

REVISIONING REGULATION

Many of the measures outlined below are already in place but on a local rather than large scale or else require development from a start already made. Only some require statutory backing and where this is called for the cost to the public purse is likely to be significantly below the HPC's budget. Together these measures would function synergistically to maximise (but not totalise) public protection.

1) Following a comprehensive independent assessment of all classes of practitioner abuse of clients,- sexual, physical, financial, emotional (usually abuse of power) and fraudulent claims to qualification, existing relevant criminal law would be examined with a view to where it might be enhanced to provide clients with improved protection. The Counselling Society has suggested that consideration should be given to the creation of a specific category of offence,- professional abuse. This would cover abusive behaviours in any relationship where the client must necessarily place trust in a helping professional. Criminal standards of proof would be necessary for conviction. At least to start with its application would need to be specifically restricted to psychological therapies else the proposal might meet with considerable resistance from other professional fields.

Given that the sole rationale for the installation of the HPC as the regulator is by its own admission the protection of the public it behoves any future regulator to have first identified evidence of the nature and extent of the problem to be addressed and then for further research, including comparison with the situation in other countries, to establish what is the appropriate remedy. Here it should be noted that the government would appear to have already made a serious category error in mapping the high profile scandals of Drs Harold Shipman (multiple murder) and the NHS psychiatrists Dr Kerr and Dr Haslam (sexual abuse of patients, again with medication involved) onto psychotherapists and counsellors, mistakenly viewing the latter's activities through a medical model lens. Despite repeated requests to do so the Department of Health has been unable or unwilling to produce any figures that would scope or confirm the true scale of the perceived problem. Naturally this raises suspicion that other agendas are driving the preferment of the Health Professions Council.

It should be noted that the involvement of the criminal law with imprisonment as a sentencing option is only appropriate at the very serious end of the spectrum of complaints against practitioners. These tend to be media spectacle cases and are very few and far between, and therefore should not be the driver of policy on the vast majority of complaints. The mode of prosecution of cases within the executive (because ultimately answerable only to the Privy Council) courthouse of the HPC (really a third and shadowy legal mode) makes no such distinctions and the main business of the HPC Fitness to Practice Tribunal appears to be handling outsourced employer-driven NHS disciplinary proceedings (See the figures from the Maresfield Report). For psychotherapists, counsellors and their clients the HPC FTP is inappropriately adversarial, litigious, bureaucratic and with its public gallery and online publication of cases and charges, often months in advance of trial and verdict, thoroughly insensitive, exposing and likely to inflict unretractable damage on both parties.

2) A national expansion of mediation and conflict resolution facilities is the obvious companion measure to 1). Very few would dispute how access to mediation has benefited divorce proceedings. Likewise a therapist-client "divorce" need not be the foregone conclusion to every complaint. Sometimes the therapist's sincere apology for a mistake will be sufficient. For clients better access to mediation would make initiation of a complaint easier and its resolution speedier, less costly, more confidential and more congruent with therapy itself, there being an equal focus on consumer protection and care for the professional involved. Mediation can take account of the fact that many grievances arising in therapy turn out to be an intrinsic (because transference)

part of the process. In these cases concretising the grievance HPC style blows it for the client, marooning them in an illusion. The HPC offers no preliminary mediation, the mediation theoretically available after prosecution is redundant, a nonsense. Thus mediation may facilitate the continuance of therapy where appropriate and on the other hand very clearly identify when mediation has no place in a given case, could be retraumatising for the client, and a full complaints process should be launched without further ado. Some professional associations already provide for mediation as an inhouse stage in their complaints procedures. The figure from a period of eight years for one professional association (UKAHP) where mediation has been available suggest that only 10% of cases require the full complaints procedure to be invoked. Both clients and therapists would benefit from mediation having a profile that was higher and more independent of the therapist's professional association. Thus qualified and sometimes specialised mediation services have a vital part to play in the overall assemblage of regulatory measures.

