professional standards authority
for Health and Social Care

Reshaping regulation for public protection

Our view on the implications of the Health and Care Bill for professional regulation

October 2021

The Health and Care Bill presents an important opportunity to improve health regulation

The Government is taking forward wide-ranging reforms to the powers and governance of the healthcare professional regulators. On top of these changes, the Health and Care Bill proposes new powers for the Government to reshape the regulatory landscape including powers to shut down regulators and move professions into and out of regulation.

We are pleased to see that reform is progressing. Regulation needs a major overhaul if it is to better protect patients and support the changes being proposed for health and care services. It needs to be made simpler to make it easier for patients and service users, professionals and employers to use.

As the Bill makes its way through Parliament and a separate review of the regulatory landscape will shortly set out options for reform, we give our view on what principles should guide decisions about reform to ensure that public protection is at its heart.

Our view at a glance

Public protection must be the guiding principle

- The need to keep patients safe should be the driving force behind any changes made to professional regulation – making it simpler should make it easier for all those involved in health and care to protect the public.
- We support the proposed powers for the Government to merge or abolish regulators, provided there are proper safeguards in place and change is focused on protecting patients and service users.
- Creating a single regulator would be the best way to deal with the problems in the current system. It would remove many of the boundaries which prevent regulation from working as a coherent whole and make it simpler for patients, professionals, employers and educators.
- If there isn't appetite for a move from 10 regulators to one at this time then reducing the overall number would help and could be a first step towards a simpler, more coherent framework.
- We agree the Secretary of State should have powers to deregulate as well as regulate professions – we know that the risk profile for different occupations can shift over time and a more agile method of responding to this may be needed.
- Protecting the public must be the guiding principle behind any decisions made to deregulate professions.

What's on the table?

The Health and Care Bill (Part 5, Section 123) would give the Secretary of State for Health and Social Care new powers to:

- abolish an individual health and care regulator
- remove a profession from regulation if regulation is not required for protection of the public.[1]

The Secretary of State already has powers to create a regulator and bring a profession into statutory regulation so these changes will let them do the opposite.

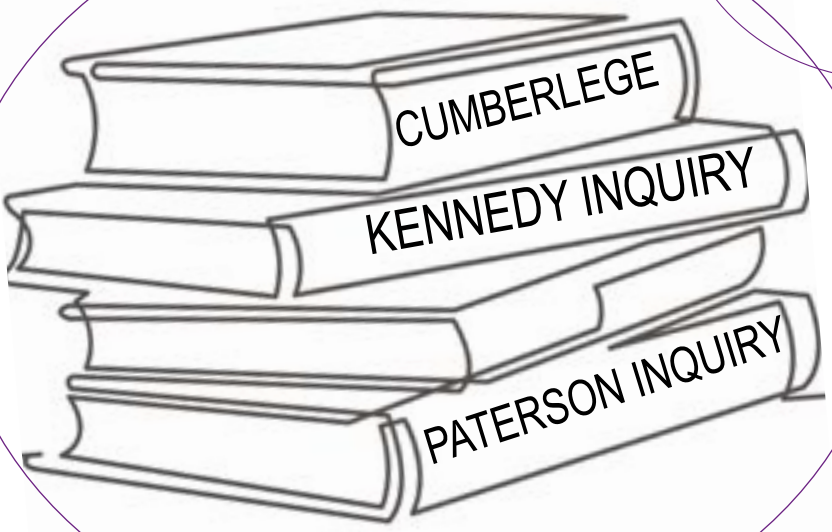
It means that if the Government wanted to make changes to the number of regulators or change which groups are regulated, they would not need to pass an Act of Parliament. They could instead make changes using secondary legislation or 'regulations' sometimes referred to as 'Henry VIII' powers. Changes made in this way are not subject to the same level of Parliamentary scrutiny as a Bill so let the Government make changes more quickly. They are still required to consult for 12 weeks and the legislation must be approved by both Houses of Parliament.

