

PROFESSIONAL REGULATION AND STATUTORY PROTECTION

Discussion Paper

Approved by Council 5th December 2016

Introduction

1.1 AfN Council, in March 2012, agreed its strategic aim, to protect the public with statutory protection or equivalent external recognition. This remains Council's strategic aim, and the purpose of this discussion paper is to outline the options and processes necessary for achieving statutory protection, with the aim of demonstrating the integrity of the UKVRN and the public benefit for the appropriate professional regulation of Registered Nutritionists.

- 1.2 The three options are;
- Statutory protection, with a commitment to a whole workforce approach
 - Professional Standards Authority (formally the CHRE) 'assured voluntary register' status
 - Privy Council Chartership

1.3 This briefing note outlines the advantages and disadvantages of each option, and the relative costs/ benefits to UKVRN Registrants. In the medium term the priority is to meet Professional Standards Authority standards for 'assured voluntary register' status, and be ready, if agreed by Council in Jan 2018, to make an application to the PSA in the financial year commencing 1st April 2018.

1.4 In the long term AfN is still committed to achieving statutory protection of title or equivalent external recognition, either through the introduction of primary legislation or Privy Council chartership.

Statutory Protection

Overview

2.1 Government is clear that statutory regulation must be proportionate to risk posed by health and social care occupations whose occupations are not regulated (*Trust and Assurance 2009; Working Group on Extending Professional Regulation*). The Government's position is articulated in the Command Paper '*Enabling Excellence*' (2011) which states, 'The Government believes the approach to professional regulation must be proportionate and effective, imposing the least cost and complexity consistent with securing safety and confidence for patients, service users, carers and the wider public.....The extension of statutory regulation to currently unregulated professional or occupational groups will only be considered where there is a compelling case on the basis of a public safety risk and where assured voluntary registers are not considered sufficient to manage this risk.'

2.2 This gives rise to the first question; if a petition by AfN to parliament for statutory protection is to be successful, it will need to articulate a coherent argument around the requirement for primary legislation on the basis of public safety and risk. It will also need to demonstrate the basis on which that risk cannot be satisfied by assured voluntary regulation under the scheme established by the Health and Social Care Act 2012 (which created Public Health England), giving powers to the Professional Standards Authority (PSA, formally the CHRE) to accredit registers of people who work in health and social care occupations who are not regulated by statute. PSA 'assured voluntary registers' are aimed at occupations that fall

within the definition of 'health care' under the National Health Service Reform and Health Care Professions Act 2002, section 25E (8) as inserted by the Health and Social Care Act 2012. Whilst it is the ambition of AfN to achieve PSA 'assured voluntary register' accreditation to demonstrate the integrity of its register operations; PSA regulation (as with the HCPC) is mainly concerned with controlling risk at one-to-one patient/ public level. A second question therefore emerges; does the scope of Registered Nutritionist's professional activity fit comfortably within the definition of a 'health & social care' profession, where risk is of public harm from a Registered Nutritionist (either individually or collectively) is probably more significant in the longer term and/or at population level, and where Registered Nutritionists are more frequently concerned with research, management or policy, rather than with one-to-one clinical interventions.

Whole Workforce Approach

2.3 Another lesson to be learned from the statutory regulation of other professional and occupational groups is that statutory protection of title is often insufficient to reduce risk posed by the unqualified operating at the economic margins of the profession. If only the title 'nutritionist' is protected by law and not the *practice* of nutrition (the production, translation and use of nutrition science for public benefit) there will be limited benefit in terms of reducing risk (although there would be the acquisition of considerable professional prestige, which, as we know, is not a compelling reason for Government to grant statutory protection.) Use of alternative titles (such as nutrition advisor) would still potentially expose the public to harm. This then gives rise to the third question; should the aim be the statutory protection of what Registered Nutritionists do, as well as what Registered Nutritionists are called? (The parallel is in architecture, where the title 'architect' is protected by law, but not 'architectural designer' or 'plan drawer' much to the professions continued frustration!)

