

The Psychotherapy Bill

Ten years ago I co-wrote an article about professionalisation for *Self and Society Stealing the Flame*. A later piece was entitled the *Glacier Reaches Town*, the detailed and comprehensive descriptive review of the first draft of Lord Alderdice's Psychotherapy Bill that follows needs no evocative title, it speaks only too clearly for itself. How did it become available? After IPN was excluded from consultations on the Bill, a copy was leaked by a well-wisher to IPNOSIS, Internet journal for the Independent Practitioners Network [IPN].

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The Psychotherapy Bill

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The **Psychotherapy Bill** provides for the institution of a **General Psychotherapy Council of England and Wales**.

It provides infrastructure for the registration of psychotherapists such as a **registrar** and several form of **registration**, ranging from **full**, to **conditional**, **provisional** and **suspended**. There are procedures for being **restored to the register** if you have been **struck off** and provisions for **fraud or error in the registration process**.

Standards of Proficiency are attended to through an **Education Committee** that has responsibility for **recognition of qualifications** and **withdrawal of recognition**.

The Bill concerns itself with Professional Conduct and Fitness to Practice. There will be a **code of practice** with an **Investigation committee** that will consider allegations of misconduct and that has powers of suspension, and revocation of suspension. There are provisions for

legal assessors and medical assessors and for appeals against decisions of the registrar, the health committee and the professional conduct committee and the appeal tribunals.

The Bill also details what will constitute **offences**. And it gives attention to **monopolies and competition**.

Clauses 34-36 concern the exercise of powers of the Privy Council in relation to the Council.

There are items about **indemnity insurance**, **data protection** and **rehabilitation of offenders** and **finance**.

The bill provides guidance on how it is to be interpreted and a schedule for the bill's implementation.

The bill intends to **establish a body to be known as the General Psychotherapy Council of England**

and Wales; to provide for the regulation of the profession of psychotherapy, including making provision as to the registration of psychotherapists and as to their professional education and conduct; to make provision in connection with the development and promotion of the profession; and for connected purposes.

The General Council and its committees have the **duty to develop, promote and regulate the profession of psychotherapy** and other functions.

The Council is to have four statutory committees, **the Education Committee; the Investigation Committee; the Professional Conduct Committee; and the Health Committee.**

A **Registrar** is to be appointed. The duty of the registrar is to hold **a register of psychotherapists in accordance with the provisions of the act.**

Arrangements for the Registrar include **provision for the payment to him of any allowances or expenses.** The terms of office, **in addition to providing for his remuneration,** look after such matters as pensions, allowances or gratuities **in respect of him.**

The Register is open to any person who can satisfy the registrar that they have **paid the requisite fee** are **of good character in good health, physically and mentally** and **have a recognised qualification.**

During a transitional period, if someone applies for registration **he shall be treated as having a recognised qualification if he satisfies the Registrar that for a period of at least five years (which need not be continuous) he has spent a substantial**

part of his working time in the lawful, safe and competent practice of psychotherapy.

What counts as lawful, safe and competent is to be determined by the General Council who will also be able to deal with a psychotherapist who qualified outside the UK, and who, while not holding a recognised qualification, **satisfies the Registrar that he has reached the required standard of proficiency.**

The transitional period is two years from the opening of the register.

There is also **conditional registration,** where the applicant psychotherapist **passes the prescribed test of competence; or such part of that test as the Registrar may specify and gives the required undertaking to complete such additional training and acquire such experience as may be specified by the Registrar.**

Disputes about what constitutes a viable qualification are to be dealt with by the **Education Committee**

There is also **provisional registration.** To devise rules for this **the General Council shall take such steps as are reasonably practicable to consult those who are registered psychotherapists.** Provisionally registered psychotherapist cannot practice **except under the supervision of a fully registered psychotherapist who is approved by the General Council.**

The General Council will determine how the Registrar conducts the business of registration, in particular how the registrar **is to satisfy himself as to the good character and competence, the physical and mental health** and the quality of references.

The Registrar is charged with renewing and removing entries in the register, issuing certificates of competence, dealing with the reasons for removal of anyone from the register, or denying them access, The Registrar will charge fees and administer periods of suspension of practitioners who are in default of the prescribed conditions which the bill details.

A **Register** is to be produced annually and made publicly available.

The Registrar is also charged with investigating allegations that register entries are fraudulent or incorrect and reporting **the result of his investigation to the General Council.**

The Registrar has the power to suspend the registration of a psychotherapist while they are under investigation, subject to **giving the psychotherapist concerned an opportunity to appear before the Investigating Committee and argue his case against suspension, and allowing him to be legally represented;** and for the Registrar to be involved in the proceedings.

If the General Council, having considered the registrar's report decides that the registration is fraudulent or incorrect, it may order the Registrar to remove the entry.

