

HEALTH COMMITTEE

Tuesday 5 December 2006

Session 2

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HEALTH COMMITTEE

27th Meeting 2006, Session 2

CONVENER

*Roseanna Cunningham (Perth) (SNP)

DEPUTY CONVENER

*Janis Hughes (Glasgow Rutherglen) (Lab)

COMMITTEE MEMBERS

*Helen Eadie (Dunfermline East) (Lab)

Kate Maclean (Dundee West) (Lab)

*Mr Duncan McNeil (Greenock and Inverclyde) (Lab)

*Mrs Nanette Milne (North East Scotland) (Con)

*Shona Robison (Dundee East) (SNP)

*Euan Robson (Roxburgh and Berwickshire) (LD)

*Dr Jean Turner (Strathkelvin and Bearsden) (Ind)

COMMITTEE SUBSTITUTES

Mr Kenneth Macintosh (Eastwood) (Lab)

Dave Petrie (Highlands and Islands) (Con)

Margaret Smith (Edinburgh West) (LD)

Stewart Stevenson (Banff and Buchan) (SNP)

*attended

THE FOLLOWING GAVE EVIDENCE:

Ray Miller (British Psychological Society)

Alison Robertson (British Psychological Society)

CLERKS TO THE COMMITTEE

Karen O'Hanlon

Simon Watkins

ASSISTANT CLERK

David Simpson

LOCATION

Committee Room 6

Scottish Parliament

Health Committee

Tuesday 5 December 2006

[THE CONVENER *opened the meeting at 14:00*]

Psychologists (Statutory Regulation)

The Convener (Roseanna Cunningham): Good afternoon, everybody. I have received apologies from Kate Maclean. I assume that the other members who are not present are making their way here. Agenda item 1 is on the proposed statutory regulation of psychologists. We have with us Ray Miller, the president of the British Psychological Society, and Alison Robertson, the chair of the society's division of clinical psychology in Scotland.

The background to this agenda item is that I and several other members have been contacted by many psychologists, who have drawn to our attention their concerns about the forthcoming legislation on the statutory regulation of psychologists. We do not have sight of the Scottish statutory instrument yet, but ahead of our having it referred to us for consideration, which is expected to happen in 2007, I thought that it would be useful to take the opportunity, as we have a little time, to hear from the British Psychological Society and ask some questions. Because we do not have much in the way of advance evidence, I will invite Ray Miller to say a few words, for no more than five minutes, to lay out the background. After that, members can ask questions.

Ray Miller (British Psychological Society): I appreciate the opportunity to address the committee, because the issue is important for psychology, the public and, in many respects, Scotland. Many people are surprised to hear that psychologists are not statutorily regulated. There is a voluntary system, which is run by the British Psychological Society, but it is easy to evade, simply by choosing not to be a member of the society. We need a more effective, robust and complete system to protect the public more adequately. We have been pressing that case for about 30 years with successive Governments, because we believe that the answer lies in statutory regulation, which would be compulsory. Although there has been encouragement from Governments, it was always difficult to find parliamentary time to put through legislation, until 1998, when the Health Bill was considered. The bill swept up several health professions within it,

including ours, to allow progress to be made by secondary rather than primary legislation, which was felt to be easier. We were keen to think about that route. The bill stated specifically that it would cover professions that were in whole or in part involved in health care.

After the Health Bill became the Health Act 1999, the Health Professions Council was set up. It was seen as the vehicle for delivering statutory regulation. We were asked to apply to the council, which in due course we did. We entered into a series of negotiations with the Department of Health at Westminster and with the council on how regulation might operate. That process came to a head last year, when a consultation exercise was undertaken on the possibility of our going into the Health Professions Council. We had several concerns about the consultation document that was issued: we felt that it did not cover some matters that were likely to cause problems—although we had discussed those with the Department of Health—and there were several difficulties that we thought would lead to the proposed system providing less protection for the public in some cases than the present voluntary system provides.

