GOC response to DHSC consultation

Healthcare regulation: deciding when statutory regulation is appropriate

Question 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***
- ***Disagree***
- ***I don't know***

Please provide reasons for your answer.

GOC response: We welcome the opportunity to respond to this consultation. As the regulator for the optical professions, we protect the public by, for example, upholding high standards in the optical professions and taking action where registrants' fitness to practise, train or carry on business may be impaired. Overall, we agree with the proposed approach outlined in relation to maintaining the current regulatory landscape which we believe is effective in protecting patients and the public.

While we support the PSA's framework in assessing risk and advising the Government, we also think that regulators themselves are well placed to give advice and provide evidence of risk. We think that the current profession-specific regulatory model within health and social care is effective in enabling regulators to have an in-depth knowledge and expertise in how their sector operates and the risk profile of their registrants. This model also enables regulators to tailor regulatory interventions in a targeted, knowledgeable and proportionate way depending on the risk profile of their registrant base. Therefore, we believe that any changes to the existing regulatory model should be based primarily on improving public protection and confidence.

In terms of the specific question, we agree with taking a qualitative and quantitative analysis of risk in determining whether to regulate a health or care profession. We think it's important to consider the following points:

Future regulatory landscape

- How the future healthcare landscape will look and how care will be delivered to patients i.e. we are increasingly moving towards more integrated care systems with care provided by multi-disciplinary teams. Many healthcare professionals, including GOC registrants, have seen their roles evolve with many gaining additional qualifications allowing them to expand their scopes of clinical practice and realise their full professional capability. Many of our

registrants also work as part of multi-disciplinary teams alongside ophthalmologists, for example, in helping to manage patients with long term conditions such as glaucoma.

- While we welcome these developments within professions such as optics, we think that more urgent action is required to utilise the capacity and expertise within the primary care workforce to help reduce the burden on overstretched areas such as ophthalmology departments, GPs and A&E, all of which have been exacerbated by the COVID-19 pandemic. We know, for example, that in England hospital eye care services are under severe pressure as demand outstrips supply. There were 600,000 patients on the waiting list for ophthalmology treatment in England as of December 2021, 25% higher than 12 months earlier (NHS Digital, Hospital Outpatient Activity 2020/21). Outpatients are increasingly waiting longer for both initial and follow up appointments which increases the risks of avoidable sight loss. However, greater utilisation of primary eye care services and greater integration between primary and secondary pathways would help alleviate this problem as many patients, currently managed within secondary care, could be effectively managed in primary care. This would then increase access for those patients requiring more specialist secondary care. This issue has been highlighted in the recent publication of the NHS England and NHS Improvement National Eye Care Recovery and Transformation Programme, which recommends NHS commissioners in England make better use of expertise in primary eye care to help meet patient demand.

- This type of integrated care model between primary and secondary care is already well established in Scotland, Wales, Northern Ireland, and in some areas of England. The Scottish Government, for example, has continuously prioritised and invested in improving eye care pathways, by upskilling optometrists to realise their full professional capability as part of multi-disciplinary teams to manage cases within the community instead of in secondary care. Around one in four optometrists in Scotland have gained an independent prescribing qualification which equates to over a third of all independent prescribing optometrists in the UK. They are the first point of call and can (with additional training) manage, treat and prescribe medicines to patients, without patients having to be seen by a GP or ophthalmologist. As a result, around 95% of patients in Scotland going for an eye examination are not referred on to secondary care, demonstrating that the majority of patients are managed within community optometry (Public Health Scotland, General Ophthalmic Services Statistics 2021).

- There is similarly excellent work going on in Wales to recognise and adequately fund enhanced services.

- In terms of risk, as clinical roles continue to evolve, so too will the risk profile of a profession, so we believe it is important to take a holistic view of risk both within a profession and within different parts of the UK.

Contextual risks

- The context/settings in which care is delivered and what existing regulatory mechanisms may or may not currently exist to help mitigate risk within these settings. While this consultation focusses on the regulation of individual healthcare professionals, the GOC also regulates optical businesses (and is unique in this respect but for the role of the General Pharmaceutical Council (GPhC) in regulating pharmacy premises). In relation to our sector, most care is delivered in private settings i.e. in a high street opticians/optometrist practice delivering NHS contracts. However, not all optical businesses are currently required to register with the GOC or meet our regulatory standards. This inconsistency is not only confusing to patients and the public, but can also potentially increase risks as concerns could fall through the gaps. We have provided more detail on the regulation of optical businesses in our answer to question four.