There are also proposals to remove restrictions that stop regulators delegating their functions to another and to let groups that are not generally considered a profession to be regulated by law. This is to allow the Government to regulate senior NHS managers and leaders if desired, as recommended by the Kark review.

Problems with the current system

‘There is a whole jigsaw of organisations involved in regulation to keep patients safe, but despite numerous organisations and substantial resource, there was a failure to keep patients safe in the case of Paterson.’

(Report of the independent inquiry into the issues raised by Paterson[2])



The regulatory and wider patient safety system has evolved piecemeal over many years. It is crowded and not fully in step with modern care. And it still sometimes fails to keep patients and service users safe.

Successive public inquiries and reviews into major patient safety failings, from Kennedy[3] to Cumberlege,[4] have established that lack of proper coordination and cooperation between the different parts of the complex patient safety landscape contribute to things going wrong or prevent problems being detected.

In health and care professional regulation in the UK there are 13 regulators. Ten of these fall under our oversight. Seven have a UK-wide remit,[5] three cover different parts of the UK.[6] One social work regulator (for England) falls under our remit and the other three social care regulators, for Scotland, Wales and Northern Ireland do not.[7]

Regulators range in size from the Nursing and Midwifery Council (NMC) (731,918 registrants) to the General Chiropractic Council (GCC) (3,341 registrants). There are also up to two million unregulated roles within the wider workforce such as health care assistants, social care workers and many mental health practitioners including counsellors and psychotherapists. Decisions about which professions are regulated have in the past generally not been based on a systematic assessment of risk.

Problems with the current system (cont.)

The need to keep patients safe should be the driving force behind any changes made – making it simpler should make it easier for all those involved in health and care to protect the public.

In the wider regulatory system there are many bodies who have a role overseeing the safety and quality of health and care services. A report in 2019 revealed over 126 organisations had some regulatory impact on NHS providers in England (alongside the 211 Clinical Commissioning Groups).

In many cases there are separate regulators within England, Scotland, Wales and Northern Ireland. Recent and planned additions to this landscape include the Healthcare Safety Investigations Branch (HSIB), covering England and proposals to introduce a Patient Safety Commissioner for medicines and medical devices in England and Scotland but currently not in Wales or Northern Ireland.

Boundaries between regulators create barriers, even when they try to cooperate, and this can increase the risk of public protection failures. It also makes it more difficult for professional regulation to work with other parts of the system. For example:

- health and care inspectorates in each country must engage with up to nine separate professional regulators who all carry out broadly similar functions
- employers must check employees' credentials against many separate registers
- educators must agree training programmes with multiple organisations and submit to separate inspections by each regulator – this may also create barriers to inter-professional learning and working
- patients or employers wanting to report serious incidents involving different professionals must make separate referrals or complaints to each professional's separate regulator.

The current system is also not agile enough to support the development of new roles quickly. It also makes inconsistency between regulators more likely and makes it harder for regulators to adopt common ways of working.

Last but by no means least, it is more costly than it needs to be, in part due to inefficient duplication of functions.

What do we think?

The Authority has called for a simpler and more coherent system of regulation.

The Authority has called for a simpler and more coherent system of regulation. We know that many stakeholders agree. We previously proposed a single regulator for health and care professionals as well as a single statement of professional practice or 'common code' across professions.

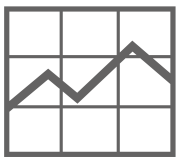
We support the proposed powers for the Government to merge or abolish regulators, provided there are proper safeguards in place and change is focused on protecting patients and service users.

Whatever changes are proposed it will be important for there to be meaningful consultation with all stakeholders affected.

A SINGLE REGULATOR

We think that creating a single regulator would be the best way to deal with the problems in the current system. It would remove many of the boundaries which prevent regulation from working as a coherent whole and make it simpler for patients, professionals, employers and educators.

A single body would make collecting, analysing and using fitness to practise data to prevent future harm much simpler.



