

**The Health and Care Professions Council response to the Welsh Government consultation: ‘Welsh Language Standards – Improving services for Welsh speakers within the health sector’**

14 October 2016

**1. About the Health and Care Professions Council (HCPC)**

- 1.1 The HCPC is a UK-wide statutory regulator of 16 health and care professions, set up to protect the public. To do this we maintain a register of professionals (“registrants”); set standards for entry to our register; approve education and training programmes for registration; and process concerns where a professional may not be fit to practise.
- 1.2 Our role and functions as a statutory regulator are set out in the Health and Social Work Professions Order 2001.
- 1.3 We regulate 15 professions on a UK-wide basis and social workers in England. We currently have over 347,000 registrants, of which about 13,100 (less than 4%) list their home address as in Wales. The vast majority of registrants are based in England. We have one office in Kennington, London. All our full-time permanent staff are based at this office.
- 1.4 We are committed to fulfilling our obligations under the Welsh Language Act 1993, and published our first Welsh language scheme in 2011. This sets out our commitment to the principle that in the conduct of public business in Wales, we will treat the Welsh and English languages on the basis of equality. The scheme was amended and approved by the Welsh Language Commissioner in February 2013. In 2015, we prepared a comprehensive evaluation report of the scheme alongside an implementation plan of key priorities for the period 2015-17.

**2. Overview of the HCPC’s position**

- 2.1 We appreciate that the standards are intended to introduce clear duties on organisations with regards to their Welsh language provision, and to give the public more certainty about what they should expect. We recognise that it is appropriate for the HCPC to be subject to such standards, and we wish to work with the Welsh Government and Welsh Language Commissioner to ensure that we exercise our public functions in Wales in a way that meets the language needs and choices of the general public. However, we are concerned that in their current form, the standards could have significant implications which are not proportionate or reasonable for the HCPC to meet.
- 2.2 The following considerations frame our judgment of what would be reasonable and proportionate for us to deliver in implementing the standards.

- 2.2.1 We are a UK-wide body that performs functions in Wales but does not have an office in Wales. We are funded through the registration fees of registrants – the vast majority of whom live in England – and do not receive any public money.
- 2.2.2 We exist to protect the public. Our role and regulatory functions are set out in the Health and Social Work Professions Order 2001. We would be concerned that directing unreasonable or disproportionate resources toward meeting the requirements of some of the standards would place additional burdens on our ability to meet our wider duties to protect the UK public.
- 2.2.3 Any financial shortfall resulting from the costs of complying with the standards would ultimately need to be funded through an increase in registrants' fees. Such a situation would be contrary to official UK Government policy, which seeks to reduce the cost of regulation. We are also concerned that any associated fee increases could be seen to unfairly impact on registrants from outside of Wales.
- 2.3 We will submit a Regulatory Impact Assessment to support this response in due course. However, it should be noted that in certain instances it has been difficult to predict the costs of implementing the standards without knowing which we will be required to comply with, particularly where there are potentially significant changes to our current resources required (e.g. bilingual provision of our website and online services). Below we set out where we consider further clarification is necessary, alongside our key areas of concern.

### 3. Points for clarification

- 3.1 **'In relation to Wales':** We would value clarification from the Welsh Government about the intended extent of the application of the standards. Page 14 of the consultation document states that 'Welsh Ministers can only make standards specifically applicable to [a] body provided it is in relation to Wales'. As a UK-wide regulator we are unclear whether this should be interpreted as applying to our services in relation to the Welsh public only (which we generally aim to meet through our scheme), or all services which may be accessed by someone in Wales e.g. the entirety of our website; our online services which are aimed at registrants only; newsletters intended for a UK-wide audience, etc.
- 3.2 **New duties resulting from the standards:** We are unclear whether the standards are intended to guarantee the services we provide for the Welsh public to meet their language needs, or whether they set out a service delivery standard for the very small minority of registrants we have who indicate a Welsh language preference. We appreciate that the former interpretation fits with strategic area 5 of the Welsh Government's 'A living language: a language living', and reflects the requirements of the Welsh Language Act 1993 and what we already aim to achieve through our scheme. At present, we give priority to the areas of service delivery where contact with those who use the services of registrants and the public interest is greatest. We believe it is reasonable and proportionate for us to continue to try to improve our services that meet this objective, such as bilingual provision at public events in Wales and translation of materials intended for a wide audience, e.g. our standards of conduct, performance and ethics, and key information on our website. However, the latter interpretation would entail

significant and possibly unintended consequences should we be required to comply with all the standards to this level.

#### **4. Bilingual provision of website and online services**

Standard 52 states that *'You must ensure that – (a) the text of each page of your website is available in Welsh, (b) every Welsh language page on your website is fully functional, and (c) the Welsh language is not treated less favourably than the English language on your website.'*

Standard 54 states that *'You must ensure that when you publish a new page on your website or amend a page – (a) the text of that page is available in Welsh, (b) any Welsh language version of that page is fully functional, and (c) the Welsh language is treated no less favourably than the English language in relation to that page.'*

Standard 56 states that *'You must provide the interface and menus on every page of your website in Welsh.'*

