PART 14
OTHER ISSUES

14.1 This Part includes extracts from consultation responses that did not address specific provisional proposals or consultation questions, but nevertheless raised important issues.

THE LAW COMMISSIONS' APPROACH

14.2 Some consultees expressed concerns about the Law Commissions' approach to law reform.

14.3 The British Osteopathic Association thought that:

> the opportunity to carry out a root and branch review of the healthcare regulatory system has not been taken and in many ways this review concentrates on the detail of healthcare regulation without addressing the fundamental weaknesses within it which have developed as a result of history.

14.4 The Royal Pharmaceutical Society of Great Britain was "supportive of the ethos" of the consultation, but disappointed with the tone and timing of the review. It considered that:

> The tone of the consultation is more appealing to those with an in-depth knowledge of the legal framework of regulation than those delivering the service within that framework.

14.5 The Society said that the consultation paper was "difficult to read", and believed that this had inhibited responses from its members and the public.

REGULATING OTHER PROFESSIONALS

14.6 An individual consultee (Sheila Try) thought that the review was "an ideal time to bring unregulated workers together under one regulator body". She said:

> Healthcare Assistants are now performing many tasks that are nursing roles for which nursing students have to be trained, mentored and assessed and qualified nurses are regulated on while Healthcare Assistants do not. If Healthcare Assistants can perform these tasks without regulation why are nurses regulated and even trained to an expected higher standard?
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> …
>
> It is time the Healthcare Assistant role was clearly identified, regulated and monitored to ensure patient and public safety as well as that of the Healthcare Assistant.
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> If nurses are subjected to regulated training, assessment and are held accountable for their actions it is surely common sense that any other personnel performing the same tasks must be treated in the same way and subject to fitness to practice guidelines.

FITNESS TO PRACTISE

14.7 An individual consultee (Walter Merricks) suggested that "some testing of the public understanding" of concepts such as fitness to practise and impairment would be useful before their inclusion in the new statute.

14.8 Some consultees raised general concerns about the regulators' fitness to practise procedures. We received responses from several Independent Speech and Language Therapists which raised similar issues. One example said:

> 1. If a complaint is made against you, you should be informed by the Health and Care Professions Council at once and told who and what the complaint is at the start of the enquiry. Currently you are not informed and if you enquire you are only told yes or no. Why is the accuser allowed to remain anonymous? Also this can affect professional indemnity insurance and access to legal help at a very stressful time. I think it might also encourage some malicious complaints.
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> 2. At the enquiry stage both sides should be allowed a statement. Currently only the complainant can. If mediated at the enquiry stage it might stop so many cases from proceeding further saving the Health and Care Professions Council's time and money.
>
> 3. Definite time limits should be set for each stage. Currently there are NO time limits in place. Cases can drag on for months and months affecting health, self esteem and finances.[1]

14.9 Another individual consultee (Melanie McDonald) said:

> My experience of working as a lawyer for a regulatory body raised a number of concerns about the ability of the regulators to manage fitness to practice proceedings in a manner which achieves consistency of outcome, good quality decision making and to work in an open and transparent way so as to benefit both registrants and members of the public who depend on the probity and clinical competence of healthcare professionals at times when they are often at their most vulnerable.

IMPACT ASSESSMENT

14.10 The Nursing and Midwifery Council had "significant concerns about the accuracy and adequacy of the impact assessment", and provided detailed comments. These included querying the accuracy of some of the figures and calculations, and the extent to which the transfer of rule-making functions to the regulators would save costs for the Department of Health. For example, the Council said:

[1] Emphasis in the original

> This paragraph, at the foot of page 5, refers to "the transfer of costs from the Department of Health on to the regulators who would be required to undertake the consultation and drafting associated with a change in the rules". This statement is misleading, as the regulators already bear the costs of consultations and drafting related to all changes in their rules. The Department of Health is only responsible for the costs of consultations and drafting relating to section 60 orders or changes to primary legislation. The difference under these proposals is that the Department of Health will no longer have a scrutinising function in relation to any new rules. It is accepted that this will result in some costs savings in the Department. However, the impact assessment does not address the possible detrimental consequences of removing this degree of scrutiny of such legislation and the likely increased costs on the regulators, which would have to be passed on to their registrants, in having to "buy in" this level of legal expertise in statutory drafting.

14.11 The Royal Pharmaceutical Society of Great Britain was:

> very concerned that the financial burden of change proposed by this consultation will fall on the individual pharmacy registrants, and correspondingly cause a raise in registration fees.

14.12 It sought "assurances that pharmacists will not be financially penalised by any Governmental reform".

14.13 The Registration Council for Clinical Physiologists noted that the "financial cost of maintaining a voluntary register is high".

MIDWIFERY

14.14 The consultation paper made no specific proposals regarding midwifery, but a number of responses commented on this aspect of the legal framework.

14.15 The Nursing and Midwifery Council assumed that our proposed legal framework would signal the end to the current statutory framework for supervising midwives (although it could continue to issue standards under the proposed two tier system of guidance). It argued that:

> The supervisory framework for midwives is underpinned by the rationale of public protection. There is a body of knowledge about the contribution of supervision to the safety of mothers and babies and how effective use of the supervisory framework is considered to lead to improvements in the standard of midwifery care and better outcomes for women. There is also evidence suggesting that where there are weak employer systems or weak supervision of midwives, poor clinical outcomes will result.

14.16 The Royal College of Midwives warned that:

> Even with these statutory protections, midwifery has had a constant fight to ensure profession specific regulation that recognises the role of the midwife, the level of responsibility and accountability, and the

> potential for disaster for mother and baby should things go wrong. This fight, in large part, stems from midwives being regulated by the same body that regulates the much larger and fundamentally different profession, nursing.
>
> From this perspective, the removal of midwifery specific provisions from statute is unacceptable to the Royal College of Midwives and to midwives. We do not believe that such changes will ensure on-going public protection for women and babies.

14.17 Thompsons Solicitors stated:

> We share the concern of the Royal College of Midwives about the proposal to remove from the Local Supervising Authority Midwifery Officer the power to suspend midwives. Whilst we understand that this power is not exercised frequently it is an important one, particularly where midwives are working independently and not within a hospital environment.

14.18 However, not all consultees agreed. Independent Midwives UK felt that the additional layer of statutory regulation for midwifery "has evolved historically and the lack of a proper funding mechanism also impacts on how it functions". It recommended this "is disbanded to bring midwifery regulation in line with the other professions". An individual consultee (Anonymous) felt that "there may be a case for additional supervision for midwives but the evidence base for this should be clear" and it could be that "the additional supervision is a responsibility of employers and individual practitioners to arrange".

NAMES OF THE REGULATORS

14.19 An individual consultee (Paul Sommerfeld) proposed that changing the names of the regulators could "significantly increase public understanding of regulatory bodies". He gave the example of the British Medical Association and the General Medical Council, and said that the distinction between the two is "entirely opaque to members of the public". He proposed that:

> the names of *all* health and social care regulatory agencies should include the word 'Regulatory' eg General Medical Regulatory Council; General Pharmaceutical Regulatory Council; General Osteopathic Regulatory Council, Health Professions Regulatory Council, etc.[2]

14.20 The response continued:

> A further step would be, where possible, to include the common name of the profession regulated eg General Regulatory Council for Doctors; General Regulatory Council for Osteopaths; General Regulatory Council for Pharmacy Professions and Premises. Evidently, this may not be possible for multi-profession councils such as the Health and Care Professions Council.

[2] Emphasis in the original.