Council of Deans of Health

The voice of UK university faculties for nursing, midwifery and the allied health professions

KPMG - Review of Professional Regulators

Consultation response – September 2021

The Council of Deans of Health welcomes the opportunity to contribute to this consultation. The Council represents 100 UK university faculties engaged in education and research for nursing, midwifery and the allied health professions.

Section 1: Introduction

1. Your organisation

Council of Deans of Health

2. What is your role?

N/A.

3. Which country do you work in?

UK.

Section 2: Potential reforms

4. In your view, what are key considerations relating to the following objectives of regulatory reform? Are there any missing?

- Improving public protection – i.e. minimising risk of harm due to poor professional practice
- Flexible workforce – i.e. supporting the development of a flexible workforce that is better able to meet the challenges of delivering healthcare in the future
- Performance – i.e. addressing concerns about the performance of professionals in a more proportionate and responsive way
- Support – i.e. providing greater support to regulated professionals in delivering high-quality care
- Efficiency – i.e. increasing the efficiency of the system

All the above are important considerations of healthcare professional regulators. The regulation of healthcare higher education must assure public protection from both a regulatory and educational

perspective. Universities are committed to delivering high quality education which ensures public protection. Regulation must be agile, risk-based, data-driven and outcome-focused.

The regulation of education is a key function of regulators. Standards of education and training are as important to public protection as fitness to practise (FtP) standards. Regulators should explore and develop a regulatory approach which has an increased focus and investment in the 'upstream' of the registrant journey to reduce the impact and costs of registrant FtP issues during professional practice. Regulators should also rebalance their focus to see the healthcare higher education sector as central across all their workstreams. Universities could play a more strategic role for regulators through harnessing sector expertise to advise across all their functions and assist with evidence-based interventions, output-focused delivery, and strategic performance.

Healthcare higher education is regulated by both professional healthcare regulators and higher education regulators. The sector is in danger of burdensome and duplicative regulation from both healthcare professional and higher education regulators.[1] Too often education regulation impinges unnecessarily on healthcare professional regulation and vice versa. There is a need to reduce the regulatory burden placed on education providers considering the robust regulation provided by healthcare professional regulators. Removing this overlap would save costs by reducing inherent inefficiencies but also clarify overarching policy responsibilities and allow individual regulators to focus on their remits. Data should, where appropriate, be shared between agencies to reduce the data burden on education providers.

We strongly oppose any new powers to allow for charges for educational quality assurance. Healthcare professional education is already high-cost and resource intensive. Universities are already charged for quality assurance by higher education regulators across their provision, including healthcare. Additional charges may have unintended consequences, such as causing some institutions to rethink existing provision, including in vulnerable disciplines. This would be problematic for the UK Government's ambitious NHS workforce growth targets. Instead, we urge governments and regulators to look at options to reduce the high costs of registrant FtP activities.

Education providers should have the right to appeal approval decisions. This should also be the case when conditions are attached to an approval. Providers need the right to appeal approvals with conditions, as there is some unwarranted variation in the decisions made by quality assurance teams within regulators across the UK. A condition could be out of step with contemporary evidence and practice and local needs, or it could be so prohibitive that it would mean that the programme was de facto refused approval.

5. In your view, what are the key benefits of the multi-regulator framework for health and care professions in the UK?

The current multi-regulator framework can provide specific focus on particular professions throughout an individual's regulatory journey and career from pre-registration education to retirement. This can be

[1] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/655794/Regulatory_Reform_Consultation_Document.pdf (p30)

beneficial in understanding the particular needs and requirements of certain professions and the contexts in which they deliver healthcare to patients and service users.

Another benefit of the current system is that healthcare professional regulation is broadly UK-wide. The Council respects and values the devolution of health and education policy across the UK. However, any changes to the healthcare professional regulatory framework, including the regulation of education providers must be agreed at a UK level. This will ensure consistency across the UK and ongoing internal mobility of the UK healthcare professional workforce.

6. In your view, what are the key risks / costs associated with this multi-regulator framework?

There is a risk of inconsistent approaches to the quality assurance of education provision across different regulators when a more consistent approach could be delivered. Creating shared, more closely aligned processes would be beneficial for universities educating more than one type of healthcare professional. Greater alignment may also lead education providers to think about training in a more interdisciplinary way, which along with the potential for reducing duplication may also better prepare students for working in clinical teams that may be drawn from different disciplines.

7. In your view, does the multi-regulator framework enable regulators to instil confidence in regulated professionals and protect the public?

Yes.

8. Please elaborate on your response to Question 7.

The healthcare higher education sector has positive and collaborative relationships with healthcare professional regulators, as highlighted by the effective and responsive joint working during the pandemic.

9. Subject to the removal of technical obstacles (i.e. funding, data sharing restrictions etc), is there any unnecessary overlap in the roles and responsibilities of the professional regulators which could be combined? E.g. a single Code, back office functions, QA of education, etc.