Using data to prevent future harm would be simpler

What do we think? (cont.)

The creation of single register would be another beneft of a single body – helping to address the problematic inconsistencies between the existing professional registers.

A single regulator would allow the development of a common statement of professional practice or 'common code'. A common code would improve public understanding of what to expect from health and care workers and when to report a concern to the regulator. It could support greater alignment of learning outcomes for students to ensure that these joint values are translated into the approach to education and training for all professionals.

It would also support the development of more flexible models of training, bring greater consistency of approach, improve inter-professional collaboration and learning, and make it easier for training to meet national workforce and health priorities.

A single body would allow the creation of single register which would address the problematic inconsistencies between the existing professional registers.

We can look to Australia where regulatory boards for the professions have been brought together under a single regulatory body in the form of the Australian Health Practitioner Regulatory Authority (AHPRA). In British Columbia in Canada, plans to radically reduce the number of regulatory boards from 20 to six are well underway.

However, if there isn't appetite for such a change from 10 to one regulator at this time, an overall reduction in number would help and could be a first step towards a simpler and more coherent system.

REDUCING THE NUMBER OF REGULATORS

Public protection should drive any change rather than cost effectiveness and efficiency. Noting this, simplification could be based on, for example:

- mirroring the way team-based care is delivered; or
- taking other common characteristics such as whether registrants are likely to be working in a commercial environment, patient groups with whom professionals work, similarity of educational programme; or
- considering the risks of each profession and combining those requiring similar regulatory force.

What do we think? (cont.)

An overall reduction in the number of regulators could be the first step towards a clearer, simpler and more coherent system.

Different options would address some of the problems we have outlined with the current system and have a range of different benefits. However, as well as the benefits, the Government will also need to think about the unintended consequences.

While grouping professionals primarily based on the nature/level of risk arising from practice may seem logical, this might mean moving away from team-based regulation which more closely mirrors the way that care is delivered. For example, it might mean splitting up the dental team who are currently all regulated by the General Dental Council (GDC).

Regulation of teams is likely to bring with it several benefits and address problems with the current system including:

- allowing patient safety concerns involving members of a team to be more effectively addressed
- supporting closer alignment and cooperation between professional and system regulators
- allowing the development and use of expertise specific to the family of professions in question such as medicine, dentistry, or nursing.

Recent decisions by the Government appear to support the broad logic of regulating in this way for example, the regulation of Nursing Associates by the Nursing and Midwifery Council (NMC) and Physician Associates/Anaesthesia Associates by the General Medical Council (GMC).

However, regulating based on teams would also bring with it its own challenges. Many professionals currently work in multi-disciplinary teams therefore choosing where they should be placed may not be straightforward. The composition of teams may change over time.

What do we think? (cont.)

Other factors which may affect performance, and which should be considered but not necessarily be the main driver behind decisions on reconfiguration, include:

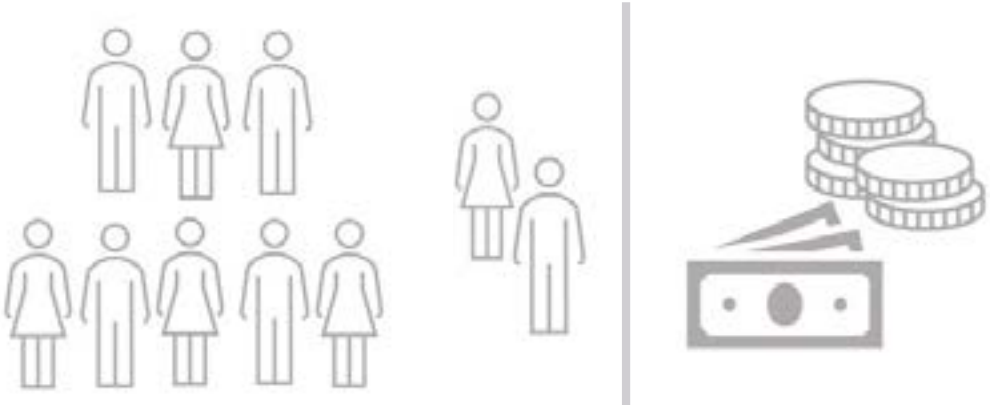
- Size - if there is an ideal size above or below which a regulator may find it easier/harder to perform well (see our work on cost effectiveness and efficiency)
- Funding - if there is a link between fees per registrant and performance, and how fees would be set in a multi-professional regulator.

