

Council, 10 December 2009

## Conclusions on the proposed statutory regulation of psychotherapists and counsellors

### Executive summary and recommendations

#### **Introduction**

In December 2007, the Council agreed to set up a Professional Liaison Group (PLG) to look at the potential statutory regulation of psychotherapists and counsellors.

A consultation was held between 14 July 2009 and 16 October 2009 on the recommendations of the PLG.

The attached document invites the Council to agree the preliminary conclusions about the potential regulation of psychotherapists and counsellors which can be made at this stage.

#### **Decision**

The Council is invited to discuss the attached document.

The Council is invited to agree:

- the conclusions outlined in the attached document; and
- the text of the attached document for publication on the HPC website (subject to any changes suggested by the Council and any minor editing amendments prior to publication).

#### **Background information**

Consultation on the statutory regulation of psychotherapists and counsellors  
[www.hpc-uk.org/aboutus/consultations/closed/index.asp?id=93](http://www.hpc-uk.org/aboutus/consultations/closed/index.asp?id=93)

Psychotherapists and counsellors Professional Liaison Group (PLG)  
[www.hpc-uk.org/aboutus/professionalliaisongroups/psychotherapistscounsellors](http://www.hpc-uk.org/aboutus/professionalliaisongroups/psychotherapistscounsellors)

#### **Resource implications**

There may be financial implications relating to further work in this area, dependent upon the Council's discussion at this meeting.

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#### **Appendices**

None

#### **Date of paper**

1 December 2009

**DRAFT – SUBJECT TO HPC COUNCIL APPROVAL**

Council Paper

Conclusions on the proposed  
statutory regulation of  
psychotherapists and counsellors

Chief Executive

Health Professions Council

10 December 2009

DRAFT - FOR DISCUSSION / APPROVAL, HPC COUNCIL 10122009

## Conclusions on the proposed statutory regulation of psychotherapists and counsellors

### 1. Introduction

In February 2007, the Government published the White Paper *Trust Assurance and Safety - The regulation of Health Professionals in the 21<sup>st</sup> Century*, paragraph 7.16 of which stated:

*“...psychologists, psychotherapists and counsellors will be regulated by the Health Professions Council, following that Council’s rigorous process of assessing their regulatory needs and ensuring its system is capable of accommodating them. This will be the priority of future regulation.”*

This policy was implemented in respect of practitioner psychologists by means of an order made under Section 60 of the Health Act 1999 (a “Section 60 Order”). As a result, the practitioner psychologists part of the HPC Register opened on 1<sup>st</sup> July 2009.

In relation to psychotherapists and counsellors, the HPC Council (“the Council”) agreed on 13 December 2007 to consider the issues identified in the White Paper, which can be summarised as:

1. whether the regulatory ‘building blocks’ which the HPC uses (protected titles, standards of proficiency) can be used to meet the regulatory needs of psychotherapists and counsellors; and
2. whether it can be done in a manner which can be accommodated within the existing regulatory structure and, thus, without detriment to the discharge of the HPC’s functions in relation to the professions it currently regulates.

As the White Paper contained an unequivocal statement of policy by the Government that (subject to consultation and legislative approval) psychotherapists and counsellors would be regulated by the HPC, the task undertaken was limited to examining the practicalities of implementing that policy.

The Council has approached the task by examining four regulatory ‘building blocks’:

1. Structure of the Register;
2. Professional titles to be protected;
3. Standards of proficiency (SOPs); and
4. Standards of education and training (SETs).

However, it is important to note that the work was not intended to produce final drafts of either SOPs or SETs but was more in the nature of a feasibility study. A further consultation on those standards will need to be conducted after the Government has finalised any regulatory proposals in the form of a Section 60 Order.

The Health Act 1999 requires the Government to publish a draft of any Section 60 Order it is proposing to make and to consult upon the terms of that draft Order before it is presented for approval by the UK and Scottish Parliaments.

Among the issues which any Section 60 Order would need to address, and therefore on which the Council needs to reach preliminary conclusions, are:

1. the structure of the Register;
2. the professional title(s) to be protected;
3. the register(s) which will confer automatic entitlement to HPC registration; and
4. the length of any transitional ('grandparenting') period.

## **2. Methodology**

In July 2008, the Council invited relevant stakeholders to contribute via a 'Call for Ideas'. 110 responses were received and subsequently analysed. A Professional Liaison Group (PLG) was set up to further explore the 'building blocks' of regulation and its discussion was informed by the responses received to the Call for Ideas.

