
The Health and Care Professions Council response to the Professional Standards Authority for Health and Social Care call for views on 'Right-touch regulation'

1. Introduction

- 1.1 The Health and Care Professions Council (HCPC) welcomes the opportunity to respond to the Professional Standards Authority for Health and Social Care (PSA) call for views on 'Right-touch regulation'.¹
- 1.2 The HCPC is a statutory UK-wide regulator of health, social work, and psychological professions governed by the Health and Social Work Professions Order 2001. We regulate the members of 16 professions. We maintain a register of professionals, set standards for entry to our register, approve education and training programmes for registration and deal with concerns where a professional may not be fit to practise. Our main role is to protect the health and wellbeing of those who use or need to use our registrants' services.
- 1.3 We have not addressed each individual question set out by the PSA in the call for views, but have instead provided below our general views and examples of how we have used the principles of right-touch regulation in making decisions about regulatory policy.
- 1.4 We are happy for the PSA to use the information provided in its further work on right-touch regulation.

2. General views

- 2.1 We consider the principles expressed in 'Right-touch regulation' to be logical and in line with the government's policy regarding professional regulation. Right-touch regulation represents a risk-based approach, where statutory regulation is considered as only one of a number of means to address identified risks. A key principle is that the minimum regulatory force should be used to achieve the desired outcome.
- 2.2 Likewise, in the command paper 'Enabling Excellence' published in February 2011, the Government stated that regulators should only take on new responsibilities or roles where there is 'robust evidence of significant additional protection or benefits to the public'.² The 'Enabling Excellence' command paper

¹ Council for Healthcare Regulatory Excellence, 'Right-touch regulation' (2010).
<http://www.professionalstandards.org.uk/docs/default-source/psa-library/right-touch-regulation.pdf?sfvrsn=0>

² Department of Health, 'Enabling Excellence: Autonomy and Accountability for Healthcare Workers, Social Workers and Social Care Workers' (2011).
<https://www.gov.uk/government/publications/enabling-excellence-autonomy-and-accountability-for-health-and-social-care-staff>.

also emphasises a risk-based, proportionate and cost-effective approach to ensuring public safety and confidence in the professions. We have found the consistency in approach of these documents helpful and have used them jointly in considering regulatory policy issues.

- 2.3 However we do note some room for subjectivity in the way the right-touch regulation principles might be applied. We would welcome the development by the PSA of a decision tool (or similar) to assist regulators to use the right-touch regulation methodology in a more systematic way. This would ensure that the principles are duly considered at the start of the decision-making process (e.g. about whether to increase the degree of regulation in a certain area), rather than used afterwards as a way of defending or justifying a decision that has already been made.

3. Applying the principles – Annotation of the Register

- 3.1 The HCPC has used the principles in ‘Right-touch regulation’ in making decisions about regulatory policy. Specifically, in deciding whether to annotate the Register to indicate advanced qualification or post-registration specialism within a profession, we considered to what extent annotation would be in line with right-touch regulation.
- 3.2 In late 2010 and early 2011, we consulted on criteria to be used to decide whether to annotate a post-registration qualification on the Register. Subsequently in late 2011, a policy statement was agreed by the Council which stated that we will only annotate the Register where we are legally required to do so or in exceptional circumstances where:
- there is a clear risk to the public if the Register is not annotated and the risk could not be mitigated through other systems;
 - annotation is a proportionate and cost-effective response to the risks posed;
 - the qualification annotated on the Register is necessary in order to carry out a particular role or function safely and effectively; and
 - preferably there is a link between the qualification and a particular title or function which is protected by law.
- 3.3 In analysing the results of the consultation and in formulating the policy statement, we concluded that decisions made about risk should be reasonable, appropriate and informed by best practice and evidence, with reference to a number of different ways of conceptualising risk including the methodology laid out in ‘Right-touch regulation’.
- 3.4 In May 2012, the Council considered whether to annotate the Register of chiropodists / podiatrists who have completed further qualifications in podiatric surgery. The discussion paper explored the ‘right-touch regulation’ model in detail as a means of deciding whether annotation was a proportionate and cost-effective step.³

³ HCPC Council, ‘Annotation of the Register – qualifications in podiatric surgery’ (10 May 2012). <http://www.hcpc-uk.org/assets/documents/10003A3Eenc06-annotationofregisterpodiatricsurgery.pdf> (see Appendix 2).

- 3.5 We identified some risks associated with podiatric surgery practice – for example, the potential for an adverse outcome, including a reaction to medication, infection, swelling, thrombosis and sensory loss. A small number of fitness to practise concerns had been raised about podiatrists practising podiatric surgery. There were also concerns expressed about the absence of external quality assurance of education programmes which deliver podiatric surgery training, and stakeholders perceived a lack in public protection.
- 3.6 Annotation was considered to be a reasonably simple solution and one which would decrease the risks to public protection in a proportionate way. Stakeholders would be able to see that there were externally agreed standards for practice, the training had been independently assured and that the qualification had been annotated appropriately. As a result the Council decided to progress with annotation of the Register for qualifications in podiatric surgery. (We are currently consulting on draft standards for podiatric surgery which will underpin the annotation and be used to approve education and training programmes.⁴)
- 3.7 In October 2012, the Council considered a paper on whether to annotate qualifications in clinical neuropsychology. Similarly to the paper on podiatric surgery mentioned above, this discussion paper worked through the eight elements identified by the PSA as supporting right-touch regulation.⁵
- 3.8 As a result of these considerations and the outcomes of the public consultation mentioned above, the Council decided not to progress with annotation of the Register for qualifications in clinical neuropsychology. In particular, there was limited evidence of risk linked to the practice of clinical neuropsychology; for example, no fitness to practise cases related to clinical neuropsychologists were identified, and there was no quantitative information on adverse outcomes.
- 3.9 Additionally, it was assessed that the identified risks were already managed in a number of ways:
- Most clinical neuropsychologists are HCPC registered clinical or educational psychologists (or in other domains). This means that they must already adhere to our standards and we can take action where concerns are raised about their fitness to practise.
 - The British Psychological Society already holds a register of clinical neuropsychologists who have completed the BPS-accredited qualification, and this information is available to members of the public.
 - Those clinical neuropsychologists working in the NHS are already subject to clinical governance and other management and support systems.

⁴ Further information can be found at <http://www.hcpc-uk.org/aboutus/consultations/index.asp?id=174>

⁵ HCPC Council, 'Annotation of the Register – qualifications in clinical neuropsychology' (18 October 2012). <http://www.hcpc-uk.org/assets/documents/10003D19enc03-annotationneuropsychology.pdf> (see Appendix 2).