- 4.1 We believe that meeting standards 52(a), 54(a) and 56 would be disproportionate and unreasonable. Currently, we provide a selection of pages of our website in Welsh, which users can navigate to from the Cymraeg link at the top of every website page. These pages have been selected on the basis that they would be the most useful to the Welsh-speaking public, should they need to report a concern about a professional or check that a professional is registered. These pages are regularly reviewed and improved when necessary.
- 4.2 For the period April 2015-March 2016, the Welsh language homepage of the website (which is navigable from every page of the HCPC website) received 1,355 unique user views. All of the other Welsh language web pages we publish received less than 50 unique visits over the year. A number of these visits will have been made by HCPC staff. By comparison, our English language homepage received more than 267,000 hits in the month to 6 October 2016 alone.
- 4.3 Welsh content currently makes up 1.7% of our website (when hearings, publications, consultations, newsletters and everything archived are excluded). In light of the figures on demand listed above, we consider making the text of each page of the remaining 98.3% available in Welsh to be disproportionate and unreasonable.
- 4.4 We are planning an overhaul of the HCPC website, which will be a major project in the coming financial years. We are aware of the need to improve our offer of Welsh language content, and meeting our Scheme is one of the project's high-level objectives. Providing a fully bilingual website would be technically challenging, necessitating a separate website with significant costs attached. We consider it would be more beneficial to improve the sections of the website that are most likely to be used by the Welsh-speaking public to ensure they can access information of the highest quality which meets their needs, rather than providing a fully bilingual website where much of the content is intended for very different audiences (for example, international applicants to the register).

## 5. Automatic translation of correspondence and documents

Standard 2 states that *'When you correspond with an individual ("A") for the first time, you must ask A whether A wishes to receive correspondence from you in Welsh, and if A responds to say that A wishes to receive correspondence in Welsh you must – (a) keep a record of A's wish; (b) correspond with A in Welsh when corresponding with A from then onwards, and (c) send any forms you send to A from then onwards in Welsh.'*

Standard 5 states that *'If you don't know whether a person wishes to receive correspondence from you in Welsh, when you correspond with that person you must provide a Welsh language version of the correspondence'*.

- 5.1 We are unclear with regards to the intended interpretation of these standards. One interpretation could be that it becomes the HCPC's responsibility to assess whether an individual wishes to receive correspondence in Welsh and, if a person resides in Wales to the best of our knowledge but we have not had confirmation of a language preference from them, we must by default translate any correspondence we send them. We would consider this to be disproportionate and unreasonable, and seek further clarification on this.
- 5.2 Currently, for registrants who have notified us of their preference for correspondence in Welsh, our registration department is able to record this preference in their databases and will automatically send all communications which are in letter form in Welsh. This includes generic mailings regarding the renewal process, and any information registrants might request for themselves (e.g. confirmation of their registration). In addition, as part of our scheme, we produce any invitations and information about public events held in Wales bilingually. All HCPC staff are instructed to include the line 'Correspondence is welcome in English or Welsh / Gallwch ohebu yn Gymraeg neu Saesneg' in their email signature.
- 5.3 We often need to send individuals (including Partners, who provide professional and lay input into our registration and fitness to practise processes) significant amounts of information which will frequently contain complex legal terminology. We do not currently have the record keeping systems to record language preferences for everyone who may be involved in our fitness to practise cases, to ensure that we could comply with standard 2. We are committed to providing this documentation in Welsh if it is requested, but consider it would be unreasonable for us to ask every individual in Wales to explicitly state their preference, and disproportionate in the vast majority of cases to automatically translate this information where a preference has not been made.
- 5.4 In addition, we would currently have difficulty in meeting standard 2 because our record keeping systems are not set up across all of our regulatory functions to record such preferences.

Standard 40 states that *'If you produce the following documents, and they are available to the public, you must produce them in Welsh — (a) policies, strategies,*

*annual reports and corporate plans; (b) guidelines and codes of practice; (c) consultation papers.'*

Standard 43 states that *'If you produce a document which is available to the public, and no other standard has required you to produce the document in Welsh, you must produce it in Welsh – (a) if the subject matter of the document suggests that it should be produced in Welsh, or (b) if the anticipated audience, and their expectations, suggests that the document should be produced in Welsh.'*

- 5.5 For Council meetings held in Wales, we already publish the agenda in Welsh and offer to translate papers upon request. As set out in 3.2, we also translate materials which are intended for a wide audience, such as our standards of conduct, performance and ethics. While we are committed to continually reviewing how we can improve and build upon our offer of Welsh language content, we do not consider it to be reasonable or proportionate to automatically produce all publications which are available to the public in Welsh, considering the low levels of demand, and the proportion of our functions that are exercised in relation to Wales.
- 5.6 In addition, we consider standard 43 to be subject to considerable interpretation and therefore it does not provide greater clarity to organisations about what they are required to deliver.

## **6. Recruitment of Welsh-speaking employees**

- 6.1 As part of our Regulatory Impact Assessment, we are assessing whether the standards would require us to pursue recruitment of Welsh-speaking employees (in particular, standards 15, 25CH and 73). This would likely be difficult for an organisation with no base outside of London.

## **7. Concluding remarks**

- 7.1 We understand that the Welsh Language Commissioner will ultimately decide which standards the HCPC needs to comply with and we will be consulted on the detail of a draft compliance notice. We therefore look forward to working with the Welsh Government and Welsh Language Commissioner to ensure our language offer meets the needs of the public.
- 7.2 Prior to this, we would welcome further clarification from the Welsh Government in relation to 3.1 ("in relation to Wales") and 3.2 (new duties resulting from the standards). In addition, we hope the Welsh Government gives further consideration to the proportionality of applying the standards listed in this document, and will consider introducing further exemptions to the Welsh Language Standards (No. [Health sector]) Regulations 2016 where appropriate.