



## What *is* the Health Professions Council (HPC)?

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This is an important question that has yet to be adequately answered. The question is a logical one, not a political or rhetorical one. It is important to understand what a new 'regulator' is in terms of what it does on a daily basis, and how it organises its resources to accomplish its aims. Without a clear idea of the mechanisms at play it is not possible to predict the consequences of its actions, nor to hold it properly accountable for those consequences. If we only read the statements published by the HPC itself we won't be any wiser. Statements like "We are the Health Professions Council (HPC). We are a regulator and we were set up to protect the public. To do this, we keep a register of health professionals who meet our standards for their professional skills and behaviour" are practically meaningless - we need to have some idea of how these statements are translated into practice, what grounds them in the truth. Much of the HPC publicity stresses the importance of Fitness to Practise hearings, and although these do take up a huge amount of time and money at the HPC, and a huge amount of PR space, in fact they account for a very tiny proportion of people on the register (see the Maresfield Report at [maresfieldreport.com](http://maresfieldreport.com) for a detailed analysis of this aspect of the HPC). Without knowing what the HPC think regulation really is or how it really works, it won't be possible to know how to act in relation to it, nor how to judge whether it succeeds or fails.

One way to tackle the question is to approach the HPC as an organisation with everyday activities, committees, and budgets. From this point we can begin by saying that the HPC is an administrative centre which holds a database (known as The Register), which currently

contains the details of 205,000 practitioners from 15 different occupations. Most of these occupations had previously been known as 'professions supplementary to medicine' and fell under the jurisdiction of the Council for Professions Supplementary to Medicine (an

organisation created by the Conservative Government of 1960 in order to *register* those practitioners who worked in the NHS). The professions became known as Health Professions when the new Labour Government enacted the Health Professions Order 2001 (HPO 2001) in order to *regulate* these professions whether they worked for the NHS or not. The Order instituted key changes, and swept away the CPSM. Of course, many of the same people are still involved, and the organisation is still at the same address, but the new Order turned registration into regulation and centralised the power of the organisation by getting rid of the Professional Boards which had up until then guaranteed a place for each different practice in the organisation.

The Order states that the HPC must 'set the standards necessary for safe and effective practice for each part of the register', but it does not define what it means by standards, it does not define how to measure safe and effective practice, and it does not stipulate the necessity for generic over-arching standards. These are for the HPC to define, and in order to do this, it can consult practitioners – or as Chief Executive Officer, Marc Seale, put it at a conference in London (organised by Confer to put questions from Counsellors and Psychotherapists to HPC January 2010): 'we invite them in to do a job, they do it, then we say good bye'.

There are three main areas of intervention where the HPC makes its presence felt as a *regulator*. Continuing

Professional Development Audit and Fitness to Practise hearings each intervene at the level of individual registrant, Education and Training involves the validation of courses leading to professional qualification.

In each of these activities (CPD, FTP and E&T) the HPC recruits practitioners and lay people to help its Directors and staff to make decisions. The place of the practitioner in relation to these structures is new. Many of those who attended the Confer Conference were astonished to discover that the HPC recruit and select members to the Professional Liaison Group as if to a job vacancy. The assumption amongst practitioners had been that representatives from the various professional groups had been given a place on a forum, and had control over who attended. But this is one of the ideological changes introduced by the HPO2001. The HPC Council is appointed by the Government Appointments Commission; at Fitness to Practise Hearings lay people outnumber those with expertise or experience of the field in questions; in the new CPD audit, each registrant's file is assessed by one lay-person and one person from the same part of the register. In brief, the HPC structure deliberately introduces a series of breaks between the knowledge of, and the regulation of, practice. This is problematic and contentious because it interrupts the flow of knowledge both in its development and in the *natural* regulation of practise, and obscures what actually happens by creating blind spots.

