked whether it would be possible to protect the title ‘counsellor’ or whether it was so widely in use ‘outside of therapeutic settings’ that it could only be protected as part of an adjectival title.

It is difficult to assess the extent to which the title is used by those outside of the field it is sought to regulate, although there are some examples. In their response, the British Association for Counselling and Psychotherapy (BACP) cited the example of ‘debt counsellors’.

Another group are ‘genetic counsellors’, who provide information and support to individuals and families about genetic conditions. These individuals often come from a medical or nursing background, although some direct entry exists, and consider their area of work to be very different from ‘counselling’.

The paper considered by the Group on 28 and 29 January 2009, said:
‘...it is important to consider the extent to which any proposed protected title is in use by the profession being regulated; by other regulated ...professionals; and by others who undertake work in areas that it is not intended to regulate. Protecting a title that it also in use by individuals outside of health, wellbeing or therapeutic interventions and contexts may have the potential to criminalise the behaviour of those who it has not been the intention to regulate’.

Legal advice

The HPC Executive has discussed this issue with the HPC Solicitor and Parliamentary Agent, with a view to finding a way in which this title might be protected.

Article 39 of the Health Professions Order 2001 sets out a number of offences relating to the misuse of protected titles. Advice received by the HPC Solicitor and Parliamentary Agent is that the title ‘counsellor’ might be able to be protected without a preceding adjective if Article 39 was amended in some way in order to more clearly specify the circumstances in which misuse of the title would occur. This might be achieved by ‘defining’ in some way the area of activity of those that it is sought to regulate. For example:

[without being registered]

‘A person commits an offence if, with intention to deceive, they use the title ‘counsellor’ in connection with the [following activities...]

Such an approach might ensure that those who use the title in connection with other activities, normally as part of an adjectival title, e.g. ‘debt counsellor’, ‘genetic counsellor’ would not be disadvantaged by regulation. This would also ensure that the misuse of ‘counsellor’ in connection with ‘therapeutic activities’ could be prevented.

From looking at some definitions put forward for 'counselling' the following are commonly used words and phrases to denote the sphere of professional activity:

- Advice
- Therapy
- Psychological therapy
- Wellbeing
- Therapeutic
- Facilitating change
- Psychological or emotional problems

One possible option might be:

[without being registered]

'A person commits an offence if, with intention to deceive, they use the title 'counsellor' in connection with the provision of psychotherapeutic services'

The term 'psychotherapeutic services' might then be defined in a schedule to the Health Professions Order 2001.

The Group is invited to discuss and make suggestions about how such an amendment might be framed in order that it could flexibly ensure that misuse of the protected title could be dealt with. The Group's work in putting together standards of proficiency may be useful here, and this might also be the subject of a question in the HPC consultation on the regulation proposals.

As this would directly concern the detail of legislation, this is likely to be topic that would, in any event, be the subject of discussion between the HPC, the profession and the Department of Health in the stages of preparing the legislation necessary to introduce statutory regulation. Therefore, it may be at this stage that the Group's recommendations indicate the broad approach but that further work and discussion would be necessary about the exact wording of such a provision.

Alternatives

Although discussion with the HPC Solicitor and Parliamentary Agent has suggested a possible way of protecting 'counsellor', the final decision about whether this would be feasible in terms of regulation rests with the Department of Health. A key consideration for the Department of Health would be the impact of such a proposal upon those who is not sought to regulate, and whether it is feasible to formulate legislation in clear terms that would mitigate against any such impact.

As such, the Group is invited to consider whether it would be appropriate to also recommend an alternative adjectival title or titles, should protecting the 'stem title' not be considered feasible. At the meeting on 28 and 29 January 2009, the titles suggested in the Call for Ideas, as well as the suggestion of 'registered

counsellor', were discussed, but no clear agreement was reached. The Group is invited to discuss and make recommendations about the alternative protected adjectival title(s) should it not be considered possible to protect 'counsellor' on its own.

Decision

The PLG is invited to discuss possible wording or possible sources that might be referred to, to assist in describing the circumstances in which misuse of the title 'counsellor' would occur.

The PLG is further invited to discuss and make recommendations about alternative protected adjectival title(s) should it not be considered possible to protect 'counsellor' on its own.

