This briefing describes the paper the Professional Standards Authority (PSA) published in August 2015 on “Rethinking regulation”. The paper is available at: https://www.professionalstandards.org.uk/library/document-detail?id=f32e5b9e-2ce2-6f4b-9ceb-ff0000b2236b

Background

The Professional Standards Authority (PSA) for Health and Social Care promotes the health, safety and wellbeing of patients, service users and the public by raising standards of regulation and registration of people working in health and care. It is an independent body accountable to the UK Parliament.

It oversees the work of nine statutory bodies that regulate health professionals in the UK and social workers in England. In England social workers are regulated by the Health and Care Professions Council (HCPC) which is one of the nine statutory bodies that the PSA oversees. There are separate arrangements for the regulation of social workers in Scotland, Northern Ireland and Wales.

Summary

The ‘Rethinking Regulation’ paper covers the whole scope of the role of the PSA and is not specific to the regulation of social workers or any particular group of health or social care workers. The paper argues for a radical overhaul of regulation so that it supports rather than stands in the way of the changes proposed in health and care services. Important elements of the argument for change it puts forward are the need to ensure regulation is able to work flexibly in the current rapidly changing organisational and professional environment. The PSA argues for improved assessment and management of risk in regulation. It also calls for a more coherent system which uses common principals for regulation of individual practitioners and has coherence across the regulation of practitioners and at the system and organisation wide levels of inspection and regulation.

Why is the PSA Suggesting Radical Change is Needed?

The paper sets out some of the history and background to the development of the regulation of the health and care workforce. It argues that the piecemeal development of regulation often in reaction to particular events or changes in practice means there is no coherence to the current system, it is asked to do too much and things it should not do or cannot do, that there is a lack of overview of what it can or cannot achieve and that it is costly without much evidence of its effectiveness.
One of the most important criticisms made is that it is very difficult to keep track of the total number of organisations involved in regulation, inspection, audit and scrutiny of different aspects of health and social care services. This makes it very difficult for members of the public to navigate and understand who is responsible for what. The organisations involved also have to manage their boundaries about who is responsible for what. Most critically it highlights the lack of coherence between the regulation of individual professionals and the role of system and organisational regulators such as the CQC and Ofsted.

The report says “There is no overarching design for these arrangements, nor any sense in which they have been fashioned to make them coherent or efficient.” It argues for “… a reassessment of the role of regulation in promoting safety and quality, followed by a deliberate and considered re-design of the institutions and processes of regulation.”

**How Does the PSA See the Problem?**

The PSA paper describes a system which has grown in response to specific stimuli but with no overarching design or design principles. The system is responsive so consistently behind trends and the development of services. It is complicated and incoherent. The paper points out the growth in fitness to practice decisions which the PSA has to review from 590 in 2004/05 to 4,043 in 2014/15. Though the number of fitness to practice hearings is small relative to the number of staff registered the continuing instances of harm to patients and those cared for is of wide public concern. Their work has shown that there is a lack of evidence of how regulation influences the behaviour of those regulated and how circumstances support the resilience of the vast majority of professionals.

**Managing Risk in Health and Care**

The paper argues that regulators need to redefine the outcomes they are seeking to achieve and rethink how those outcomes can be achieved. An important component of this is how the issue of risk in health and care is managed. They see understanding of risk as crucial to getting regulation right so that regulation is proportional and appropriate to the level of risk to those receiving services. Regulation needs to ensure it is not creating rigidities which inhibit innovation or give the impression that risk of harm can be eliminated as opposed to managing the hazards that inevitably arise in practice.

The approach the PSA advocates is the development of a consistent risk assessment methodology.

**Relationship of Professionals to the Organisations They Work In**

Another area the paper highlights is the gap between the model of professional regulation based on the idea of the autonomous self-managing professional and the reality of professionals working in large organisations and as part of complex multi-disciplinary and multi-agency teams which will have very considerable influence on what the individual professional can or cannot deliver in terms of quality of care.

The report says: “The evidence of the link between the behaviour and competence of people providing care and the contextual environment in which they do so is now compelling, both from human factors research, but increasingly now also from in terms of human psychology. It seems strange to us therefore that people are regulated separately from the systems and places in which they work.”
The paper argues for “…a more nuanced, more sophisticated use of professional and system regulation in concert to ensure that professionals are personally able to provide good care and are supported to do so within their workplace.”

For social workers and social work managers and leaders there is a clear link between this thinking about regulation and the development of professional expectations as set out in the Knowledge and Skills Statements for social workers, practice supervisors and practice leaders.

**The Role of System Regulators**

The report highlights the potentially confused role of system regulators with their roles for improvement, inspection and regulation. While the report is particularly focused on health and care regulators i.e. those regulating the NHS these concerns and potential conflict of role equally apply to Ofsted as it has developed an improvement role within children’s social care.

The report recognises that independent evaluations of the work of the NHS regulatory bodies have shown they have had a positive impact but goes on to say “it is not clear whether system regulators have improved the quality of care in a significant, sustained way, or if the benefits of this approach outweighs the very considerable cost.” Given this cost the report says “there is no firm evidence on which to base decisions about what the goals should be, what to measure and no agreed way to evaluate the impact of regulation on quality of care.”

**Ideas for Change**

The paper argues that there needs to be more focus on what works and on reducing harm and a better understanding of risk and consistent methods for assessing risk so the correct regulatory approach is used in relation to the risks presented.

This would be achieved by shared objectives between professional and system regulators e.g. CQC, Ofsted and an approach that supports registrant professionalism and does not overburden them with rules and guidance to the detriment of performance.

The report notes the contradictory messages about aspirations for a learning and no blame approach while at the same time government passes legislation to criminalise ‘avoidable harm’.

The report advocates re-design of the regulatory system “…to encourage and support people and individuals and as teams to drive achievement and improvement.” “It is clear that the regulators role is to set standards and check they are met and should not be involved in improvement work”. The report is concerned that if regulators are involved in improvement they will lose objectivity and end up “marking their own homework.”

The report wants to see an approach which supports professional standards of conduct and behaviour which is based on what works. From the research they have commissioned they have found that there is little evidence that the standards have any direct influence on registrants’ behaviour. They suggest regulators need to focus on how they can support the prevention of harm and should focus on “defining the behaviour and other outcomes that the regulator wishes to see, together with an understanding of what interventions will support that behaviour being consistently and sustainably demonstrated by registrants.” From their research they identify the benefits of there being ‘reflective spaces’ for registrants that are not part of the formal regulatory process, for registrants where small problems can be addressed and prevented from escalating.
There is recognition of the dynamics of teams which can be so important to allowing harmful behaviours to develop or be sustained and conversely to be tackled and ended. The report suggests that tackling the dynamic situations in which people work to prevent harm means engaging registrants in developing a culture where people are willing and able to challenge each other. Developing such cultures and practices is not easy and requires a management and organisational environment which supports this approach. The report identifies five issues that act as barriers to such development:

- Inconsistent staffing;
- Problems with support systems and structures;
- High workload pressures and multiple competing priorities;
- Organisational and professional culture; and
- Widespread lack of process design and standardisation.

All of these will be familiar to those working in children’s services and help to make very clear the need for links between the regulation of individuals and organisations.

Finally the report argues for the need to re-design regulation to support innovation and change in the shape of services for the future. It is critical of the current approach as too often putting constraints on practitioners who wish to advocate. It says:

“It is time for a more nuanced, more sophisticated use of professional and system regulation working in concert to ensure that professionals are personally able to provide good care and are supported to do so within their workplace. If regulation was going to improve care, it would have done it by now. So it’s time to improve regulation.”

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