One member of the PLG responsible for distributing certificates of practise to people on courses across the country gave voice, privately, to his concerns that the expanding market for counselling courses was making it more and more difficult to be confident that certificates meant what they said. The changes introduced into the education system, making it more market driven, were weakening the processes of natural regulation and raising anxiety. Looked at from this point of view he quite liked the idea that the HPC would absolve his responsibility by offering a centralised system to punish people who transgressed. Great, if numbers is what interests you. Not great if knowledge and practice is important to you.

So, why are lay people so heavily relied upon in the HPC? If there are good reasons behind this innovation, they are not easy to find. More obvious, unfortunately, is the pernicious dimension overtly expressed in a variety of phrases ('club culture', 'old boy networks', 'protectionism', 'self interest'). These invidious ideas found overt expression in the first major advertising campaign. It used photographs of people dressed up in white coats, but wearing false noses, eyebrows and glasses and invited the public to doubt the integrity of their practitioner. Four large posters from this campaign were proudly displayed as 'art' – framed and placed in the corridor at the HPC until only recently. What this extraordinary act seems to convey is that the organisation itself is not functioning as a thinking rational entity, but is

animated by a rather simplistic idea. If there is good cause to mistrust local structures or practise and training then let us have the evidence and tackle the problem directly. What exists at the moment is a culture of insinuation and a rising level of fear – these do tend to push people away from rational thought and towards a knee-jerk call for 'more power from above' creating a vicious circle. The more centralised the system becomes, the less real information it has about what goes on in reality, and the more it gets tempted to blindly 'crack down' with its power.

The HPC claim to be able to 'regulate' through the application of standards, an idea borrowed from factory and quality management. There is ambiguity surrounding the real value of standards however, with some people openly saying they don't matter in practice, and very little evidence that they mean much of a consistent value in the fitness to practice hearings. That there is a split between the standards and the reality is probably true. Where does this leave them as an instrument of regulation? If we follow the push to change the generic standards of proficiency we can get a better idea of the real meaning of the standards.

The push to change the current generic standards gathered momentum after the consultation closed on regulating psychology. On 2 December 2008 the Education & Training Committee agreed to "undertake a review" of the generic standards. This date marks the end of the overt process of consultation to take

on the practising Psychologists to the HPC register and at the beginning of the overt process to capture counsellors and psychotherapists (this opened in summer 2008 with the Call for Ideas, the first meeting of the PLG for P&C took place on 4 December 2008). The Generic Standards had come in for criticism by the Psychologists, and would come in for more by the Counsellors and Psychotherapists when their turn came to comment on HPC proposals to take over their field.

When the HPC requested the Department of Health to write the legislation necessary to transfer power to regulate Psychologists to HPC under Section 60 of the Health Act 1999, the DH was also rewriting the constitution of the Council of the HPC. Until then each of the fourteen professions regulated by HPC had one member on the Council (plus an equal number of lay people, and the Council Chair), but, with the expanding number of professions coming into the HPC it was felt to be unfeasible to sustain this one to one relation, and membership of Council was fixed at nineteen which broke the connection between the Council and each group of practitioners. All current post holders lost their power, new advertisements went out, and the Appointments Commission chose the new Council ready for the July Council meeting where a Review Group (RG) was convened to continue the work on the replacement generic standards of proficiency. This introduces a further potential break between the knowledge and practice which can be better understood by

following the way this group formed its ideas, and noting how it will implement them.

This RG comprised seven members, two of whom were newly appointed to HPC, two were not registrant members of HPC (hence, lay), and three were experienced HPC Council members. They met twice (28 September 2009 and again on 27/8 January 2010) before reporting to Council in March 2010. Their report was endorsed and their proposal went forward for public consultation between 28 July and 20 October 2010.

In October 2009 the public consultation on the regulation of Counselling and Psychotherapy closed with a record 1,100 responses in which criticism was levelled at the HPC as an inappropriate regulator for this field with the standards of proficiency widely cited as inappropriate. Although HPC presented an unperturbed face, and gave the go ahead to the DH to prepare to transfer power, the politics of the day held that this wouldn't work unless something at least was done about the Generic Standards of Proficiency.