In light of this paper, the discussion points above and the Group's previous discussion, the PLG is invited to discuss and agree the following recommendations:

- The Group strongly recommends that the title 'counsellor' should be protected on the basis that it is used by a large number of practitioners; it is well understood by members of the public; and that a failure to protect this title would risk large scale evasion of regulation and therefore harm the level of public protection.
- The Group recognises that the title is sometimes used by other groups outside of therapeutic interventions (e.g. debt counsellors). However, the Group believes that it is essential that this title should be protected and recommends that this might be achieved by amending Article 39 of the Health Professions Order 2001 to specify the circumstances in which misuse of the title would occur.
- In the event that the Department of Health considers that it would not be possible to protect the stem 'counsellor' without it being part of an adjectival title, the Group recommends that the following title(s) [titles to be added here in light of the Group's discussion] would be suitable alternatives. However, such an approach would mean that 'counsellor' on its own could be continued to be used by those who are not registered and this raises concerns about the evasion of regulation.

Appendix 1: Excerpts from ‘Structure of the Register and protected titles’ (considered by the Group at its meeting on Wednesday 28 January 2009 and Thursday 29 January 2009)

[Section one: Background and context]

1.2 Protected titles

In the call for ideas, we also asked which titles should be protected and why.

1.2.1 About protected titles

The HPC regulates by protection of title. Each of the professions regulated has at least one title which is protected in law. This means that only someone who is registered in the relevant part of the HPC Register is able to use that protected title.

The HPC’s powers to protect titles are contained within Article 6 (2) of the Health Professions Order 2001 (‘the Order’). The parts of the Register and the protected titles are set out in a schedule to the Health Professions Council (Parts and entries in the Register) Order of Council 2003.

1.2.2 Protection of function

The HPC regulates by protection of title. This approach to regulation tends to be common amongst the UK regulators of healthcare professionals. However, some regulators also have protection of function. This means that a particular task or role is protected by law and can only be undertaken by someone who is registered.

An example of this is the fitting of contact lenses which has to be undertaken by someone who is appropriately qualified and registered with the General Optical Council. Internationally, some of the state boards in the United States regulate by protection of function – their legislation prescribing what licenses in each profession can and cannot do.

Sometimes other legislation outside of professional registration also acts to protect or ‘restrict’ certain functions. For example, only a podiatrist who successfully completes approved education and training and has their entry in the Register appropriately annotated is able to supply certain prescription only medicines and administer certain local anaesthetics. This is a requirement under the Prescription Only Medicines (Human Use) Order 1997, an Order under the Medicines Act 1968.

The relative advantages and disadvantages of protection of title versus protection of function are often the subject to debate. A common criticism of protection of

title is that this does not prevent individuals who wish to avoid regulation 'rebranding' their services and continuing in practice.

Conversely, a common criticism of protection of function is that this would fetter the change and development of professions, and the emergence of new roles and new professions. Further, whilst it might be possible to define in law specific 'physical' functions that are specific to a small number of professions, this may be far more problematic for other professions where the nature of the intervention would be far harder to define in law. In addition, multi-disciplinary team working means that tasks that in the past that may have been undertaken by one profession are now undertaken by a variety of different professions.

1.2.3 Existing protected titles

A list of the existing protected titles is provided below for information.

Part of the Register	Protected title(s)
Arts therapists	Art psychotherapist Art therapist Dramatherapist Music therapist
Biomedical scientists	Biomedical scientist Medical laboratory technician
Chiropodists / Podiatrists	Chiropodist Podiatrist
Clinical scientists	Clinical scientist
Dietitians	Dietitian Dietician
Occupational therapists	Occupational therapist
Operating department practitioners	Operating department practitioner
Orthoptists	Orthoptist
Prosthetists / Orthotists	Prosthetist Orthotist
Paramedics	Paramedic
Physiotherapist	Physiotherapist Physical therapist
Radiographer	Diagnostic radiographer Therapeutic radiographer

Speech and language therapist	Speech and language therapist
	Speech therapist

In some professions more than one title is protected. This is often where there is differentiation in education and training and standards of safe and effective practice between titles - for example, the arts therapists and radiographers parts of the Register.