2.5 If the approach is to seek statutory protection not just of title but also function, there are then three additional considerations; the interaction with dietetics and the potential regulatory overlap between the two fields; the regulation of the wider-non-professional workforce (mapped by the three Workforce Competence Frameworks in Nutrition) and their role in supporting individual and family's food choices, and the relationship between Registered Nutritionists and those working in the field whose practice might not be considered sufficiently scientifically sound but who may also present a risk to the public. This provokes the fourth question – what are we seeking to protect to manage the risk of public harm, and who should we be working with to achieve this aim?

Laying the Groundwork

2.5 Statutory protection will require primary legislation to grant statutory powers to an independent regulator. There are three choices here. First, the HCPC (who regulate dieticians) could be instructed to regulate nutritionists. In a meeting held with the HCPC in 2014 it was clear that under its governing legislation, HCPC would only have the power to regulate nutritionists who worked primarily at one-to-one level with patients (humans), predominantly in publicly funded healthcare settings, and that its remit would be necessarily limited in relation to managing the risks posed by nutritionists working in industry, research, in sports and exercise, at managerial or policy level, and certainly those working in animal nutrition. The practical effect of this would be to potentially exclude a large proportion of the profession from using the legally protected title 'nutritionist.' In addition, nutrition would sit alongside 15 other HCPC statutory regulated professions, and there is a significant danger nutrition would lose a large amount of influence over the regulation of its own practice, a consequent loss of focus, and require the establishment of a professional association (either by AfN or NS) to pursue aspects of professional activity the HCPC would require (in, for example, setting standards for course accreditation.)

2.5 The second choice is for AfN to become the statutory regulator. This would have the advantage of retaining AfN's expertise in voluntary regulation (both of volunteers and staff) and transferring this expertise into statutory regulation across all level of the workforce. Annex 1 records the potential effect on the activities AfN currently undertakes, and indicates which it might be able to continue with as a statutory regulator

2.6 The third choice is for parliament to form an independent regulator. If an independent regulator is formed, it could be proposed that the regulator's scope includes dietetics. AfN would then reform (possibly with the NS) to assume the role of the professional association for nutrition, as there would be doubt the field could support a third membership-based subscription charity. The fifth question, therefore, is what form of statutory protection would best meet the risk posed to public health, what is best protected (title, function and which levels of the workforce) to manage this risk, and in what corporate form this statutory body might take.

2.7 The disadvantage of statutory protection is lack of future agility. Once achieved, it is extremely difficult to amend a piece of primary legislation. A statutory regulator is bound by its statute and is not permitted to undertake additional activities, or deviate from its legislated tasks. Over time, there can be unintended consequences from a poorly-drafted legislation, and many statutory regulators are frequently prevented by their primary legislation from taking sensible and appropriate action, particularly in relation to the development of register activity or fitness to practice operations. Care must be taken, therefore, to achieve the outcome that is desired through careful use of the parliamentary process.

Professional Standards Authority

3.1 As discussed above, current Government policy on extending regulation to new occupational groups is that statutory regulation will only be considered in exceptional circumstances and where voluntary registers, such as those maintained by professional bodies and other organisations are not considered sufficient to manage the risk involved. This approach was confirmed in a letter from Dan Poulter MP, then Parliamentary Under Secretary for Health to AfN President Prof Alan Jackson in April 2013, and in subsequent correspondence with the Professional Standards Division at Department of Health.

3.2 Unless we can demonstrate a compelling case for statutory protection of title that cannot be satisfied by Professional Standards Authority 'assured register' status, it is unlikely we can achieve statutory protection of title. Therefore the approach has been to improve our register operations so that we meet Professional Standards Authority accreditation under its Voluntary Registers scheme. We aim to be application ready within the next 18-months.