On Monday 26 July 2010, two days before the consultation on generic standards opened, the HPC announced their pleasure at being invited by the newly formed coalition Government to take over the regulation of Social Workers from the General Social Care Council. This coup must have been due to some skilful lobbying behind the scenes, and could not have been a complete surprise to the HPC executive and Council, but neither could it

have been *openly* guiding the rewriting of the proposed new generic standards. This new government policy requires the HPC to change its name. This must also have an impact on the central generic standards for the foreseeable future. However, the process continues unchanged.

The Council Report (March 2010) notes that the RG was advised by HPC lawyers "not to make changes specifically in response to the feedback received through the psychotherapists and counsellors consultation as these professions are not currently regulated by the HPC". The advice conveys the idea that standards of proficiency are intimately related to the work of specialists and must take this as the reference point, not the work of another group who may never join the register. Yet, the proposed new standards, as we will see, draw heavily on those already in use amongst many counselling and psychotherapy organisations.

When the RG reported to Council, it specifically noted that the 'generic standards of proficiency should be retained as they recognised important commonalities shared by the professions regulated by the HPC'. Furthermore, 'one of our strengths as a multi-profession regulator is our ability to have common *processes* that are applicable across all our professions' (my emphasis). But the HPO 2001 only requires the HPC to establish standards of proficiency for *different parts of the register*, that is each different part that relates to a different kind of practice. There is no legal

requirement for HPC to create over-arching generic standards. The reasons for having 'generic standards' are left vague and unargued. They appear to have more to do with the needs of a new group of Council members to create an object to manage (a 'mission statement') than they do to the practice of any of the professions.

An added complication arose in September 2009, when HPC wrote to twenty professional bodies of groups already regulated asking them for feedback on the current generic standards of proficiency. Details of this survey were not made public, but the Review Group noted that seven of these twenty organisations responded to the survey: four said they had nothing to say, one commented on the introductory remarks, not on the standards themselves, and two commented in detail about eight of the twenty five main standards. The RG interpreted this to mean that most of the professional bodies covered by the HPC were satisfied with the current state of the standards. This rather odd conclusion allowed them to park the feedback on one side, and continue working towards its own agenda.

Attachment B of their Recommendations to the Council summarised the additional information made available to them and considered at their second meeting and showed that most of it came from the consultation on the regulation of counselling and psychotherapy, and the rest related to concerns raised by the psychologists.

Furthermore, the implications of the new standards are spelled out in a time-table of work considered at the Council meeting which pointed out that it will take years before the psychologists can re-write their specific standards to take account of any changes at generic level. Here another problem is revealed: HPC explain that the timetable to rewrite the psychology standards is based on the three-year 'grand-parenting' period which will have to be allowed to play out under the current, agreed, standards. The logic here is that the standards are so central that people need to be sure of the standards they are judged by, it would be wrong to change them mid-stream. This logic, however, is not directing other work at the HPC. Psychologists with complaints against them prior to 1 July 2009, are being tried by HPC lawyers using HPC standards – which must be applied retrospectively. Nothing adds up.

There are many other anomalies all of which tend to suggest that there is little real thinking about the practical implications of ideas. The system seems to be built on the idea that centralised thoughts can be imposed, and this can be backed up with systems of punishment for local transgressors. The statement currently on the website says "The consultation follows a lengthy analysis of the standards where feedback was considered from a variety of stakeholders, including a number of comments from individuals and organisations. During the process the HPC set up a group of its Council members to review the generic standards and

recommend whether any changes need to be made." This implies the existence of an orderly, routine, well thought out process, but there is no evidence of a routine procedure to collect information about problems raised by the generic standards, and survey evidence seems to suggest that practitioners are not really thinking about this. At no point do the Review Group quote from any amassed wisdom generated from years of operating the previous standards. It rather looks, at best ad hoc, at least politically motivated, at worst simply business colonisation ('with an eye to future opportunities for large-scale expansion and income generation').