Ultimately different options are all likely to have different benefits and disadvantages. The complexity of the current system won't be solved by reducing the number of health professional regulators alone. However, the review of the professional regulators could be a first step towards greater coherence.

The regulators have done a lot to make their processes clearer and help patients navigate the system to raise concerns. The reforms underway to regulator powers and governance should also help. It is important that these proceed and are not derailed by planned structural changes. However there are limits to what more can be achieved within existing organisational boundaries.

The UK has in some areas led the way in modernising health professional regulation. While we will not be the first to go down this path, we will be able to join colleagues around the world in recognising that simplifying can have benefits.

Size and funding will affect a regulator's performance but should not be the main drivers for decisions on reconfiguration



A wider approach to assurance of professions

It is vital that the review of the regulatory landscape and any review of which professions are regulated take account of the two million unregulated roles within the wider workforce.

While regulation of professions continues to play an important part in protecting patients and services users it comes at a cost. It should therefore be reserved for those groups within health and care where the risks cannot be managed in other ways. We have called for a risk-based approach to which professions should be regulated and developed a tool to advise on occupational risk.

The Government has proposed powers to deregulate professions if this is no longer required for protection of the public.

We agree the Secretary of State should have powers to deregulate as well as regulate professions – we know that the risk profile for different occupations can shift over time and a more agile method of responding to this may be needed.

However, there must be a robust, independent process to ensure that any decisions are based on **a clear assessment of the risk of harm** arising from practice. The Government previously consulted on giving the Authority a statutory role to advise on regulation of occupations and we support this.

As with closure of regulators when considering deregulation of professions, protection of the public must be the guiding principle behind any decisions made.

We would also expect the Government to have a place for the Accredited Registers (AR) programme in its remodelled regulatory landscape. The AR programme accredits registers of health (and currently within England only, social care) roles not regulated by law. It lets the public have access to qualified practitioners wherever and whenever they access care. We have recently revised the AR programme to ensure it better supports the needs of wider stakeholders including the health service.

We think it is important that the programme can evolve over time to provide assurance for new and expanding roles within the workforce. We note the ongoing discussions about introducing mandatory licensing for non-surgical cosmetic practitioners. This is a complex area with both regulated and unregulated individuals carrying out cosmetic procedures in different settings. We will seek to work with others in this area, including the two cosmetic registers that we accredit, to explore how licensing or any alternative mechanism could be introduced in way that complements the existing safeguards offered by the programme.

Looking to the future

Right-touch does not mean light touch.

Changes to the number of regulators, or which professions are regulated, may lead to a challenging period. This would be alongside any changes arising from the more detailed reforms due to be rolled out regulator-by-regulator, starting with the GMC in 2022-23.

In addition, the coming five years or so are likely to be challenging for the NHS and social care systems across the UK due to continued strain on resources from pandemic care and dealing with pent-up demand 'post'-pandemic, and in England in particular as a result of the Health and Care Bill proposals. While the recent announcement of an increase in national insurance to fund a health and social care levy should help to alleviate some of the immediate pressures, funding and workforce issues are likely to continue to loom large.

The existence of effective regulatory arrangements, focused on risk, safety and public protection, will be central to the delivery of care whatever challenges the sector faces in the years ahead.

While some might argue that the timing is wrong for change on this scale, there is already a busy and ongoing programme of regulatory reform with the sector invested in improvement and change. Although further structural and organisational mergers may be challenging, we think that with appropriate oversight and governance, the sector is well-placed to respond.