This removal is subject to an elaborate appeals process, up to, and including, an appeal to Her Majesty in Council.

Professional Education is also a feature of the proposed General Council.

The **Education Committee** has a duty to promote high standards of education and training in psychotherapy. It may, if the Council so decides, itself provide or arrange for education and training.

The **Education Committee** is to be consulted **on matters relating to education, training, examinations or tests of competence.** And it is the committee's duty to give advice to the General Council on these matters.

The Education Committee may appoint people to visit anywhere that is offering a **relevant course of study or where any examination is, or is proposed to be, held in connection with any such course,** or further, where **any test of competence is, or is proposed to be, conducted in connection with any such course or for any other purpose connected with this Act.**

This means courses where the course forms the basis of a recognised qualification or trainings which are supposed to confer register-ability, or post registration training, or education.

A person who happens to be a member of the General Council or its committees is specifically not disqualified from being such a visitor. The Bill goes into considerable detail about the duties of such visitors and such reports as they may provide.....**in the exercise of his functions under this section, he shall report to the Education Committee** about the nature and quality of the instruction given and the facilities on offer and anything else, **as he was required to report on by the [Education] Committee**

In section 13 the Council is charged with determining **the standard of proficiency which, in its opinion, is required for the competent and safe practice of psychotherapy.** The Council is charged with publishing **a statement of the standard of proficiency determined by it...** with updates of revisions as they arise which specify the **differences between**

that standard and the standard as it was immediately before the revision.

Section 14 outlines how the General Council, if it is satisfied that a qualification granted by a UK institution **is evidence of having reached the required standard of proficiency**, or that the qualification **will be evidence of having reached that standard**, it may, **with the approval of the Privy Council, recognise that qualification for the purposes of this Act.**

The General Council will maintain a list of recognised qualifications and the Education Committee has a role in deciding which qualifications are, or are not, recognised. Authority for recognition of a qualification rests with the Privy Council on the basis of information made available to it by the General Council, informed in turn, by the Education Committee.

So far as [European] Community law affects the application for registration of a psychotherapist, **i.e. any enforceable Community right or any enactment giving effect to a Community obligation is involved... the General Council may, subject to Community law, require him to satisfy specified additional conditions before being registered.**

Under section 15, the General Council has wide discretion to recognise qualifications in a limited way, to make the recognition conditional, to remove recognition if conditions imposed are not complied with. However this is subject to approval of the Privy Council.

Under section 16, if, as the result of a visitor's report or other information, acquired by the Education Committee, the Committee decides a recognised qualification is out of compliance with the

required standard of proficiency, it will refer this to the General Council. If the General Council agrees, then, having informed the Privy Council and made available to it the information it has, with the approval of the Privy Council, withdrawal of a recognised qualification may take place.

The General Council may rule that further courses of training are mandatory for the continuance of registration. Before making or varying such rules **the General Council shall take such steps as are reasonably practicable to consult those who are registered psychotherapists and such other persons as the Council considers appropriate.**

The General Council may require from any institution that offers or proposes **a relevant course of study, examination or test of competence**, details of the requirements to be met by students, its finances, and **the efficiency of the institution's management.**

A refusal, subject to the Privy Council's approval, may result in the withdrawal of recognition of the qualification.

Section 19 outlines proposals on **Professional conduct and fitness to practise.** The General Council is to publish a Code of Practice **laying down standards of conduct and practice expected of registered psychotherapists and giving advice in relation to the practice of psychotherapy.**

This code will be developed through consultation with **such representatives of practising psychotherapists as it considers appropriate.**

A psychotherapist's failure to comply with the code is not in itself to be taken **to constitute unacceptable professional conduct on his part** but it will be taken

into account **in any proceedings against him under this Act.**

The Code is to be freely and publicly available.

Section 20 outlines the consequence of conduct which **falls short of the standard required of a registered psychotherapist** i.e. **"unacceptable professional conduct"**.

This includes falling short of the standard required, being **guilty of professional incompetence**, being **convicted (at any time) in the United Kingdom of a criminal offence**, or **if his ability to practise as a psychotherapist is seriously impaired because of his physical or mental condition.**

All complaints are to be referred to the Investigating Committee. The registered psychotherapist is told about the allegation and given a month in which to respond. The **Investigating Committee** researches the allegations and decides if there is a case to answer. So far as there is a case to answer then it is followed through by reference either to the **Health Committee** of the **Professional Conduct Committee.**

The registered psychotherapist may be suspended, with the proviso that they have the right to appear, with legal representation, before the Investigating Committee and argue their case against the making of the proposed order.

Under Section 22. if the **Professional Conduct Committee** finds the allegation well founded, they have the options of admonishing the psychotherapist; imposing a conditions of practise order; suspend the registration for a specified period; or to remove the psychotherapist from the register.