3) The matrix of practitioner ethics must remain the local Code of Practice and Code of Ethics that all professional associations worthy of the name already have in place. Their maintenance and continuing review and development along with the adjoining complaints procedures are integral to all ethical counselling and psychotherapy practice. The importance of professional associations retaining full responsibility for their implementation cannot be overemphasised. The entire culture of psychotherapy and counselling will be jeopardised, compromised and progressively eroded by the excision of this responsibility and the arrogation of these functions to a centralised Fitness to Practice Tribunal (HPC) that actually celebrates its ignorance of local contextual issues surrounding a given practice. In the event that a complaint is of an order of severity that warrants its referral to adjudication under criminal law (see 1) the professional association would be legally responsible for facilitating that referral. A lay presence on any ethics committee or case panel should be required quite explicitly as a process watcher i.e. whistleblower-in-waiting in the event of an attempted professional cover-up, a guarantor in such a case that it would be removed from the professional association and referred for the attention of the public prosecutor. The next and central measure will signpost the client/complainant to the relevant facility for invoking a full complaints procedure should independent preliminary mediation (2) be inadequate or inappropriate.

4) This is the only really major innovation amongst these proposals, at least in the UK as variants are up and running in Australia, Canada and the USA. The Practitioner Full Disclosure List PFDL. This is major because if implemented it will either rival or hopefully supplant the register that the HPC seeks to compile. It is also a big innovation by virtue of its independence from the historic control of registration by the blocs of training institutes e.g. UKCP and BPC and the other umbrella organisation, the BACP. It removes the structural basis for their corrupt collusion with the HPC project. Corrupt because little over 2 years ago they were clamouring vociferously against the HPC with the British Psychological Society leading the call for a Psychological Professions Council until the BPS saw advantage for itself in jumping ship. PPC is an anagram of its dynamic, -Permission Please to Control. At least government at the time had the good sense to reject this initiative. However if the HPC project is arrested the umbrella bodies will be back with a PPC type proposal before you can say "see a therapist" and are likely to oppose a PFDL tooth and nail. Regardless, the List as it will be referred to from here on, is an idea whose time has come. Practitioners, as they awaken from the various political trances to which they have been subject the last fifteen years, will see the good of it and go for it. A pilot version is already under development in the Bristol area and here are links to the initial proposals and sample entries for a pilot national version of this web-based measure <http://www.allianceforcandp.org/documents/TheListIntro.doc> and <http://thelist.eu/>. This is a truly user friendly arrangement and of indirect benefit to the individual practitioner listed, as the level of information to be made available allows for the prospective client to make an informed and

refereed/sponsored choice of therapist in good standing. If the List were to be given statutory backing, inclusion on it could be mandatory for all practitioners of whatever persuasion, regardless of other affiliations. On the other hand once it reached a certain critical mass of subscribers it would become such an evident attractor and reference point for clients that still more practitioners would sign up to it. "Aren't you on the List? Why not?" At any rate its administration in the first place will be independent of government and funded by practitioner's subscription and subscribers might elect to keep it that way. Failure to disclose previously upheld complaints, not to mention a criminal conviction would result in the practitioner being struck off. Note this deals effectively with both the anyone can put up a brass plate argument and the widely recognised inadequacy of regulation by protected title HPC style which anyone can legally avoid by using alternative descriptors. Interestingly the inclusiveness of the List as a medium with no minimum level of credentials, only an insistence on a minimum level of transparency and practitioner provided information already far above that on any current register, is probably as close to functional regulation as will ever be possible in a field narcissistically obsessed with exclusiveness. There is also a realism to the List, given the historical impossibility for counsellors and psychotherapists to agree what they actually do and to agree who can do what and who can call themselves what. The HPC and Skills For Health are managerialist follies that will never eliminate at ground level the ambiguities and overlapping roles that are inherent in the psy field. These quangos are best regarded as last ditch manoeuvres of the modernist spectacle, desperately attempting to organise appearances in the interests of a master discourse. Politically speaking a Tower of Babel is guaranteed. The List is the answer, no pearly gates, no gated estates, just a truly diverse ecology of practice reflected in its proliferating and unique pages.