However, in some parts of the Register where there is no differentiation, more than one title is protected. For example, for chiropodists / podiatrists both titles are in wide current usage. They are sometimes used interchangeably by practitioners and therefore both titles are protected.

In other instances, more than one title is protected to prevent an obvious evasion of protection of title. For example, the title 'physical therapist' is not commonly used by physiotherapists in the UK but is used internationally, and is therefore protected to prevent an obvious evasion of registration.

1.2.4 Legal powers

The HPC's powers relating to protection of title are included in the Order and reproduced below. These powers are explained further overleaf.

Article 39 of the Order sets out a number of offences relating to the misuse of protected titles.

Article 39 (1) of the Order says:

Subject to paragraph (2), a person commits an offence if with intent to deceive (whether expressly or by implication)—

- (a) he falsely represents himself to be registered in the register, or particular part of it or to be the subject to any entry in the register;*
- (b) he uses a title referred to in article 6(2) to which he is not entitled;*
- (c) he falsely represents himself to possess qualifications in a relevant profession.*

Article 39 (3) of the Order says:

A person commits an offence if—

(a) with intent that any person shall be deceived (whether expressly or by implication) he causes or permits another person to make any representation about himself which, if made by himself with intent to deceive, would be an offence under paragraph (1); or which

- (i) is false to his own knowledge; and*
- (ii) if made by the other person would be an offence by him under paragraph (1)*

1.2.6 Prosecution of cases

The HPC's legal powers outlined in section 1.2.4 mean that it can prosecute individuals who use a protected title whilst not registered, if they do so with 'intent to deceive'. A person found guilty can be liable to a fine on level 5 of the standard scale (up to £5000).

This means that in any proceedings brought by the HPC, the HPC has to prove that the title was used with the intention of misleading members of the public. The intention to deceive can be both express and implied. This means that the HPC is able to deal with cases where the title may not be used, but its use is implied in others ways.

To illustrate:

1. An individual advertises in a directory service as a physiotherapist but is not registered. This person could be liable for prosecution under Article 39 (1) b; there is evidence of an express use of a protected title to which the individual is not entitled.
2. An individual advertises in a directory service, is not registered, and does not use the protected title 'physiotherapist'. However, in their advert they say that one of the services they offer is 'physiotherapy'. This person could be liable for prosecution under Article 39 (1) b; the protected title is not used but its use is implied.

The two examples given on the previous page are not intended to be an exhaustive list of the kinds of cases that the HPC is able to handle. However, they do provide an illustration of how the legislation functions.

The HPC's fitness to practise department is responsible for investigating complaints about protection of title. Case Officers are responsible for gathering relevant information to ascertain whether an offence might have been committed. In summary, a three stage process is normally followed:

- The person concerned is asked to explain their alleged conduct (unless there is evidence that the complaint has no basis – e.g. the person is registered under another name).
- If there is clear evidence of an offence (or if no response as been received to correspondence), a cease and desist letter is sent, warning the individual that their misuse of a protected title must stop, or steps will be taken to prosecute.
- Dependent on the evidence and the response received, steps are taken to make a decision about prosecution, which may include obtaining witness statements and interviewing the alleged offender.

Information may also be passed to the police and trading standards as appropriate.

To date, the HPC has found that this approach has been an effective way to prevent the misuse of protected titles (please also see the section overleaf on communication). Whilst the HPC has not yet taken prosecution action itself, it has worked with the police and other agencies to assist in their investigations. For example, in November 2007 an individual was cautioned by Essex Police for misuse of the protected title 'physiotherapist'.

As the purpose of protection of title is the ability to take appropriate action against those who would mislead members of the public, there are some uses of a protected title that may not cause concern. For example, those undertaking training may use the title but with an adjective that makes it clear that they are not registered – for example by using the prefixes 'trainee' or 'student'. In these circumstances it is clear that the individual is in training and therefore there is no intention to deceive.

Other examples include the use of terms such as 'animal', 'equine', 'veterinary' or 'industrial' before the protected title which show there is no intention to deceive; the prefix clearly indicates that the person concerned does not treat human beings. For example, some individuals use the title 'animal physiotherapist' and provide physiotherapy solely for animals.