The Committee has the discretion to revoke, or alter, to require a competency test or otherwise change a conditions of practice order.

So far as this is done, an elaborate set of procedures ensures that the psychotherapist can appear before the Committee, with legal representation, to argue their case.

At least once a year, the Committee is charged with publishing a the names of investigated psychotherapists, the nature of the allegations, and what was done about them by the Committee. It may, at the discretion of the psychotherapist concerned, publish statements about allegations that were not well-founded

Allegations that are referred to the **Health Committee** may also result in a **conditions of practice order** or a **suspension order.** With similar conditions to the above in respect of length, revocation, opportunity to argue their case and legal representation.

When an allegation against a registered psychotherapist is being investigated, **an interim suspension order** may be imposed. With similar conditions as to representation etc as in the other orders above. However the registered psychotherapist may in this case appeal to the High Court of Justice. Following which, the decision of the court is final.

Section 25 and 26 continue to outline various circumstance of hearings, the public and private options, representation, appeal, notification of decisions, and the admissibility of evidence.

Legal Assessors may give advice to the **Investigating Committee**, the **Professional Conduct Committee** and the **Health Committee** on questions of

law. The qualifications for this role are detailed.

Medical Assessors may give advice to the **Investigating Committee** the **Professional Conduct Committee** and the **Health Committee** on questions of health. The qualifications [registered medical practitioner] for this role are detailed. **Medical Assessors** may also be member of the General Council.

When registration is refused, or is provisional or conditional, or is revoked, or if conversion from conditional or provisional into full, is refused, the aggrieved person may appeal to the General Council. **Such appeals shall be subject to such rules as the General Council may make for the purpose of regulating appeals under this section.**

Appeals procedures are defined in section 30, they are built around an appeal tribunal, the chairman of which is to be a registered psychotherapist. Of the other two members, one is to be **a fully registered psychotherapist, the other being a registered medical practitioner** who are chosen by the chairman, who also appoints a clerk.

Appeal tribunals sit in public. Appeals are a re-hearing of the case, where the General Council is the respondent and the tribunal has power to make any decision that the Health or Professional Conduct Committee had power to make.

The tribunal has **the power to award costs**, and evidence is expected to be in line with **civil proceedings in any court in England and Wales.**

Section 32, **Offences**, asserts that a **person who (whether expressly or by implication) describes himself as a psychotherapist, psychotherapy**

practitioner, psychotherapy physician, or any other kind of psychotherapist, is guilty of an offence unless he is a registered psychotherapist.

This includes people who fail to comply with requirements imposed by the Health committee the Professional Conduct Committee or an appeal tribunal hearing. **A person guilty of an offence under this section shall be liable on summary conviction to a fine not exceeding level five on the standard scale.**

In a section 33. on **Monopolies and Competition**, the Bill connects with existing Fair Trading legislation

The **Privy Council's** oversight of the General Council is detailed in Section 34.

If the **Privy Council** is unhappy with the General Council's performance it may **exercise any power of the General Council or do any act or other thing authorised to be done by the General Council; and do, of its own motion, any act or other thing which it is otherwise authorised to do under this Act on the instigation of the General Council.**

The **General Council** needs approval of the **Privy Council** to change its terms of reference or make **different provision with respect to different categories of psychotherapist or registered psychotherapist.** The Bill describes the ways in which this shall be carried out.

The **General Council** is empowered to make rules about the kinds and amounts of insurance that registered psychotherapists must carry, with failure to comply **as constituting unacceptable professional conduct.**

Section 38 provides for 'registered psychotherapists' to be granted access, alongside other professions, to Health Records; Personal files (social services); Personal files (housing).

Section 39 provides for a registered psychotherapists to be included in the professions that are recognised by the **Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975**.

The **General Council** is charged with keeping and publishing appropriate audited accounts and laying them before the **Privy Council**.

The Schedule details the proposed composition of the **General Council**: **10 members elected by fully registered psychotherapists; 6 members appointed by the Privy Council; 3 members appointed by the Education Committee; and 1 member appointed by the Secretary of State.** With various caveats, the terms of office of these Council members is five years.

The ten members elected by fully registered psychotherapists must be fully registered psychotherapists and may be registered medical practitioners.

One of these ten must be a registered medical practitioner. Eight of the remaining nine are elected by English psychotherapists and one by Welsh psychotherapists.

Of the six members appointed by the Privy Council **one shall be a registered medical practitioner at the time of his appointment and shall be appointed after consultation with the Conference of Medical Royal Colleges and their Faculties in the United Kingdom;** [and not a psychotherapist] the other five are not to be registered psychotherapists.