3.3 Achieving Professional Standards Authority accredited voluntary register status will not give statutory protection to the title 'nutritionist' and will not make the title 'Registered Nutritionist' any more secure. The scheme is much more about ensuring public and government confidence in the ability of voluntary registers to self-govern in the public interest. It will result in a far greater degree of public scrutiny of AfN regulatory activities, at a significant cost to AfN. However, it will be harder to make the argument to parliament that statutory protection is required, and that AfN ought to be the statutory regulator, unless we first achieve Professional Standards Authority 'assured register' status.

Privy Council Chartership

4.1 A Royal Charter, granted by the Privy Council, was at one time the only means of incorporating a body, (akin to registering as a limited company today). Nowadays grant of new Charters is comparatively rare and reserved for eminent professional bodies or charities which have a solid record of achievement and are financially sound.

4.2 A Royal Charter would allow the AfN to refer to itself as 'Chartered,' for example, 'The Chartered Institute of Nutritionists' and/or Registrants as 'Chartered Nutritionists,' a protected title with potential international reach. A professional body may apply for a Royal Charter if they represent a field of activity which is unique and not covered by other professional bodies, if it is in the public interest and at least 75% of the corporate members are qualified to first degree level standard.

4.3 Criteria for Chartership is; (although the Privy Council states that appearing to meet these criteria

does not mean that a body will automatically be granted a Charter.)

(a) the institution concerned should comprise members of a unique profession, and should have as members most of the eligible field for membership, without significant overlap with other bodies.

(b) corporate members of the institution should be qualified to at least first degree level in a relevant discipline;

(c) the institution should be financially sound and able to demonstrate a track record of achievement over a number of years;

(d) incorporation by Charter is a form of Government regulation as future amendments to the Charter and by-laws of the body require Privy Council (i.e. Government) approval. There therefore needs to be a convincing case that it would be in the public interest to regulate the body in this way;

(e) the institution is normally expected to be of substantial size (5,000 members or more).

4.4 Once incorporated by Royal Charter a body surrenders aspects of the control of its internal affairs to the Privy Council. Amendments to Charters can be made only with the agreement of the Queen in Council, and amendments to the body's by-laws require the approval of the Council (though not normally of Her Majesty). This effectively means a significant degree of Government regulation of the affairs of the body. Petitioning for a Charter is thus a public one, and can also be expensive in terms of the preparation of the formal documents. The Privy Council encourages institutions to take soundings among other bodies who may have an interest, in order to minimise the risk of a counter-petition. Any proposal which is rendered controversial by a counter-petition is unlikely to succeed, and suggests that the Privy Council Office should be approached informally at an early stage for advice on the likely chances of success of a formal Petition.

Annex 1

Indicator of potential effect on AfN activity if it becomes a statutory regulator.

Activity	AfN as Voluntary Regulator	AfN as Statutory Regulator
Governance	Involvement of lay representatives appointed by AfN	Appointment of lay representatives by government – possibly majority at Council level
UKVRN inc. fitness to practise	Core business – if accredited by PSA - subject to annual inspection & public reporting	Core business - Subject to annual inspection & reporting regime by PSA and reported to parliament
Regional Network	Focus for CPD, professional networking and professional coherence	Not appropriate – activity absorbed by NS?
Annual Discourse	Key annual outreach activity; professional networking and professional coherence	Not appropriate – activity absorbed by NS?
Awards of Fellowship	Method of marking distinguished contribution to the profession	Not appropriate – activity absorbed by NS?
Press & social media engagement	To ensure Registered Nutritionists are positioned to comment with accurate science.	Not appropriate – activity absorbed by NS?
Course Accreditation	Core business - essential to setting standards for professional entry	Core business - essential to setting standards for professional entry
Course Certification	Core business - essential to meeting charitable objects to support wider workforce's use of evidence-based science.	Would depend if statutory protection extended to wider workforce, if not, activity absorbed by NS, BNF?
External Engagement	Core business - essential to meeting charitable objects to ensure sound regulation of Registered Nutritionists and use of evidence-based science	Limited to ensuring public understanding of statutory protection and potential to make a compliant, correct form of title etc.