A stakeholder event attended by around 50 people was also held in Manchester in March 2009 to further discuss the potential future regulation of psychotherapists and counsellors.

The HPC then conducted a three month public consultation on the draft proposals from the PLG from 14 July 2009 to 16 October 2009. The consultation followed the guidance set out in the HM Government Code of Practice on Consultation. 1,105 responses were received to the consultation.

The analysis of the consultation responses has been included in a separate document: 'Responses to the consultation on the recommendations of the Psychotherapists and Counsellors Professional Liaison Group (PLG).' This is being considered alongside this document by the Council at its meeting on 10 December 2009.

## **3. Representative organisations**

In the course of undertaking these exercises, the HPC has identified more than 40 organisations that represent the interests of Psychotherapists and Counsellors in some way and it is likely that there may be others that the HPC has not yet identified.

The organisations vary considerable in size and scope but it is clear that, in contrast to many of the professions currently regulated by the HPC (and other statutory regulators), the psychotherapy and counselling field does not appear to have a single or unified 'professional voice'.

Those representative bodies have a wide range of views on many of the topics relating to regulation and the topics on which there is a lack of consensus include:

- the need for statutory regulation;
- the structure of the Register;
- the standards of proficiency; and

- the education and training requirements for entry to the Register.

The Council should ensure that it takes account of that lack of consensus in reaching its conclusions.

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## 4. Structure of the Register

The HPC Register is divided into parts by means of an Order made by the Privy Council. The approach adopted for the different parts of the Register varies from profession to profession and, of the 14 existing HPC professions:

- six of the professions have one part and one associated protected title (e.g. biomedical scientists, paramedics, operating department practitioners);
- four of the professions have one part and more than one protected title, but where the second title is included as an 'anti-avoidance' provision or where the professional titles are interchangeable (e.g. dietitians (dietitian/dietician), physiotherapists (physiotherapist /physical therapist)); and
- four of the professions have one part and several protected titles, each of which represents a distinct area of practice, domain or modality within the profession (e.g. radiographers (diagnostic radiographer/therapeutic radiographer)).

### 4.1 Differentiation between psychotherapists and counsellors

The PLG recommended that the Register should be structured to differentiate between psychotherapists and counsellors – i.e. that the part of the Register should have two distinct protected titles, one relating to psychotherapists, the other to counsellors (third bullet point above).

In responses to the consultation, the majority of respondents overall disagreed with the proposed differentiation and argued instead that the Register should be structured so that both titles were protected but could be used by any registrant registered in that part. This is similar to the chiropodists and podiatrists part of the Register where the titles 'chiropodist' and 'podiatrist' are protected but there is no distinction between titles – both titles can be used by registrants registered in that part of the Register and the titles are used interchangeably by practitioners (second bullet point above).

Respondents to the consultation argued that differentiation between the titles was not possible for a number of reasons including that such as distinction was not supported by clear distinctions in education and training; that there was insufficient evidence to support a difference at the level of practice; and that the titles were often used interchangeably by practitioners. However, we heard from other respondents who argued that there were differences between the education and training of psychotherapists compared to counsellors and in the competencies necessary to practise in each area. A common theme across all respondents was a belief that the draft standards of proficiency did not support or adequately describe differentiation between psychotherapists and counsellors.

Differentiation relies upon being able to specify at a threshold level the different standards of proficiency necessary for entry to the Register as a psychotherapist and as a counsellor. Taking into account the responses we received to the consultation, the HPC considers that it is not possible at this stage to conclude whether the Register should differentiate between psychotherapists and counsellors without further work being undertaken on standards of proficiency (please see section 10 of this document).

## **4.2. Differentiation between modalities**

The vast majority of respondents to the consultation agreed that the Register should not be structured to differentiate between different modalities because they considered that the number of different modalities meant that this was not possible; that to do so would be confusing for members of the public; and that doing so might negatively impact upon the inclusivity of practitioners and the diversity of practice.

The HPC concludes that, although modalities will continue to be important to the profession and to practitioners, it is not necessary to identify modalities in the structure of the statutory Register. Registrants would be able to use preceding adjectives before the protected title in order to indicate the modality or orientation of their practice and would be bound by HPC's standards of conduct, performance and ethics to practise within their scope of practice and to fairly represent their professional skills and experience.

## **4.3 Children and young people**

There was no clear or overall consensus in the consultation about whether the Register should be structured to differentiate between those qualified to work with children and young people and those qualified to work with adults.

Given that further work is identified in this document in the area of standards of proficiency no conclusions are made at this time about whether the Register should be differentiated in this way. However, the arguments made in this area will need to be considered in light of the HPC's planned work looking at post-registration qualifications and the annotation of the Register and in the light of the further work on standards of proficiency outlined in this document.