The disruptive effect of the pandemic, although undoubtably challenging for all the regulators to manage, has also created the context to think about what changes might be needed to encourage greater collaboration and realise the benefits of regulatory consistency and simplicity.

The opportunity for reform does not often arise and so with reform already begun, it makes sense to carry on and make the changes that the health and care sector really needs. While the regulators will no doubt try to respond as well as they can, we believe more radical change is needed to solve the recurring problems. Change is needed to improve public protection and to support professionals in meeting the wider challenges facing patients, service users and the health and care sector.

Measuring the success of reform

What should reform of professional regulation aim to achieve?

There is a lot going on that will affect professional regulation at the moment. Without a clear plan there is a risk that a piecemeal approach could make things more, rather than less, complicated or prioritise short-term reduction in costs and improved flexibility over public protection.

We have laid out what success and failure would look like, both for reforms to the regulatory landscape which could be taken forward as a result of the Health and Care Bill and the wider reforms to regulator powers and governance.

If the reforms are to be a step forwards for professional regulation, they should create:

- Greater coherence of the regulatory system to support modern, multi-disciplinary health and social care
- More inter-professional working and flexibility between professions
- A safe and appropriate balance of accountability and flexibility in the work of the professional regulators
- A proportionate, and less adversarial way of dealing with concerns about professionals with the necessary public protection safeguards
- Overall, a more effective public protection framework, that listens to patients and responds to their concerns, and has the confidence of the public and professionals.

These reforms will have failed the public if they lead to:

- Lower levels of public protection, public confidence, or professional standards
- Less transparency or accountability for regulators
- The same or more complexity from the perspective of the public, employers, and professionals
- Continuing difficulties for regulators in working together
- Continuing challenges to closer working between professions
- Significantly increased costs that are not justified by public protection.

Endnotes/useful links

ENDNOTES

1 This will amend Section 60 of the Health Act 1999.

2 The *Report of the Independent Inquiry into the Issues raised by Paterson* was set up following the conviction of surgeon Ian Paterson who performed inappropriate or unnecessary procedures and operations on over 200 patients.

3The review which led to the publication of *The report of the public inquiry into children's heart surgery at the Bristol Royal Infirmary 1984-1995* was chaired by Sir Ian Kennedy. It examined failures of care and regulation which led to the deaths of at least 170 children.

4 *First Do No Harm - The Independent Medicines and Medical Devices Safety Review* examined safety concerns arising from the inappropriate use of a range of medicines and medical devices (certain hormone pregnancy tests, an anti-epileptic drug and pelvic mesh implants) all of which caused avoidable harm to potentially hundreds or thousands of patients, mainly women.

5 Regulators with a UK-wide remit are: General Chiropractic Council, General Dental Council, General Medical Council, General Optical Council, General Osteopathic Council, Health and Care Professions Council and Nursing and Midwifery Council.

6 Regulators covering different parts of the UK are: the General Pharmaceutical Council (which regulates the pharmacy team in Great Britain), the Pharmaceutical Society of Northern Ireland (which regulates pharmacists in Northern Ireland) and Social Work England (which regulates social workers in England).

7 The devolved social care regulators are not under the Authority's oversight and are outside the scope of the proposals within the Health and Care Bill.

USEFUL LINKS

- Our response to the Government's consultation on *Regulating healthcare professionals, protecting the public* which proposed detailed changes to the powers and governance of the healthcare professional regulators.
- More information about our views on the Government's consultation, including our short reports *First look at the Government consultation on reforming regulation* and *Three things to get right for public protection*
- *Right touch reform*
- *Regulation rethought*
- Find out more about our work with the 10 health/care professional regulators
- Find out more about our work with the Accredited Registers
- Find out more about our research and policy work as well as more details on our right-touch approach and its associated publications
- All our publications can be found here.

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