However, **Any of the other members may be a registered medical practitioner.**

The three members appointed by the **Education Committee ...shall be persons appearing to the Committee to be qualified to advise the General Council on matters relating to education and training in psychotherapy.** In choosing these persons, **the Committee shall consult those institutions in the United Kingdom by which or under whose direction any relevant course of study is given;** and anyone else the Committee thinks is relevant.

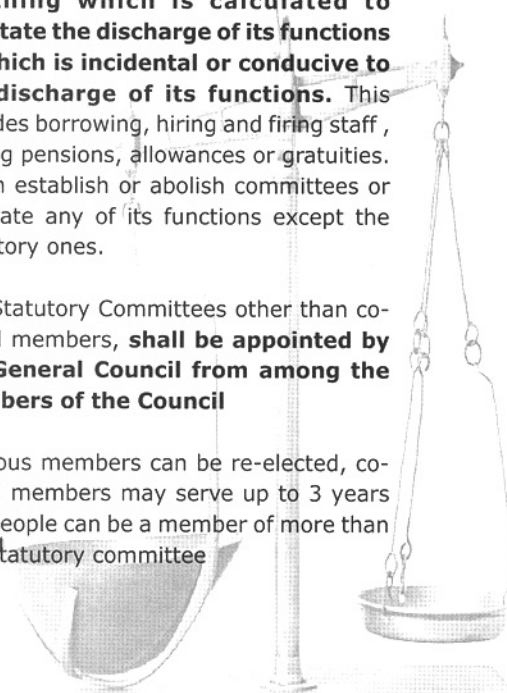
The member of the **Education Committee** appointed by the Secretary of State is someone who appears **qualified to advise the General Council on matters relating to professional education.**

The Chairman elected by the General Council holds office for seven years.

The General Council has the **power to do anything which is calculated to facilitate the discharge of its functions or which is incidental or conducive to the discharge of its functions.** This includes borrowing, hiring and firing staff, paying pensions, allowances or gratuities. It can establish or abolish committees or delegate any of its functions except the statutory ones.

The Statutory Committees other than co-opted members, **shall be appointed by the General Council from among the members of the Council**

Previous members can be re-elected, co-opted members may serve up to 3 years and people can be a member of more than one statutory committee



The **Education Committee** consists of **six of the members of the General Council elected by fully registered psychotherapists; three of the members of the General Council appointed by the Privy Council; the three members of the General Council appointed by the Education Committee; the member of the General Council appointed by the Secretary of State.**

The **Investigating Committee** consists of **at least eight members of the General Council, of whom at least two shall be members of the General Council appointed by the Privy Council.** and it may co-opted eight further members.

The **Professional Conduct Committee** consists of **at least six members of the General Council, of whom at least two shall be members of the General Council appointed by the Privy Council** and it may co-opt four further members.

The **Health Committee** consists of **at least six members of the General Council, of whom at least two shall be members of the General Council appointed by the Privy Council; and at least one shall be a registered medical practitioner at the time of his appointment** and it may co-opt four further members.

The **Transitional Provisions** and the **initial membership of the General Council** feature in Part III of the Bill.

Three, four and five year transitional periods are detailed. During the three-year transitional period, the ten psychotherapy members of the Council are appointed by the Privy Council **after consultation with bodies in the England and Wales appearing to the Privy Council to represent practising psychotherapists ... One of the psychotherapy members shall be expressly appointed as a member who is also a registered**

medical practitioner at the time of his appointment.

The lay members of the General Council during the transition period are also designated by the Privy Council, as are the members of the Education Committee, who must be **persons appearing to the Privy Council to be qualified to advise the General Council on matters relating to education and training in psychotherapy.**

The first chairman of the **General Council** shall be appointed by the Privy Council from among the lay members to serve as such until the end of the first meeting of the Council to be held after the first election of members.

Further Reading

Ann Casement, *Chair's Report* The Psychotherapist No 13 Autumn 1999

Denis Postle, *The Glacier Reaches Edge of Town.* Self and Society 23:6 1994

IPNOSIS An Internet journal for the Independent Practitioners Network <http://ipnosis.postle.net>

Digby Tantam & Emmy van Deurzen, *The place of psychotherapy and counselling in a healthy European social order.* European Journal of Counselling Psychotherapy and Health 2:2 1999

G.O.R.I.L.L.A. archive:

<http://www.lpiper.demon.co.uk/>
Denis Postle, *The Alchemist's Nightmare: Gold into lead the annexation of psychotherapy in the UK* International Journal of Psychotherapy 3:1 1998

Denis Postle, *Statutory Regulation* talk given at the British Confederation of Psychotherapy conference 'Statutory Regulation', June 1999

Denis Postle, *Shrink-wrapping psychotherapy* British Journal of Psychotherapy Spring issue 2000

Denis Postle & J.Anderson *Stealing the Flame.* Self and Society 18:1 1989