5) A public information campaign and education regarding therapy is needed to clarify what clients can reasonably expect from psychotherapists and counsellors, both in terms of personal behaviour and possible outcomes. Demystification in this regard is long overdue. Such a campaign would draw to the attention of the therapy seeking public the variety of therapies on offer, would provide pointers to their respective limits and limitations, while also providing under one roof / on one site showcasing for a wide range of modalities presented in their own terms (members of the public can be trusted to buy sensibly and sometimes make instructive mistakes just as they do in any supermarket). Psychoanalytic psychotherapy will be free to be transparently untransparent and the value of this too can be openly stated. The campaign would do justice to the variety of working relationships that are actually on offer out there and at the same time bust a lot of unhelpful myths that the media have had a field day with for years. An adbusters section would aim to continuously deconstruct the market driven concoction of branded therapies that exhibit what Freud termed "the narcissism of small differences" since these only confuse and mislead the public. This is the relevant practical implementation of transparency that the public actually desires; as opposed to the slimy public relations driven listening events and roadshows the HPC invests in, plus advertisements featuring bogeyman images of charlatans that it will protect you from, - see we're tough on abuse aren't we! One thing should already be obvious, the HPC cannot tell the public what psychotherapy and counselling are, it can only tell them about itself. Thus it in no way fulfils the need for 5). The public information campaign would advertise the existence of the List and draw attention to its attributes and facilities.

6) There will remain scope for the development of advanced components as opposed to the 5 basic components of revisioned regulation outlined so far. The quest for more than adequate civic accountability for practitioners needs to be ongoing. Here is another problem that the arrival of hegemonic regulation by the HPC would usher in, it would freeze development as fear, cynicism and compulsivity would take hold in much of the psy field. The quest could be described as for arrangements that foster excellence in a culture of self-responsible therapeutic practice. Let's really clear about one matter: the multiplication of 'musts' for which HPC is an

avid agent has no place in the process or context of a therapy session. Many clients are in therapy precisely to escape their compliance behaviours. No self aware therapist is going to permit their own consciousness to be colonised by this managerialist detritus.

Some examples of advanced civic accountability practices:

- a) The Ethical Review (UKAHPP) is a facility whereby a practitioner can consult with an ethics committee member on the ethical status of a proposed therapeutic action or intervention in advance of its implementation.
 - b) Peer and self assessment (IDHP) is a periodical ritualised process by means of which practitioners with some familiarity with each other's work and person provide feedback, monitoring and evaluation.
 - c) Standing by (IPN) is the opposite of bystanding. It means a group stakes its own reputation on its preparedness to validate its individual members work with clients. That validation can be withdrawn if a practitioner's behaviour or quality of work with a client warrants its suspension. In an IPN full member group this horizontal dynamic is also engaged at the inter-group level as each group of 5-8 practitioners is linked to two other groups in a honeycomb structure. Periodic meetings between link groups function to reduce the likelihood of intra-group collusion, blind spots and conscious or unconscious malfunctioning. This culture, now 15 years in existence, requires a high level of self-disclosure and trust within a group. It is the polar opposite of the vertical, atomised, fear-driven, watch your back, even STASI working culture that the HPC centralised command structure would assuredly foster in the psy field.
 - d) Sponsorship (Lacanian) is another community based procedure through which the individual therapist can only obtain and sustain a license to practise on the basis of a continuing sponsorship by another named individual or group who is known to have taken that position, implying an ongoing knowledge of the sponsored's work. The corollary of this vouching for is that the sponsor must expect to be questioned in the event of the sponsored practitioner being the subject of a complaint.
 - e) Ethics Debates (Own proposal) can serve to ground the sometimes precious therapy world in the real world through the elaboration of imaginary, anticipated, or anonymised real dilemmas in spaces where the therapy literate public can meet with therapists (other than their own!) to argue and accept challenge while hopefully preserving a sense of humour so more difficult topics and scenarios can be discussed/debated. Such formal and sometimes more impromptu talking places for an education in ethics recall the agora of ancient Greek citizenship and would foster the ethical literacy necessary if a lived civic accountability is to be a feature of the psy field. Ethics debates could also be closed in the sense of restricted to practitioners debating actual case dilemmas under conditions of strict confidentiality. Blogs have already appeared where users and/or members of allied helping professions are engaging with therapists around implicitly ethical issues. However face to face debates with the inclusion of the non-verbal cueing of visible body language may be more worthwhile than schizoid dogfights in cyberspace.
- 7) Continuing Professional Development in the sense of workshops attended post training is listed towards the end of this inventory because it has been overblown and compulsified. It remains the case that any practitioner worth her salt will engage in this anyway, often way over the now required levels, out of sheer interest in their craft. The auditing of CPD which HPC will implement really only benefits its providers who are guaranteed a nice not so little earner from a captive market. Hoopjumping and false compliance behaviours will rise exponentially under HPC surveillance. The so-called free market engenders an Hobbesian ethos of mistrust which in turn requires that at least a semblance of controls be installed to allay the consequent anxieties surfacing in all