We never had a response to the consultation, because it was swept up in the Foster and Donaldson reviews. The Foster review considered non-medical regulation and the Donaldson review considered medical regulation. We played a full part in the Foster review and raised many of our concerns in the process. We found that our concerns were shared by several professional bodies that work in what might broadly be described as a psychological way. When the Foster review was eventually published, we were disappointed that it seemed to have taken little account of many of the anxieties that we and others had raised.

Many of the points that we had made—quite forcefully, we thought—were dismissed as not being worthy of much further discussion. It seemed to us that the Government had a predetermined agenda for how it wished to approach many areas. It wanted to reduce the number of regulatory bodies and make the Health Professions Council the body that would sweep up the many groups like ours. There was little justification given for that in the Foster review; it seemed that the review simply came out and said what had already been decided in advance.

Our concern is that many of the things that were said in that review seemed to us to be a recipe for poorer protection for the public. One of the problems is that it concentrated almost entirely on the health service. Given that 60 per cent of our members do not work in the health service, we found it difficult to see how they would be covered

by many of the proposals that were being made in the Foster review. In terms of the mechanisms that might be used to achieve regulation in the national health service, it looked at the issues of annual appraisal, professional development through the knowledge and skills framework and dealing with the first levels of complaints. We doubted whether the NHS was particularly well prepared to implement regulation by those means and, as I said, as 60 per cent of our members are not in the NHS, it was hard to see how those mechanisms would be extended to cover them. It has also been pointed out to us that there is potential for an employer bias in this situation. We know that the NHS is under financial pressure in a number of areas and the temptation might be to cut back on some quality issues rather than to pursue them rigorously, which an independent regulator might do. We are in favour of an independent regulator, separate from the profession and the employer. That will deliver genuine protection for the public.

The review envisaged that the Health Professions Council would be the means to achieve the desired end. We have many anxieties about the council. We are concerned about how it works and whether it is dynamic and flexible enough to incorporate a set of professional groups that are quite outside its experience and which work in non-health areas at many levels. In many cases, its standards are lower than the standards that are already being set through voluntary regulation. We find it difficult to see how lowering standards can deliver greater protection for the public, even if the coverage would be greater.

We believe that the regulator must be independent and robust and we do not believe that the Government's plans will achieve that. For example, people who are in training for the delivery of psychological services would not be covered and neither would people who are working at levels other than the fully qualified level. There is a particularly Scottish dimension to this, as Scotland has been developing workforce plans for people working in psychology at assistant level, at in-service training level and at clinical associate level, none of whom would be covered under the plans that are being made.

Nine professional organisations have got together to express those anxieties jointly, in the hope that they will be more clearly heard than they might be if we commented individually. Our banding together also makes the point that our concern is not about professional self-interest but about the protection of the public. It has been pointed out to me that we are in the unusual position of wanting stronger regulation than the Government is proposing. It is not as if we are trying to avoid regulation or want to be the body that organises the regulation—we accept that that body needs to be independent.

We are concerned that the Government could make quick progress on its proposals by making a statutory instrument in February. We believe that it is important for you, in Scotland, to understand that because, although the issue might not receive much debate in Westminster, you have an opportunity to take a much deeper interest and to examine the Scottish issues properly.

The Convener: Am I right in saying that anybody can call themselves a psychologist, even if they have no qualifications whatsoever?

Ray Miller: That is correct. Currently, the title of psychologist is not in any way protected.

The Convener: Anybody can call themselves a psychologist. You are saying that that needs to end.

Ray Miller: That is right.

The Convener: The term needs to be protected because, otherwise, people will have no clue what they will get. You are saying that none of the proposals so far encompasses all that.

Ray Miller: The problem is that the proposals could include people who were not regarded as fully qualified. One criterion for registration with the Health Professions Council would be simply to have practised in a profession for three of the past five years without a complaint. That says nothing about whether a person has been trained to work in a profession, whether they are competent or whether they update their professional skills. We are concerned that such regulation would not protect the public sufficiently.

Helen Eadie (Dunfermline East) (Lab): I see some parallels with the committee's recent discussion of denturists. The witnesses may or may not be aware that denturists protested to us against proposals to regulate their profession much more tightly. The outcome that we achieved on that has been welcomed throughout Scotland.