Yes.

10. Please provide any examples / reasons for your response to Question 9.

Fewer regulatory bodies may lead to more consistency in approach and more efficiencies. Education standards and quality assurance processes set by fewer regulators, could increase consistency. Several of our members comment on different regulators using different processes and asking for different types of data and information when reviewing education programmes, adding to complexity, process and duplication of effort.

There may be a case for the delegation of certain functions from a regulator to another regulator or third party. However, we do not believe that the holding of a register or the setting of pre-registration education and training standards should be delegated to another regulator or a third party. These are

central functions of any regulator. The only exception may be in relation to the future regulation of advanced practice, where one healthcare professional regulator may regulate professionals who have those advanced knowledge, skills, and behaviours from a range of professional groups. Regulation should not be regularly subcontracted between regulators. We welcome plans that where delegation takes place, the ultimate responsibility for the function will remain the responsibility of the primary regulator. This should be the case if functions are delegated to either other regulators or third parties.

11. What do you believe the impact of changing the current regulatory configuration (i.e. by giving existing regulators responsibility for additional professions) may have on individuals' sense of professional identity, and/or recruitment to specific healthcare professions in future? Are there any other wider impacts to consider?

It is difficult to fully comment without sight of definitive plans. Regulatory merger would entail considerable costs at the outset and thus it is important that any decisions about new regulatory bodies are based on impact assessments and cost-benefit analyses. Any regulator absorbing smaller professional groups will need proper investment to support the extension of its remit.

However, deregulation is likely to have more of a negative impact on future recruitment than merging the regulation of specific professions within multidisciplinary regulators. This may have a negative impact on professional identity for some existing professionals, therefore this decision should be made considering the views of those professions most directly affected by proposed changes.

12. Do you believe all healthcare professions should be regulated in a comparable, consistent (as opposed to 'uniform') manner? E.g. by the same entity, with the same standards, and/or with the same processes.

No.

13. Please explain your answer to Question 12.

We note that some regulators already regulate several professions, such as the Health and Care Professions Council (HCPC) which regulates most allied health professions in the UK.

There is value in having as far as possible joint standards and high-level principles of regulation to support a number of professions as opposed to different professions being subject to different standards. Moreover, there may be merit in moving towards a single code of standards and values for the regulated professions in the healthcare sector with standards for profession-specific competencies sitting within this wider code.

While we clearly support regulatory reform as set out above, we do not support all healthcare professionals and healthcare professional education being regulated by the same entity. Different professional standards of proficiency will be required. Moving to one single healthcare professional regulator would be very disruptive into the medium term and would have unknown benefits. Joint working, merging of back-office functions, and consistency in regulatory processes are more important than a reduction in the number of regulators.

14. Aside from regulatory reform, what are the top three issues facing the healthcare sector over the next few years, in your view?

Agility and innovation

Regulators need to explore ways of ensuring their standards are agile and of updating standards of proficiency on an ongoing basis. As well as changes in response to the pandemic, the next decade will likely see a profound shift in patient and service user need and expectations, changes in the delivery of care, technological and digital innovation, and new regulatory models amongst other developments. New evidence and policy priorities will mean that service and education will have to change. Healthcare regulators must also adapt.

Standards must be kept up to date and be responsive to changes in policy, practice and evidence. More systematic ongoing engagement, including via annual monitoring, may be a more effective way to ensure that professional standards are as current as possible, rather than a 'big bang' approach to standards development every decade. This will require close and continuous engagement, as already happens to a certain extent, with partners in education, service and other key stakeholders.

The pandemic has accelerated changes to healthcare delivery that were only expected to take place across the course of this decade. We need to consider the learning during this time from the higher education sector and NHS for the future of healthcare education, including for practice placement innovation and increased use of simulation. Regulators need to continue engagement with this agenda to explore the possibilities in simulated practice and immersive technologies. Regulation should permit increased use of these technologies where they have evidence of high-quality learning outcomes and benefits for students. Increased flexibility in this area could reduce pressure on practice placements. Regulation must continue to be agile as we come out of the pandemic and should not be a barrier for the future integration of technological developments in healthcare education. This will better enable us to meet workforce needs.

We also need to consider the opportunity that Brexit provides for reform to nursing and midwifery education. We welcome the Nursing and Midwifery Council's (NMC) current review of the EU Directive. Any changes must assure public protection from both a regulatory and educational perspective. We have an opportunity to develop a more fully competency-based rather than hours-based requirement within the continued context of degree-level programmes.

Regulatory burden

Healthcare higher education is regulated by both professional healthcare regulators and higher education regulators. The sector is in danger of burdensome and duplicative regulation from both healthcare professional and higher education regulators. Too often education regulation impinges unnecessarily on healthcare professional regulation and vice versa. There is a need to reduce the regulatory burden placed on education providers considering the robust regulation provided by healthcare professional regulators. Regulation should be outcome-focused, risk-based, data driven and agile.