Reading through the minutes of Council and the report of the review group on generic standards, it seems that any question about the practical effect of the standards has been parked. In place of any proper impact study, we have a public consultation which, if previous consultations are any indication, bring in such a wide and varied response that it overwhelms the capacity of those delegated with the task of reading. Instead of thinking intelligently about the meaning and detail of responses, administrators are reduced to counting things, collapsing things, and pushing things together under generic headings. The machinery of the HPC almost seems to be designed to destroy actual knowledge and expertise. It certainly does not easily lend itself to an interpretation of enlightenment.

The standards that are in question are a complicated set

of numbered points that try to differentiate between overarching and detailed generic standards. The box below renders the numbered points more or less into prose for ease of reading.

**The current generic standards (interpreted, edited, and presented as prose)**

"A professional must be able to demonstrate autonomy and accountability by practising within the legal and ethical boundaries of their work, in a non-discriminatory way, respecting confidentiality, and with the consent of the patient. He or she must exercise a professional duty of care and use good judgement, be able to manage workload and resources sensibly. These things must be ongoing. Registrants must be able to work with other people, whoever they are, and to contribute to multi-disciplinary teams where necessary. Good communication skills across the board is expected. Practitioners must be capable of investigating situations, gathering and analysing the right information and using the right techniques to carry out their work. They must be able to formulate and deliver treatment plans, draw on appropriate knowledge and skills and make professional judgements, all in a timely manner. They must be able to conduct the right procedures, treatments, and therapies etc safely and skilfully and maintain useful records. Registrants must be able to evaluate the impact of their work both on any specific job and throughout their career. If necessary, they must comply

with management audits. Finally, registrants must know and understand the key concepts relevant to their particular practice. They must know how principles are expressed and translated into action and how to mediate specialist knowledge according to the context of their work. Finally, registrants must establish and maintain a safe practice environment."

This reads like a general mission statement for a set of employees. The consultation document states that they 'describe what registrants should know, understand, and be able to do at the time they apply to join the HPC Register'.

It goes on to give an explanation about why changes are needed: "We are aiming to make the new structure simpler than the current structure with less overarching standards. Some skills (eg communication) previously had more than one generic standard and we are proposing that they be combined into one broad standard". No one explains how or why the old version was established, nor how it functioned over the intervening nine years, nor what problems actually occurred. Instead, a number of arguments are put forward for changing which read like post hoc rationalisations. 'Language use', for example was a problem that needed to be solved: '[now] we use language that can take into account changes in the law, technology or working practices which might take place over time'. How, exactly? Another problem is noted as "Not all generic standards apply to all professions regulated" – a contradiction in

terms. In the report made to Council in March 2010, the Review Group revealed that Arts Therapists have never considered themselves covered and they have been part of the HPC since before it began. What a revelation! What is the *real* function, then, of these standards of proficiency? They seem to have very little to do with practice and everything to do with creating an appearance. Where does this leave the meaning of the word '*regulation*'?

The conclusion to section 3 boldly states that the generic standards of proficiency should be retained 'as they recognise important commonalities shared by the professions regulated by HPC ... [and] one of our strengths as a multi-profession regulator is our ability to have common processes applicable across all our professions'. If this were true, then the absence of generic standards would lead to the collapse of the HPC, it would imply the HPC remains nothing more than an empty idea held together by a law.

The penultimate bullet point of the conclusion states that 'significant changes to both the structure and wording of the standards of proficiency are required to address the concerns that have been raised', but no reference is made to the specific problems raised.