Having read our papers and listened to your evidence, I think that you say that the Health Professions Council would regulate only people who are employed in the NHS. Is it conceivable that the proposed statutory instrument from the minister could embrace regulation by the Health Professions Council of anyone who is employed anywhere in Scotland? The issue that you address is the name of the organisation. You want an organisation that is specific to your profession, but some might argue that as long as all the professions are regulated and governed, that will be adequate. What do you say to that?

Ray Miller: Our intention is that everybody—wherever they happen to work—should be regulated. The Foster review proposes largely that NHS employer mechanisms would be used. We are not clear—and Foster is not clear—about how

that system would be extended to encompass other employers. For example, if NHS appraisal mechanisms were the way of continuing to appraise whether someone is competent, how would they apply to people who do not work in the NHS? How would other employers be brought on board to ensure that they employed psychologists who met the same standards? That is a particular issue because 60 per cent of our society's members work not in the NHS, but in the education sector, in the justice system, in industry and commerce and in sport and exercise. How would NHS mechanisms be applied to those people? Given that, it is important to have mechanisms that are outside the NHS as an employer and which can apply to everybody.

Helen Eadie: I presume that we will write to the minister after the meeting. If we asked him how the proposed system would embrace all the people to whom you referred, would you be content?

Ray Miller: I am happy for that question to be put.

Dr Jean Turner (Strathkelvin and Bearsden) (Ind): The situation is disturbing—I might have misunderstood it. You seem to say that anybody can call themselves a psychologist, without any training in psychology.

Ray Miller: That is the current position.

Dr Turner: That means that, were the proposed system of regulation introduced, anybody who said that they were a psychologist—although they had not been to university and had no training—would be incorporated in that system. The danger that could result from not checking people's credentials is frightening. What do you do at present to protect the public from people who are out there?

Ray Miller: One reason why we seek statutory regulation is that we have a very limited ability to provide protection against people who are simply out there. Members of our society must prove that they have completed an approved undergraduate course in psychology to honours level. Before they practise in psychology, they must achieve further postgraduate qualifications that are accredited by the society. We keep a tight rein on the quality of that training and of courses. The standards of those over whom we have some control are clearly high and appropriate. However, we share your concern that many people are not operating to those standards. Often they are operating with vulnerable people.

14:15

The Convener: In the circumstances that prevail, it is very much a case of "caveat emptor". The onus is on the customer to establish the bona

fides of whoever is calling themselves a psychologist, because there is no clear-cut way of knowing whether someone has been properly trained. It is, dare I say it, a bit like cosmetic surgery. Anyone can call themselves a cosmetic surgeon.

Ray Miller: We encourage people to go to psychologists who are on our register of chartered psychologists, as quality is attached to that. However, many people do not do that or do not realise that that is important.

Dr Turner: What protection do psychologists have at present if someone sues them?

Ray Miller: Psychologists are generally expected to have professional indemnity insurance, which would cover them in such situations.

Mrs Nanette Milne (North East Scotland) (Con): The paper that we have received indicates that various ministers have declined to meet the society. Was a reason given for that? Have you made a similar approach to Executive officials?

Ray Miller: So far we have not made an approach to Executive officials. The response that we received was from Andy Kerr, the Minister for Health and Community Care, who indicated that he had discussed the issue with his fellow ministers and that they believed that at the present time there was no need for them to discuss it further with us. He said that it would not be appropriate for ministers to open further discussions with us until there had been developments in Westminster legislation. We thought that that might be a bit late in the day, because by the time that legislation is produced opportunities for discussion will be limited.

The Convener: That is why we have asked you to appear before us today. The Health Committee's agenda can be quite pressured, and it may be difficult for us to deal with the issue if we leave it until Westminster legislation is produced.

Shona Robison (Dundee East) (SNP): My question is similar to the one that Nanette Milne asked. Was the minister implying that there would be developments in discussions at Westminster that would broaden the ambit of the proposed legislation? Was any indication given that changes would be made at Westminster to ensure that psychologists are encompassed in the legislation or that would go some way towards addressing your concerns?