[Section two: Responses to the call for ideas on the Structure of the Register and protected titles]

2.4 Counsellors

Many respondents said that the titles of psychotherapist and counsellor should be protected but did not provide any rationale for this. Where comments were made, respondents did not envisage any problem with protecting the title 'psychotherapist', which they said was in wide usage by the profession.

Those respondents who did discuss the protection of the title 'counsellor' were split as to whether it would be possible to protect it. Those who argued that it was necessary to protect the title argued that the title was well recognised by members of the public and used by a significant proportion of therapists. COSCA said that the title was 'fundamentally important' and said that counsellor was well recognised by members of the public, even more so than psychotherapist. The BACP agreed, arguing that a recent project had found that counsellor was the most publicly accepted title for someone offering psychological therapy and attracted less stigma in the eyes of the public than psychotherapist. They further added that counsellor was used by the majority of their members to describe some if not all of their work; was used by many organisations delivering psychological therapy services; and said that counsellor unlike psychotherapist had job descriptions and pay bands under the National Health Service (NHS) agenda for change. Relationships Scotland also said: 'The title 'counsellor' is vital for the integrity of our work in Scotland and should be protected.'

Amongst those who said that it would not be possible to protect the title, it was argued that the title was too ambiguous and/or that it was widely in use by individuals outside of therapeutic settings and therapeutic interventions. The Association of Christian Counsellors said: 'We would like to see counsellor and psychotherapist protected but there is a need to identify counselling from the other uses of the word – i.e. debt counselling.' Counsellors and Psychotherapists in Primary Care said that the title was a 'generic term' that was 'all too easily confused with advice giving, consultative and supportive roles within other professions'. They said it was therefore important that a distinction was made that would 'distinguish the specifically trained counsellor from those subsuming some skills within another professional role'. The National Association of Counsellors, Hypnotherapists and Psychotherapists said that the terms counselling and counsellor were often 'over-used and mis-used'. They said it was important that only those with appropriate clinical training could be registered with the HPC as a counsellor.

The BACP disagreed with the argument that the title was too widely used in other occupations. They said that their investigations had indicated that 'only one occupational group ... makes any significant use of the title'. They said these were money advisors who referred to themselves as 'debt counsellors', money advice case workers' and 'debt advisors'. Some of these individuals were members of the Institute of Money Advisors, which had around 1200 members. They were additionally concerned that to leave counsellor as an unregulated title would mean that many practitioners would have no need to apply to the HPC

Register to continue to work. In contrast, Chrysalis and the Counselling Society said that protecting the title would 'harm public protection' because those not wishing to register would choose an alternative title, and that it would 'harm counselling provision and access' because of an adverse impact upon the voluntary and part-time sectors.

The most common alternative suggestion to counsellor was therapeutic counsellor, though some suggested psychotherapeutic counsellor. The CPCAB, the Association of Christian Counsellors, the Minster Centre and the Manchester College all suggested that therapeutic counsellor should be protected. The Association of Counsellors and Psychotherapists in Primary Care suggested counselling therapist or psychotherapeutic counsellor. The College of Psychoanalysts suggested psychotherapeutic counsellor and said that the shorter therapeutic counsellor was 'ambiguous' and 'inadequate' as a title. An individual respondent used the title psychotherapist counsellor in their response.

[Section three: Summary and discussion]

- **Protected titles**

The context outlined in section one of this paper, and the responses to the Call for ideas, reveal a number of broad considerations that the group will wish to take into account in determining the protected titles.

- The need to protect the titles in common usage by members of the professions being regulated.
- The need to protect those titles readily recognised by members of the public.
- The potential for the evasion of registration (i.e. by failing to protect a title) and the resulting risk this may pose to the public.
- The need for effective communication and clarity for members of the public.
- The potential by protecting a title for criminalising the behaviour, or bringing into regulation, of those that it is not sought to regulate.

These broad considerations are not intended to be exhaustive but might be used by the group in considering the various arguments put forward about the protected titles (i.e. they equally apply to the arguments about modality specific adjectival titles, as they do to the debate about the protection of the title 'counsellor').

These broad considerations are further not intended to be mutually exclusive of each other. For example, the need to avoid the potential for criminalising behaviour has to be balanced against the potential for the evasion of regulation. Some issues that are broader still may also be raised by this area, most notably that of professional identity, a theme that emerged in the responses to the call for ideas.