relationships. Thus deregulation of markets dialectically pulls for its opposite,- over-regulation. Work practices such as therapy, that are founded on relationships which are the zone in which such free floating anxiety manifests, then become easy targets for the sedation agenda of the regulators. Training institutes and other CPD providers deal with their economic anxiety (survival fears) by cosying up to the regulators and welcoming their controls.

8) An individual supervisor for all practitioners, regardless of seniority. A safeguard against therapeutic omnipotence, an acknowledgement that however competent one is, this work takes its toll and every practitioner requires some holding. Anyone without a supervisory arrangement more fool them. But who didn't confront Derek Gale, formally or informally, years ago? Assuming he had a supervisor, this case highlights the limits of supervision within the full spectrum of regulation revisioned. Now as it happens he was a very social animal, regularly throwing large parties at which other therapists mingled with his clients. It took his clients banding together to shop him to the HPC, invoking his registration as an arts therapists. All who knew him, and there were many, need to ask themselves what stopped me performing the equivalent of a citizens arrest and holding him to account years ago? Rather than trying to forget this high profile case, as if in the grip of some fear of contagion, there is much to be learnt from it, and with regard to 8) we can thank Derek Gale for bringing into view such themes as the collusion within old boy networks and the peculiar incapacity of alleged specialists in human relations to exercise basic skills of interpersonal confrontation with their own kind. A CPD workshop called for here! Therapists are a compassionate breed, and generally, outwardly at least, rather nice people. Soft in the head it might be said. If therapists cant interrupt the unethical behaviour of their own colleagues and would prefer to outsource this to an agency of the state, given the long lead in time for its procedures to kick in, what are the ethics of turning a blind eye? Some therapists extol world work. How about what's on their doorstep? This leads aptly enough to the final measure in the regulation revisioned compendium.

9) Personal therapy for practitioners. The paradox here is that to make this mandatory is self-defeating, therapy can only be authentically entered on a voluntary basis. But if you haven't received it, how can you then give it? Really. The whole psy field should heed but not necessarily replicate the rigour of the psychoanalysts who traditionally have a personal analysis that precedes a training analysis. Compare this with what prevails in the psy field as a whole today: personal therapy undertaken as a requirement (even then not always) once training begins. This in some cases will acquire its own motor and be as good as voluntary therapy undertaken before training without thought of training. It may even lead to dropping out of training. Those who carry on but resent it are at risk of failing to develop the client side identification that is a valuable byproduct of a practitioner's personal therapy. Do unto others as you would they do unto you. Personal therapy is included in revisioned regulation firstly because it is foundational to one's motivation for doing this work. Only in therapy will the practitioner uncover, work through and thereafter be able to make appropriate allowance for their *unconscious* motivation for engaging in this activity and thus preempt enactments in displacement at the client's expense (some never find out and for some it may not be that significant anyway). Secondly for many experienced practitioners a time will come in their life when they intuitively know it's time to return to personal therapy to sort something out, to regain a lost personal equilibrium or simply to further their personal development; and in all these instances this personal commitment is likely to benefit their work with clients. Finally one might note that the importance of a practitioner's personal therapy is beyond the ken of the HPC and also runs contrary to both the medical model and the cult of the

expert in both of which one person is seen as acting on another rather than two people being engaged in a co-created enterprise in a context of universal human vulnerability.

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