**Consultation: Healthcare regulation: deciding when statutory regulation is appropriate**

1. Do you agree or disagree that a qualitative and quantitative analysis of the risk of harm to patients is the most important factor to consider when deciding whether to regulate a health or care profession?

Agree

We agree that the risk of harm to patients is the most important of many factors to consider. We, the Royal College of Occupational Therapists, bring together a community of professionals who deliver complex health interventions to a broad client base and who are increasingly operating in non-traditional roles including in advanced practice. Our members operate under a system of oversight that provides reassurance to the public and provides a formal route to take should things go wrong. Mandatory regulation means that standards can be kept high thanks to the external scrutiny professionals experience. Without regulation, attention to analysis of risk of harm would not have the same time and funds invested to it, increasing the risk to the public of harm and unprofessionalism.

On one level, if there were no risk of harm to patients, there would be little need for regulation. But the role of regulation is understood by the public to mean certain things, some of which raise expectations on regulators and professions alike. We recognise that regulation of the social care workforce is a devolved matter, but we are concerned that different parts of the UK will develop different approaches. This would have a number of unfortunate effects:

* Confusion among the public about what ‘regulation’ means and what safeguards apply as they move through health and social care
* Barriers to movement throughout the UK labour market for professionals.

We therefore believe that the four parts of the UK should attempt to design a common regulatory structure.

There is meaning in regulation which sits outside the role of regulation in risk management. Your consultation document points out that ‘the titles used by regulated professionals are also legally protected’. In our case, that means that someone cannot claim to deliver occupational therapy assessments or interventions when they have no formal qualification to do so. Similarly, ongoing continuing professional development ensures that professionals’ competency is current and reflects best and current practice and evidence. This is a simple notion that is well understood by the public. Although you later state that regulation should not be seen as providing recognition of a particular profession, that is not necessarily how the public, or even officials, see it. We know that the regulated nature of our profession is something which government officials find easy to understand, and when discussing future potential activity that could be done by occupational therapists, the strict regulatory framework under which occupational therapists operate is a point which officials welcome.

1. Do you agree or disagree that proportionality, targeted regulation and consistency should also be considered in deciding whether to regulate a health or care profession?

Agree

We agree that it is not proportionate or reasonable to regulate all interpretations of practice in health or care. However, it is reasonable for professionals to bear a modest subscription to maintain registration, given the benefit to the public of not needing to do their own research to investigate and choose between individual practitioners in an unregulated profession. Registered professionals understand the value of their registration and appreciate the consequences of losing it.

That said, professions do not operate in a vacuum: they are part of a health and social care ecosystem. Within that system, the public will expect the professions providing a single service to be regulated similarly. For example, if a person receiving care in a primary setting is seen by their GP and is then referred to an allied health professional, they would expect that the regulatory requirements are, if not the same, comparable, each with scrutiny and sanction. Without that parity, it would be easy for members of the public to be reluctant to receive healthcare other than from traditional medical health care professions. Such an unintended side-effect would seriously affect much of the progress that is being made in primary care to create multidisciplinary teams, and would, in the words of your consultation document ‘hamper a profession’s ability to provide a service to the public’ or for the professionals within such a discipline to operate at the top of their licence. Senior practitioners in an unregulated profession are unlikely in practice to be considered for general leadership roles in health and social care, which would blight careers and make such a profession extremely unattractive to ambitious people.

We think that your list of factors that are not relevant when deciding whether to regulate a profession, while fine in theory, does not work in practice for this reason. Within health and care systems, there is a need for the regulatory landscape to be easily understood.

1. Do you agree or disagree that the currently regulated professions continue to satisfy the criteria for regulation and should remain subject to statutory regulation?

* Agree

We are the Royal College of Occupational Therapists and our answer relates to occupational therapy.

The breadth of occupational therapy across physical and mental health means that occupational therapists can work in very different clinical settings and provide a range of interventions and assessments. They make daily decisions that influence the ability of people to live independently and take risk: a wrong decision could have life-threatening consequences or lead to health related complications. The level of risk within prisons or forensic services is high due to the client group and the potential for coercion. Even within prevention services, an incorrect assessment can have considerable consequences. Finally, there is a responsibility to work independently and therefore there is individual responsibility for clinical and professional decision making.

1. Do you agree or disagree that currently unregulated professions should remain unregulated and not subject to statutory regulation?

We have no view on this.