Department of Health

Government Response to the House of Commons Health Committee Report of Session 2014-15: accountability hearing with the Health and Care Professions Council

Cm 8916

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Presented to Parliament
by the Secretary of State for Health
by Command of Her Majesty

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Government Response to the House of Commons Health Committee Report of Session 2014-15: 2014 accountability hearing with the Health and Care Professions Council

INTRODUCTION

On 18 June 2014, the House of Commons Health Committee (the Committee) published the report: 2014 *Accountability hearing with the Health and Care Professions Council* (HCPC).

The Department is of the view that such hearings are of great value in strengthening the accountability of the professional regulatory bodies to Parliament and the wider public.

The Department is committed to continuing to work with the HCPC, Devolved Administrations and other stakeholders in developing policy affecting regulation of United Kingdom (UK) health professionals.

DEPARTMENTAL RESPONSE

The Department welcomes this report and we have carefully considered the Committee's recommendations and the issues it raises.

The majority of the report's recommendations are for the HCPC. This paper sets out the Government's response to the two recommendations (recommendations eight and nine) directed to the Department of Health but also provides a response to comments made in recommendations seven, eleven and twelve which may be of interest to the Committee. Our response is divided into three areas: assurance of social care workers; DH secondary legislation programme during this Parliamentary session; and statutory regulation of other new groups.

Assurance of social care workers

Recommendation Eight: The Committee is concerned by the most recent in a series of reports of abuse by social care workers. In 2011, the Government proposed a voluntary register, but no progress has been made since then and we agree with the HCPC that in any event voluntary registration would not be effective. We recommend that, as a first step to improve regulation in this sector, the Government should publish plans for the implementation of the HCPC's proposals for a negative register. The legislation that would be required to enable the establishment of such a negative register is contained in the Law Commission's draft Bill on the regulation of health and social care professions. Beyond the establishment of a negative register, we recommend that the Government, working with the PSA and the HCPC, develop further proposals for more effective regulation to provide proper safeguards in this area. (Paragraph 54)

The Government agrees that any abuse by social care workers is unacceptable and that effective standards for all care workers (health and social care) are critical to delivering safe high quality care for patients.

However, regulation is not a panacea and must be proportionate to the potential risk

of patient harm. Social care workers are subject to pre-employment scrutiny as well as training and competency requirements by their employers.

In support of this, Skills for Health and Skills for Care were commissioned to develop National Minimum Training Standards and a Code of Conduct for health care assistants and social care workers in England. These were published in March 2013 and are now being developed further, as part of the work programme following on from the independent Cavendish Report published in July 2013.

Health Education England (HEE), in partnership with Skills for Care and Skills for Health, has developed a draft set of standards for the Care Certificate, which is currently being piloted across a range of employers spanning health and social care. The Care Certificate will introduce clear evidence to employers and patients that the health or social care worker caring for them has been trained and developed to a specific set of standards. The Care Certificate ensures that the healthcare worker has been assessed for the skills, knowledge and behaviours to ensure they provide compassionate, high quality care and support. Subject to evaluation, the Care Certificate will be rolled out to newly-employed healthcare assistants and social care support workers from April 2015 and require support workers to hold the Certificate before working unsupervised.

HEE and Skills for Health are also working with the Care Quality Commission (CQC) to ensure Care Certificate documentation sets out how newly appointed healthcare assistants and social care support workers should not be allowed to work unsupervised until they have proven their competence through attainment of the Care Certificate.

CQC registration requirements state that all providers of regulated activities must ensure that they have the right staff with the right skills, qualifications, and experience to undertake the tasks to be performed. Where providers fail to comply, the CQC has a range of enforcement powers.

HEE, through their mandate, are required to oversee delivery of a national values based recruitment framework and associated tools and resources by October 2014, which will support employers to test values, attitude and aptitude for caring during recruitment.

In addition to this, the Department has made a number of changes to improve the regulation of providers of adult social care. This includes increasing the effectiveness of the CQC through the introduction of specialist inspection teams headed by the Chief Inspector of Adult Social Care, the development of a special measures regime for social care providers, and the development of a “fit and proper persons test” for Directors of NHS and social care providers. These measures will make providers more accountable for the quality of care that they deliver, and will mean that individual carers are working in an environment that is subject to more rigorous scrutiny.

This builds on existing processes such as supervision of unregulated staff by regulated professionals, and the Disclosure and Barring Service.

Additionally, in April of this year, the Law Commission published its report and draft Bill on the regulation of health and social care professionals. The idea of a negative register as suggested by the HCPC is, as the Committee is aware, one of the Law Commission’s recommendations.

