



CHCC COLLEGE OF HEALTH CARE CHAPLAINS



SSHA SOCIETY OF SEXUAL HEALTH ADVISERS



Unite the Union Response to:

The Department of Health and Social Care (DHSC) consultation;

Healthcare regulation: deciding when statutory regulation is appropriate.

This response is submitted by Unite in Health. Unite is one of the UK's largest trade union with 1.5 million members across the private and public sectors. The union's members work in a range of industries including manufacturing, financial services, print, media, construction, transport, local government, education, health and not for profit sectors.

Unite represents in excess of 100,000 health sector workers. This includes eight professional associations - British Veterinary Union (BVU), College of Health Care Chaplains (CHCC), Community Practitioners and Health Visitors' Association (CPHVA), Guild of Healthcare Pharmacists (GHP), Hospital Physicians Association (HPA), Doctors in Unite (formerly MPU), Mental Health Nurses Association (MHNA), Society of Sexual Health Advisers (SSHA).

Unite also represents members in occupations such as nursing, allied health professions, healthcare science, applied psychology, counselling and psychotherapy, dental professions, audiology, optometry, building trades, estates, craft and maintenance, administration, ICT, support services and ambulance services.

Introduction

Unite welcomes the opportunity to respond to the Department of Health and Social Care (DHSC) consultation; *Healthcare regulation: deciding when statutory regulation is appropriate*.

Unite has once again used its consultative provisions throughout the organisation to hear back the views of our members working in health and care settings who may be impacted by these changes.

Consultation questions

Our responses to the consultation questions are as follows;

The criteria used to assess whether a profession requires statutory regulation

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

Unite agrees that when deciding which form of regulation is required in order to protect the public, it is important to consider all aspects of risk when assessing the likelihood of harm to patients arising from care given by a health or care professional.

A particular area of concern for Unite relates to the environment in which professionals practice. In 2013 Sir Robert Francis found that a culture where staff were afraid to speak out, there was a lack of openness and a focus on finance before patient care were significant factors in the failings at the Mid Staffordshire NHS Foundation Trust¹. Once again the poor culture, lack of transparency and governance structure of an organisation have been raised as major contributing factors in failings in care that have resulted in multiple cases of harm². Unite considers that it is essential to bring into statutory regulation those responsible for commissioning, leading and managing health and care organisations. Those making decisions that negatively impact on patient care should be held to account for their acts and omissions in the same way as many of the staff who then deliver the care are held to account.

The consultation states *'the assessment of these risks should be based on evidence. Based on this assessment an informed decision can be made on whether statutory regulation is necessary or whether an alternative approach would adequately reduce risk.'* However, professions who are not currently statutorily regulated will not have readily available evidence making an assessment of risk both more difficult and unbalanced. In addition, professionals may be working independently and the public can find it difficult to understand the differences between the titles used. Regulation is a protective mark, and offers some quality assurance to those receiving care. If the clinician does do harm, then there is a process whereby the public can seek recourse.

¹ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/279124/0947.pdf

² https://www.ockendenmaternityreview.org.uk/wp-content/uploads/2022/03/FINAL_INDEPENDENT_MATERNITY_REVIEW_OF_MATERNITY_SERVICES_REPORT.pdf

It is stated in the consultation that: '*It is our view that the current make-up of regulated and unregulated professions strikes the right balance in addressing the risks posed by health and care professionals without imposing unwarranted burdens*'. Unite questions how this view has been arrived at given an assessment of each profession has not been undertaken in line with the Professional Standard Authorities (PSAs) *Right Touch* approach to regulation.

2. *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

As stated in the consultation, registration with a statutory regulator provides assurance an individual is fit to practise and has the necessary knowledge, skills and experience in the relevant profession. We agree that the current system can be inconsistent and overly complicated and therefore support the aim of simplifying the system. We therefore question the view expressed in the consultation that '*the current regulatory landscape is the correct one and that the mix of regulated and unregulated professions should not be changed*'.

In terms of proportionality and consistency, Unite would like to raise the following; when a decision has been taken to regulate a profession and powers have been given to a regulator to do so, how can they then be overruled by an organisation without the same powers?

The health trade unions have many examples of cases where members, referred to their regulator because of a concern about their practice, have simultaneously been referred to the Disclosure and Barring Service (DBS) because the Trust or Board have a legal duty to refer. Whilst acknowledging that the DBS are a statutory body they do not have the same powers in terms of investigating concerns as the regulators. None the less they make determinations to place individuals on either the adult or child barred list (or both) before their regulatory case has been concluded. This, in many cases, has been despite the regulator assessing the risk as low and the employer effectively managing any risk. In some cases the regulator has closed the case with no case to answer or lesser sanctions than a Striking Off Order and yet the DBS decide to bar! The professionals involved are then not able to work and consequently not able to further participate in their regulators process. This is contrary to the approach now being implemented by the healthcare regulators where the emphasis is on learning rather than blame. It also does not demonstrate proportionality, consistency, fairness, openness or transparency. Indeed, it is our view that this could ultimately discourage professionals from being open and honest when things go wrong.