Impact of technology

- The impact of technology on both optical care and healthcare in general, for example, hybrid/remote working, remote delivery of care to patients and automation of care services. We think that technological changes must be beneficial to patients, and some of these changes will make care more accessible and efficient, but they may also reduce the lack of face-to-face interaction with certain patient groups. This could change the risk profile and implications for regulatory activity. We want to make the most of our regulatory levers to effectively regulate technology as it develops. We need to keep up to date with developments in technology and ensure that regulatory frameworks and legislation do not become outdated as more remote care is delivered from outside of the UK. Close working between systems regulators and professional regulators will be vital for the benefit of patients.

Question 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***
- ***Disagree***
- ***I don't know***

Please provide reasons for your answer.

GOC response: We agree that proportionality, targeted regulation and consistency are useful concepts to consider when deciding whether to regulate a health or care profession.

In relation to proportionality and targeted regulation, we agree that other effective options that can achieve the same outcome should be considered alongside statutory regulation. As the consultation notes, there may be other contextual or system regulators that ensure those who are unregulated are still within the wider regulatory remit of, for example, NHS mechanisms, the CQC or regulators such as the GOC and GPhC that also cover the 'setting' in which their registrants work.

In terms of consistency, we agree that effective regulation should be achieved in a way that complements the existing regulatory framework, and where there are obvious gaps, these must be addressed. We have provided more detail on the inconsistent regulation of optical businesses in question 4. We would like to ensure regulation is applied in a consistent way, both to protect the public and give the public confidence and clarity in the services they use. However, we would point out that consistency doesn't necessarily mean the same approach for all. There should be consistent protection for patients and assessment of risk, but the approach taken in terms of regulatory oversight and levers could be different, in line with the other principle of targeted regulation.

Question 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?

- ***Agree***
- ***Disagree***
- ***I don't know***

Please provide reasons for your answer. If you disagree, please provide any evidence in relation to the criteria outlined above that supports a proposal to remove a currently regulated profession from statutory regulation.

GOC response: We agree that the currently regulated professions should remain subject to statutory regulation. We agree that deregulating a profession carries risks, including a potential reduction in professional standards which could affect patient care. Many roles within healthcare are evolving and expanding, as we have demonstrated in optometry and dispensing optics, so we think it's more likely that the risk profile will increase rather than decrease as healthcare professionals gain additional qualifications and enhance their clinical skills.

However, we would like to see consistency in terms of all optical businesses being regulated. The GOC is one of only two healthcare regulators that regulate a 'setting'. As mentioned, the GOC currently registers some, but not all, optical businesses partially fulfilling the role of a systems regulator for the sector. As specified by the Opticians Act 1989 the registration of businesses is limited to businesses that are: bodies corporate; using a protected title; and able to meet certain 'eligibility' requirements around management structure. These criteria mean that some optical businesses do not have to register with the GOC (or any other regulatory body), and therefore do not have to comply with the same standards as GOC registered businesses.

We would like to ensure that we can regulate all optical businesses providing restricted activities under the Opticians Act (for example, testing of sight, fitting of contact lenses, and sale and supply of certain optical appliances and zero powered contact lenses). We feel that this would level the playing field for optical businesses, meaning that they would all need to comply with the same regulatory standards, thereby reducing potential risks to patient care and safety. The methodology by which different types of business are regulated (e.g. sole traders and partnerships versus bodies corporate) would need to be considered in terms of targeted regulation and what is proportionate. Business regulation also helps improve patient care by indirectly bringing non-regulated patient-facing roles in the optical sector (such as optical assistants) under a regulatory regime through our Standards for Optical Businesses helping to improve patient care.

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

- ***Agree***
- ***Disagree***
- ***I don't know***

Please provide reasons for your answer. If you disagree, please provide any evidence in relation to the criteria outlined above that supports a proposal to include a currently unregulated profession within statutory regulation.

GOC response: Within the optical sector, we are confident that the current system of individual regulation is effective in protecting the patients and the public. We would like to extend the scope of business regulation as outlined in our answer to question 3, to help ensure our regulatory remit is fair and consistent and to ensure public confidence and protection.

We are not able to make a broad comment on whether all unregulated professions within healthcare should remain unregulated. Any new regulation should be consulted on, and we would provide comments via this route if appropriate.