In recent years education regulation has become more complex with an increasing number of regulatory and quality bodies inspecting institutions. In England, a new higher education regulator, the Office for Students (OfS), has been established. Ofsted, the Institute for Apprenticeships and Technical Education (IfATE), and the Education and Skills Funding Agency (ESFA) now all engage in regulatory and quality interventions for healthcare apprenticeships. Education regulators have increasing moved into the regulatory space of healthcare professional education. There is a need to reconsider the role of education regulators in the space of healthcare professional education. This increased burden is not only seen in England. The Welsh Government recently put forward a draft Bill for consultation on a new regulator (the Commission for Tertiary Education and Research).[2] If this is established, it will likely significantly increase the regulatory burden on Welsh universities.

We are concerned that the increasing number of regulators discourages sector development. This is particularly the case when regulators get involved in curricula matters. This limits innovation, threatens academic autonomy, and interferes with local arrangements between education institutions and local healthcare providers.

More clarity is needed on the remit of professional regulators in relation to commissioning bodies, former commissioning bodies, and other statutory bodies. For example, healthcare professional regulation from the NMC and HCPC must take priority over higher education regulation, as the healthcare regulators rightly control entry to the professional register. Guidance and contractual and financial requirements from other bodies, which are not statutory regulators, such as Health Education England (HEE), Health Education and Improvement Wales (HEIW), and NHS Education for Scotland (NES) sometimes encroach into the regulatory space of healthcare professional regulators and result in unnecessary burden.

At the same time, UK Government reform proposals include plans to charge HEIs for education quality assurance and remove rights for educations providers to appeal approval decisions when conditions are attached. We strongly oppose these new powers.

Advanced Practice

One area that needs further consideration in the next few years is the potential regulation of advanced practice. We believe there is a strong case for examining the regulation of advanced practice. If one healthcare professional regulator were to regulate advanced practitioners then it must be able to deploy a common approach across all professions, including for individuals who may come from professional backgrounds that are not normally regulated by it. For example, if the NMC were to regulate advanced practitioners from the allied health professions.

15. Do you believe the currently regulatory framework can effectively support healthcare professionals facing the issues outlined in response to Question 14 in future?

Yes.

16. Please elaborate on your response to Question 15

[2] https://gov.wales/draft-tertiary-education-and-research-bill

There is a need for reform. Regulators should not need to refer to Parliament to make simple changes to their operations, though parliamentary oversight is clearly important. However, we believe the current regulatory framework can effectively deal with the challenges across the course of the 2020s, as highlighted by the flexibility provided by the regulators during the pandemic.

17. Do you believe that the potential benefits of regulatory reform (i.e. in terms of improved outcomes, such as enhanced public protection) can justify the likely disruption caused by re-configuration of the sector?

Unknown.

18. Please elaborate on your answer to Question 17.

It is difficult to comment without sight of any plans on the reconfiguration of the number and scope of healthcare professional regulators going forward.

Section 3: PSA

19. Do you believe the PSA plays an effective role in maintaining the quality of healthcare regulation to protect public safety?

Yes.

20. Please explain your answer to Question 19.

We believe that the PSA continues to provide an essential role in the healthcare professional regulatory landscape. Regulators need to be appropriately regulated themselves and UK Government proposals do not provide adequate assurance on the supra-level regulation of healthcare professional regulators. This is particularly important as the recent UK Government consultation on *Regulating healthcare professionals, protecting the public* will lead to more permissive regulation. These reforms will provide significant devolution of powers to individual regulators. This could lead to unnecessary variation and inconsistency in the rules and approaches taken by individual regulators. There is a continued and greater need for regulators to be subject to independent oversight, which is separate from the Government.

The PSA undertakes important work via its regular performance reviews of the regulators, its Accredited Registers programme and work on 'right touch' regulation, which provides guidance on whether a professional group should be regulated.

In the recent *Regulating healthcare professionals, protecting the public* consultation, we asserted the importance of the PSA continuing to have powers to refer decisions made by individual healthcare professional regulators' case examiners to courts. This should include accepted outcomes, where there is a public interest.[3]

Section 4: Regulatory performance and professional group priorities

[3] Please see our full response to the consultation here.

21. Do you believe the professional health and care regulators are effective in protecting the public through their regulatory activities (e.g. registration standards; QA of education & training programmes and providers; CPD/revalidation; FtP processes)?

Yes.

22. Please explain your answer to Question 21.

This is achieved via the rigorous approach to regulation deployed by the healthcare professional regulators that the Council and its members work with.

23. Do you have any major areas of concern regarding the performance of a particular regulator, or the regulation of a particular profession, in the context of protecting the public from risk of harm (or otherwise)?

No.

24. Please elaborate on your response to Question 23.

N/A.

For more information contact:

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