Whether there are existing regulated professions that no longer need to be regulated

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

Don't know

The consultation does not contain the evidence used to assess whether the currently regulated professions continue to satisfy the criteria. Hence it is difficult to make a judgement. However, Unite members raised the following points;

The consultation cites the *Busting Bureaucracy* document³. This talks about some of the suspension of work for example appraisals, mandatory training ETC. that occurred during

³ <https://www.gov.uk/government/consultations/reducing-bureaucracy-in-the-health-and-social-care-system-call-for-evidence/outcome/busting-bureaucracy-empowering-frontline-staff-by-reducing-excess-bureaucracy-in-the-health-and-care-system-in-england>

the Covid-19 pandemic. Unite members consider this was exceptional and they would not welcome this becoming the norm. Indeed, they consider there would be a risk that essential training may be discontinued. In addition, Unite members expressed concern that attempts to deregulate professions could have adverse consequences. In particular they are concerned this could become a vehicle for disguising workforce shortages.

Whilst Specialist Community Public Health Nurses (SCPHNs), which includes health visitors, are regulated by the Nursing and Midwifery Council (NMC), there are concerns about the way they are regulated and whether this sufficiently protects the public. As evidenced by the consultation document, health visitor is not recognised as a regulated profession in its own right and neither is its successor, specialist community public health nurse (SCPHN). Instead, health visitors are regulated as nurses or midwives. Unite has long argued that this situation needs to be resolved to better protect the public who continue to refer to 'health visitor' and continue to receive the services of a health visitor. Health visiting is increasingly becoming subsumed into nursing as currently it is considered a post registration qualification. However, nursing is predicated on the recipient having a need for care, whereas health visiting focusses on preventative health and wellbeing, plays a key role in reducing inequalities in health. Health visiting requires different knowledge and skills over and above what is contained in a nursing or midwifery pre-registration programme. Whilst it is at a specialist level, it is a different profession.

Because health visitors are primarily considered nurses, during the pandemic a number of organisations scaled back their health visiting services and redeployed their health visitors into 'nursing' roles. Protestations against the appropriateness of this, including by Unite, were largely ignored. Interestingly, Public Health England has since stated that this must not happen again due to the negative impact it has had on children and families, with increases seen in safeguarding concerns, domestic abuse, child and maternal mental health problem⁴.

Another unintended consequence of the current situation is that when the NMC reviewed the standards for pre-registration nursing⁵ including the Standards for Student Supervision and Assessment in Practice (SSSAiP)⁶ they, without explicitly consulting those whom it would affect, made them applicable to post registration programmes, including SCPHN. Again, this has had a detrimental impact as many organisations have as a consequence removed the practice teacher role, an essential element to ensure safe and effective preparation of SCPHN students. Indeed, there is evidence that this is contributing to experienced and newly qualified staff leaving the profession and that many consider they are ill prepared for the demands of the role. Unite considers that there is an urgent need to properly assess the most appropriate way to regulate health visitors.

Whether there are unregulated professions that require statutory regulation

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

Disagree

We note in the consultation that plans to statutorily regulate physician's associates and anaesthesia associates continue. It was also previously considered appropriate to statutorily regulate nursing associates. Presumably these decisions were taken because these professions are considered at a similar risk to their counterpart's, doctors, anaesthetists and nurses. We agree that regulation is critical for quality assurance and assurance of high standards.

⁴ <https://www.nursinginpractice.com/community-nursing/health-visitors-should-not-be-redeployed-again-says-phe/>

⁵ <https://www.nmc.org.uk/globalassets/sitedocuments/standards-of-proficiency/nurses/future-nurse-proficiencies.pdf>

⁶ <https://www.nmc.org.uk/globalassets/sitedocuments/education-standards/student-supervision-assessment.pdf>

Unite represents members in applied psychology who have been involved in some of the stages of the development of clinical associate psychologists (CAPs) in England and clinical associate in applied psychology (CAAP) in Scotland. Unite considers these professions should be similarly statutorily regulated and additional work carried out to investigate whether additional professionals in the field of psychological support need to be considered for regulation. In particular as the numbers of these professionals and professions is increasing at a rapid rate and assurance is needed for public protection. Unite considers that voluntary registration is not satisfactory in this situation.

Unite also represents child and adolescent psychotherapists. Whilst recognising that this group is currently able to join a voluntary register, we believe work should be done to properly assess whether this group should also be statutorily regulated.

This response was submitted on behalf of Unite by;

**Colenzo Jarrett-Thorpe
National Officer for Health
Unite House
128, Theobalds Road
London
WC1X 8TN**

**For further information on this response, please contact;
Jane Beach**

Jane.beach@unitetheunion.org

Submitted via online survey

31st March 2022