Update on Department of Health proposals to amend the powers of the regulatory bodies by secondary legislation during this session of Parliament

Recommendation Nine: **We ask the Department of Health to set out in response to this report what changes it proposes to make to the powers of regulatory bodies by secondary legislation during this session of Parliament, and when it anticipates that they will be brought forward. (Paragraph 55)**

Ahead of the publication of the Government's response to the Law Commission Report, the Department of Health is already committed to taking forward work to consult on:

- the statutory regulation of Non-Medical Public Health Specialists by the HCPC;
- putting in place the framework and mechanism to strengthen the Professional Standards Authority's independence of Government by being able to raise fees from the bodies it oversees.

The Department has also consulted on amendments which will give the Nursing and Midwifery Council powers to carry out its fitness to practise and registration functions more effectively – we intend to lay the Order in October. We are also developing measures which will help the General Dental Council to speed up the early investigation stages of the fitness to practise process, providing more efficient, effective and proportionate regulation; as well as launching a consultation on 31 July on proposals to modernise and reform the General Medical Council's (GMC) adjudication of fitness to practise cases. We are working towards these measures being in place in this Parliament. The Department also intends to legislate to give regulators the power to introduce proportionate language controls for nurses, midwives, dentists and pharmacists from the European Economic Area. The GMC were given this power earlier this year, and, subject to parliamentary processes, are working towards laying the Order before May 2015.

Statutory Regulation of Other Groups

Recommendation 11: **In addition to this, since 2003, the HCPC has recommended to Government that statutory regulation be extended to eleven other professions. Of these, the only groups to receive statutory regulation to date are operating department practitioners and practitioner psychologists. Statutory regulation gives professions, in the words of the HCPC, "a huge badge of respectability, professionalism and endorsement." Decisions about whether to extend statutory regulation to different professions need to be informed both by considerations of issues of patient safety, and consideration of the evidence base for that profession. We do not seek to make judgements on either of these factors for individual professions, and, although as the HCPC has pointed out that health and care regulation is not currently "a very logical landscape", at this stage we are not seeking to make recommendations for change simply to address inconsistencies. However, if there are unregulated groups which need to be regulated on the grounds of patient safety, this should be dealt with swiftly. (Paragraph 73)**

Recommendation 12: **We received written evidence from the Registration Council of Clinical Physiologists arguing strongly that Clinical Physiologists should be subject to statutory regulation, a position that the HCPC agreed with. We recommend that, in responding to this report, the HCPC lists any professional groups for which they feel there is a compelling patient safety case for statutory regulation**

so that we can take this further with the Department of Health as a matter of urgency. We are concerned at the length of time it can take for professional groups to gain statutory regulation. As we understand that new groups can be added to the HCPC's register by means of secondary legislation we see no reason why there should be undue delay in extending statutory regulation to professional groups where there is a compelling patient safety case for doing so. (Paragraph 74)

The recommendations made by the HCPC to Government were between the period 2003 and 2011, with the majority of these being made in the early part of this period. This reflects Government policy at the time which in the light of the Shipman, Ayling, Neale and Kerr/Haslam inquiries was to encourage statutory regulation as the way of ensuring public protection. Towards the end of the previous administration this approach was being refined with the PSA (formerly known as the Council for Healthcare Regulatory Excellence or CHRE) publishing its 'Right-Touch Regulation' Paper in August 2010; and the Report of the Working Group on Extending Professional Regulation in 2009; both indicating that decisions to regulate new groups should be made after a "risk-based assessment"

Whilst this Government agrees there is a clear need to assure public safety by ensuring the quality of care by individual healthcare professionals, the Command Paper 'Enabling Excellence' (February 2011), set out the Government's vision for the future of professional regulation. The paper recognises that while statutory regulation is sometimes necessary, it should not be the default position. Rather, where significant risks to users of services cannot be mitigated in other ways, the extension of the current statutory regulation framework will only be considered where there is a compelling case on the basis of a public safety risk and where assured voluntary registers are not considered sufficient to manage this risk.

As detailed earlier in this response, the assurance of an individual practitioner needs to be seen in the context of the evolving system of regulation and the duties of an employer to ensure they have the right person with the rights skills, training and experience to provide patient and service-user focused treatment and care.

In focusing on recommendations made up to eleven years ago, there is a clear possibility that the context to these will have moved on. For example; within the recommended groups are professionals who will fall under the umbrella title of healthcare scientists. These are:

- Clinical Perfusionists;
- Clinical Physiologists;
- Clinical Technologists;
- Medical Illustrators;
- Maxillofacial Prosthetists.

Since 2010, Modernising Scientific Careers has put in place standardised and accredited education and training programmes for the health care science work force that enables formalised regulation, whether voluntary or statutory.

For those health care scientists not regulated by statute, the Academy for Healthcare Science holds a voluntary register and will be seeking accreditation from the PSA. This is assurance that is appropriate and proportionate to the risks presented to public safety.

The DH notes the HCPC's assertion that statutory regulation gives professions "a huge badge of respectability, professionalism

and endorsement". We consider that this statement does not reflect the purpose of regulation, which is public protection.

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