## **Conclusion**

The Council is requested to agree that, if psychotherapists and counsellors are regulated, one additional Part of the Register should be established for "Psychotherapists and Counsellors".

The Council is requested to agree that, if psychotherapists and counsellors are regulated, modalities should not be reflected in the structure of the Register.

## 5. Protected titles

The HPC model of regulation is based upon 'protection of title' with one or more designated titles being associated with each part of the HPC Register. Article 39 of the Health Professions Order 2001 makes it an offence for a person to misuse a title which by law has been reserved to HPC registrants.

To date, the HPC has taken the view that the number of protected titles should be as few as possible, in order to assist the public to understand which professions are regulated and hence to enhance public protection.

The majority of respondents to the consultation agreed that the titles 'psychotherapist' and 'counsellor' should be protected because they are in wide usage by practitioners in the field; are easily recognised by members of the public; and because protecting the titles would help protect clients from unqualified and incompetent practitioners. The HPC concludes that it is necessary to protect these titles.

An issue was raised in the consultation responses as to whether it would be possible to protect the title 'counsellor' given its use outside of therapeutic activities – e.g. debt counsellors, financial counsellors – and by other groups such as 'genetic counsellors'. It was suggested that a preceding adjective might be used to differentiate the title from other types of counselling. Whilst the HPC acknowledges the potential difficulties around protecting this title, and the need for further discussion about this in the drafting process for any future Section 60 Order, we conclude that this title should be protected for public protection. The HPC would be concerned that protecting only an adjectival title (for example 'registered counsellor') would fail to recognise the current use of this title in the field and public recognition and understanding of the title, and that this would serve to limit the optimum effectiveness of regulation by opening the potential for evasion of registration.

### 5.1 Dual Registration

The majority of respondents to the consultation agreed with the outlined approach for dual registration. The PLG recommended that someone using one of the protected titles should be registered as a psychotherapist and/or counsellor, regardless of whether they also practised other professions, on the grounds of public protection.

Having considered the response to the consultation, the HPC concludes that if someone is using one of the protected titles then they should be registered as a psychotherapist and/or counsellor. This is important for clarity and understanding for members of the public and therefore public protection. However, this would not affect other professionals who use psychotherapy or counselling approaches or interventions in their work but who do not use a protected title. For example, if a nurse used counselling skills in their work but did not refer to themselves as a 'counsellor'.

A point was raised in the consultation about whether psychiatrists who have undertaken specialist medical training in psychotherapy administered by the Royal College of Psychiatrists (RCP) and recognised by the General Medical Council's (GMC) specialist Register would need to register. Titles such as 'Consultant psychiatrist in psychotherapy' are sometimes used by these doctors. The HPC concludes that if it is clear to a member of



the public that someone is a medical doctor registered by the GMC then it would not be necessary for them to become separately registered. This is an area that should be the subject of further discussion with the GMC and the RCP.

## **Conclusion**

The Council is requested to agree that, if psychotherapists and counsellors are regulated, the titles “psychotherapist” and “counsellor” should be protected.

The Council is requested to agree that, if psychotherapists and counsellors are regulated, the HPC should adopt the approach to dual registration outlined in section 5.1 of this document.

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## 6. 'Eligible' registers

Typically, a Section 60 Order which brings a profession into statutory regulation will designate one or more existing registers maintained by professional or similar bodies, the inclusion of a person's name in which on an appointed day provides an automatic entitlement to be entered into the new statutory register by operation of law. When the practitioner psychologists part of the HPC Register opened, such entitlement was granted to those entered on the relevant registers maintained by the British Psychological Society (BPS) and the Association of Education Psychologists (AEP). Although this only involved two registers with approximately 15,000 registrants, the process of identifying around 500 potential 'duplicate' entries took some time to complete.

The work to date has identified in excess of 40 potential registers of psychotherapists and counsellors and it is possible that there are more yet to be identified.

The PLG put together draft criteria to assist in deciding which registers should transfer and these criteria were generally well received in the consultation. The HPC has considered whether, as proposed in the report, it would be appropriate for it to conduct a process to determine whether a register meets this criteria and therefore to recommend to the Government that the register should transfer to the HPC Register. However, the HPC has concluded that deciding which registers will grant eligibility for registration is a matter for Government and a list of these registers is likely to be included in any draft Section 60 Order.