Ray Miller: One of the problems that we have is that at this stage we are not entirely clear about what the Government's final decision on the issue will be. We know that it has in front of it a draft order for the regulation of psychologists, made under section 60 of the Health Act 1999, and we

have some idea of what the order contains. We do not know whether the Government is willing to have further detailed discussion of aspects of the order. The impression that we have had until now is that the Government is not particularly keen to discuss some of the problems with us further, as it believes that they were dealt with by the Foster review. Our view is that they were not dealt with; they were certainly not dealt with transparently. We would welcome the opportunity to have further detailed discussion of some of the issues, with a view to producing better legislation.

Euan Robson (Roxburgh and Berwickshire)

(LD): I will put to you an argument that I do not necessarily believe, because it is worth my seeking your view on it. It is suggested that the tighter the regulation, the further we move away from what might be described as the grandfather clause situation. If there are fewer psychologists, the laws of supply and demand may come into play and remuneration for psychologists, whatever the context, may have to rise. Is that part of your agenda?

Ray Miller: Not at all. Scotland has been very forward thinking in this respect. Considerable work has been done on workforce planning and ensuring that there is growth in psychology training and development, so we are likely to be able to meet future demand. In this area, Scotland's workforce planning is ahead of England's. For clinical psychologists and other psychologists in the health service, we have a close working relationship with NHS Education for Scotland. I do not believe that remuneration is an issue in this case.

The Convener: Is it your view that, if the changes that you think may be in the offing come about, the position will be worse than it is at present?

Ray Miller: The proposed order would certainly cover more people, but if it covered more people who were inappropriate, that would not be an improvement. That would undermine public protection.

The Convener: I make the offer that I always make to witnesses. If you think afterwards of anything that you should have told the committee, do not hesitate to get in touch with the clerks, who will circulate any further evidence to committee members.

Ray Miller: From our side, if there is any further information that the committee would find helpful—

The Convener: We will do. The minute we see the Scottish statutory instrument, we will at least recognise what is coming down the road.

Alison Robertson (British Psychological Society): I add a comment on the reduction in

standards. At present, chartered psychologists submit themselves for revalidation annually, but the Health Professions Council proposes much less frequent revalidation. In that context, a smaller proportion of people would be scrutinised.

Secondly, the Foster review suggests use of the NHS knowledge and skills framework personal development planning system for revalidation. As you will be aware, that is a new system that is still bedding in. There is scope for inconsistency in comparison with the current system, under which people are revalidated by a small group of people who understand the profession.

The Convener: What percentage of psychologists are self-employed? I refer to people who simply put up a notice outside their door.

Ray Miller: I could not answer that in terms of a percentage. We know that, even among those who—

The Convener: You cannot even guess.

Ray Miller: I would not like to guess, because a number of psychologists who are employed in areas such as the health service carry out private practice as well. The number is potentially quite high.

The Convener: Thank you for taking the time to come and see us.

For the moment, I ask committee members to note the BPS's arguments, which we will consider when the SSI appears. At that time, we will have an opportunity to put the issues to the minister.

Helen Eadie: I do not disagree, convener, but there is also a point to be included in our legacy paper. This is yet another case that shows that a protocol needs to be established. When Westminster discusses a health issue that impacts on the whole of the UK, there must be prior consultation with us.

The Convener: Yes. That point is well worth taking on board.

Subordinate Legislation

Food for Particular Nutritional Uses (Addition of Substances for Specific Nutritional Purposes) (Scotland) Amendment Regulations 2006 (SSI 2006/556)

The Convener: That ends the public part of our meeting.

14:23

Meeting continued in private until 14:43.

14:23

The Convener: We are asked to consider the regulations, which are subject to the negative procedure. The Subordinate Legislation Committee raised no issues on the regulations. No comments were received from members and no motion to annul has been lodged.

Does the committee agree that it does not wish to make any recommendation on the instrument?

Members *indicated agreement.*

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