Section 4 contains the proposed standards themselves and Appendix C contains a table which organises the current standard alongside proposed changes together with the

'reasoning'. This table is largely constructed out of a small number of ready-made statements which are inserted into boxes in a repetitive way, like bricks. In the column marked 'reasoning', where one might reasonably expect to find reasons, we find the repetition of a statement of *belief*. The final part of the table which contains the two new standards: the first is the old standard 1a.8 elevated to prime position: 'We are proposing that it become an overarching generic standard as we *feel* that it is an important standard that is applicable across the whole register' (emphasis added). And the second - "be aware of the impact of culture, equality and diversity on practice" - is 'justified' as follows: 'We are proposing that this standard be added to reflect the importance of culture, equality, and diversity considerations for professionals and their practice. We *believe that there is more* to culture, equality and diversity consideration that just practicing in a non-discriminatory manner and that the additional standard is important' (sic).

### **The Proposed Generic Standards of Proficiency**

The Review Group met twice, ignored the legal advice, the survey responses, and all reference to technical practical work. They decided that generic standards were necessary, constructed a list of fifteen points headed *generic standards of proficiency*. Below these fifteen points are written out as plain text:



**The proposed generic standards (interpreted, edited, and presented as prose)**

“Registrants must be able to practice safely and effectively within their field of expertise, and especially within the legal and ethical boundaries of their work – and this is an ongoing requirement. They must be able to act alone and take responsibility for their judgement without becoming hostile to anyone. Personal and cultural prejudices, religious doctrines and sexual desires have no place in the work. A registrant must be sensitive to confidential matters, yet be able to communicate with others and maintain proper records. Practitioners should subject themselves to reflection and review of practice in order to assure the quality of their work. They must be able to draw on the right knowledge and skills in their work and understand the key concepts in their field. They are responsible for maintaining a safe and effective environment in which to practice their work.”

**Conclusion**

Little is what it is supposed to be, the dynamics of change seem much more clearly linked to political will and business opportunity than to practical or theoretical matters. There is much effort expended in presenting face, there are many patches of fog and confusion, and there is no evidence of any real, carefully thought through link between the centralised operations and the local application of practice. The suspicion that practitioners are fundamentally untrustworthiness lurks around in the fog, and occasionally comes out into the glaring light (even as a serious advertising campaign!), and this cannot bode well for the future of real work and real practice. What we have here is a smokescreen of conflicting and contradictory statements behind which business interests may quietly pursue policies of expansion and colonisation. Couple this together with the power of the law and what have you got? Apparently, the HPC.

Safe regulation of practice, on the other hand, comes from rational real knowledge and experience, and a willingness to be close to the action. It also requires local courage and clarity to speak up and act when something goes awry. Finally, successful regulation requires a realistic response to difficulties and a willingness to relinquish the petty pleasures that power inevitably brings.

**Post Script.**

In a series of letters pursuing questions about a fitness to practise hearing, I asked Mr Seale, CEO, if he would use my formal title in correspondence. He replied that he thought it incorrect to address me as Dr, and referred me to Debretts to justify the snub. This came on a letter-head printed with the name of the HPC President: Dr

Anna van der Gaag. Dr van der Gaag is a speech and language therapist and received her honorary doctorate from De Montfort University earlier this year. Coincidentally, the HPC recently agreed, after much resistance, to recognise PhD as one of the qualifications required for entry onto part of its register, and will therefore be responsible for validating courses leading to the title of Dr.

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## Magnificence

You start on the back garden grass  
hands to ground hop  
bum in the air  
hop  
arms aching, stronger, hour after hour.  
Only the garden watches, waits.

Hops grow into jumps, legs straighten  
collapse  
shorts top flop, grass under fingers  
pulse in forehead  
up more up  
launch from standing  
it's coming  
it's here  
and  
O  
that X  
when everything stops  
and you hold up the earth  
with your hands  
stand on the sky!

World watching now  
fizzing air  
god claps in heaven  
and when mum doesn't look  
because you're showing off  
she can't take away  
the magnificence  
of you and the world  
turning.

### **Maxine Linnell**

*Read at the workshop on releasing  
creativity at the 2010 AHPB festival*