However, the task of processing potentially 40 plus registers can only be performed if a three-stage process is adopted under which:

- Stage one: all entries from the eligible registers are included in a temporary HPC register.
- Stage two: the HPC is given an appropriate period (say 12 weeks) in which to identify and resolve duplicate entries.
- Stage three: at the conclusion of the 'de-duplication' exercise the new register comes into effect.

## Conclusion

The Council is requested to agree that, if psychotherapists and counsellors are regulated, the inclusion of names in the HPC register from other eligible registers should be performed by means of a three-stage process of the kind outlined on the previous page.

## **7. Transitional Provisions**

Article 13 of the Health Profession Order 2001 provides a means by which those who have practised a profession, but who do not qualify for automatic inclusion in the HPC Register when the relevant profession is first regulated, to be able to apply for registration based on their prior experience. This is known in legal jargon as 'grandparenting'.

Grandparenting is a transitional arrangement and the period during which applications can be made was originally set at two years from the opening of the relevant part of the Register. In the case of practitioner psychologists, this period was extended to three years by the Section 60 Order for that profession because of the potential complexity of dealing with a profession with seven domains.

The PLG recommended that the grandparenting period should be two years in length, in keeping with the length of grandparenting period for the first 13 professions regulated by the HPC. In responses to the consultation there was no clear or overall consensus about this but some respondents argued that a longer period was merited given the length of professional training in this field and because of concern about the number of existing practitioners who may not be voluntarily registered or eligible to be voluntarily registered. Given those comments, and in light of the three year grandparenting period for practitioner psychologists, it is recommended that a three year grandparenting period should also be applied to psychotherapists and counsellors.

### **Conclusion**

The Council is requested to agree that, if psychotherapists and counsellors are regulated, the 'grandparenting' period for those professions should be three years.

## **8. Standards of Proficiency**

A strong theme within the responses to the consultation was that the generic elements of the existing HPC standards are too heavily focussed on a medical or clinical model of practice and include concepts (e.g. infection control, management plans, audit) which may not be widely applicable to psychotherapists and counsellors.

The previous consultation on the standards of proficiency for practitioner psychologists highlighted similar issues with some of the generic standards and highlighted the need for these elements of the standards to be reviewed. The Education and Training Committee agreed on 2 December 2008 to undertake a review of the generic standards of proficiency and some initial work has been undertaken to look at the standards in light of the feedback previously received.

In view of the responses received to the present consultation, it is recommended that any further consideration of draft Standards of Proficiency for psychotherapists and counsellors is deferred until such time as the revision of the existing generic standards has been completed.

### **Conclusion**

The Council is requested to agree that any further consideration of draft standards of Proficiency for psychotherapists and counsellors is deferred until such time as the Council has concluded the current review of its existing generic standards.

## 9. Education and training

Standard one of the HPC standards of education and training ('SET 1') sets out the threshold level of qualification for entry to the Register.

SET 1 provides the threshold levels of qualification "normally" expected to meet the remainder of the standards of education and training (and thus the standards of proficiency). The term "normally" is included in SET 1 as a safeguard against the unlawful fettering of the HPC's discretion. Given the terms of the Health Professions Order 2001, it would be an improper exercise of its powers for the HPC to refuse to approve a programme which delivered the standards of proficiency and the remainder of the standards of education and training, solely on the basis that it did not lead to the award of a qualification specified in SET 1.

The HPC has to set the threshold level at the level necessary for people who successfully complete a pre-registration education and training programme to meet all of the standards of proficiency. As the threshold is the 'minimum' it may be exceeded.

The majority of respondents to the consultation disagreed with the levels proposed for psychotherapists and counsellors in the PLG report. The responses we received to the consultation questions about the threshold level link to the responses we received about differentiation between psychotherapists and counsellors and the standards of proficiency (sections 4 and 8 in this document).

As the threshold level of qualification for entry to the Register must be the level necessary to deliver the standards of proficiency, no conclusion is drawn at this time about the appropriate level or levels until further work is undertaken looking at those standards. The HPC would in any event consult on the threshold level of qualification for entry to the Register and the standards of proficiency following the future publication of any Section 60 Order.

## **10. Overall conclusions and decision**

The work that the Council has undertaken since February 2007, including the Call for Ideas, the work of the PLG and the recent consultation, has not identified any specific issues that would prevent psychotherapists and counsellors from coming into the system of independent statutory regulation operated by the HPC.

### **Decision**

The Council is requested:

1. To consider and decide whether the HPC's systems are capable of accommodating and meeting the regulatory needs of psychotherapists and counsellors.
2. To instruct the Registrar to inform the Secretary of State of the Council's conclusions.

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