

**The UK
Inter-Professional
Group**

PROFESSIONAL REGULATION

A Position Statement by the UK Inter Professional Group

The UK Inter Professional Group comprises the following professional and statutory bodies:

Institute of Chartered Accountants in England and Wales
Association of Chartered Certified Accountants
Faculty and Institute of Actuaries
Royal Institute of British Architects
Architects Registration Board
General Council of the Bar
Royal Society of Chemistry
British Dental Association
General Dental Council
Engineering Council (UK)
Health Professions Council
Chartered Insurance Institute
Law Society
Chartered Institute of Library and Information Professionals
British Medical Association
General Medical Council
Nursing and Midwifery Council
General Optical Council
Association of Optometrists
College of Optometrists
Chartered Institute of Patent Agents
Chartered Institute of Personnel and Development
Royal Pharmaceutical Society of Great Britain
British Psychological Society
Institute of Chartered Secretaries and Administrators
Royal Institution of Chartered Surveyors
British Veterinary Association
Royal College of Veterinary Surgeons

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Overview

Questions about professional services, consumer protection and how professionals are regulated are now commonplace. The United Kingdom Inter-Professional Group (UKIPG), which exists as a forum for the professions and is itself concerned with the effective regulation of those providing professional services, welcomes this debate.

The UKIPG considers that a profession must have a governing body which sets standards of education as a condition of entry and achievement of professional status and which sets ethical standards and professional rules which are to be observed by its members. These rules are designed for the benefit of the public and professionals in breach of such rules are subject to disciplinary action. This may ultimately result in the loss of professional status.

The continuing existence of such professional bodies is an important public protection and such bodies in recent years have sought to improve the protection of the public through greater statutory powers, more consumer-focused codes of practice, and through revalidation processes. Evidence suggests that entry to the professions, continuing membership of the professions, and ethical codes are much tougher now than they were even ten years ago.

Professional regulation cannot, however, be a guarantee against the failure of professional services by individual members, nor can it be a substitute for other mechanisms for redress such as the civil and criminal courts or a substitute for the management of professional staff in the workplace. Rather, it is part of a spectrum of regulatory mechanisms which, taken together, are designed to protect consumers. Since the first publication of this document, the UKIPG has addressed the revalidation of competence and has considered some guidance for its member Bodies. This is at Annex B.

A long established tradition

The United Kingdom in common with other developed nations has a long established tradition of recognising professional qualifications. Those holding such qualifications and practising as professionals are expected to act with integrity, skill, independence and knowledge in a defined area of expertise.

The UK is, however, unique in having established over the past 100 years a system of professional regulation that has been adopted in many parts of the world as a credible and cost-effective means of upholding professional standards, and thereby protecting the public.

In the UK, professional regulation is provided, in part, through a regulatory framework which allows each profession to have an appropriate degree of independence in setting professional standards whilst allowing Government to legislate, where appropriate, for the public interest. Those bodies that do not have a statutory framework often adopt the same approach through their own rules. The professions themselves welcome this partnership with Government and, in many cases, seek to strengthen the regulatory framework in order to raise standards and provide for the better protection of the public.

Instances of the professions' relationship with Government in strengthening professional regulation are:

- The Government's establishment of new regulatory bodies for the teaching and social work professions;
- The health professions' work with Government to update and strengthen the legislation under which they currently operate;
- The new system for the non-statutory regulation of the accountancy profession, through the Accountancy Foundation.

Under Attack

In recent years, professional regulation has come under the spotlight. There is considerable interest, rightly, in individuals or practices which fall short of agreed professional standards, or services that are judged to have been undertaken not in the public interest.

Recent examples have, nevertheless, raised questions about the professions, particularly as to whether our existing systems of regulation are adequate. A Public Enquiry has examined the background to the tragic events in the cardiac paediatric surgery unit in Bristol. A second issue of consumer concern focuses on the outcome of the pensions' miss-selling scandal of the late 1980s, despite the fact that, at the time, no professional regulatory issues were involved.

In addition to existing regulatory systems, complementary systems of regulation are being developed by Government in some areas. New bodies are being set up which, whilst having a quite different task to that of professional regulatory bodies, nevertheless, are part of what should be a properly co-ordinated and well integrated system of public protection. There is some confusion about how these various regimes will work together on the ground. For example:

- The wide-ranging powers in relation to financial regulation of the Financial Services Authority.
- The Commission for Health Improvement, with its inspectorial role.

The Government's own Better Regulation Task Force set out five principles of good regulation in January 1998 - transparency, accountability, targeting, consistency and proportionality. The UKIPG fully supports these principles.

In its report of September 1998, the Task Force expressed the view that regulatory systems cannot be a substitute for a citizen taking responsibility for his or her own life, and has endorsed the need for flexibility, particularly in relation to regulatory regimes. The Task Force clearly saw professional regulation as part of the overall picture and an appropriate alternative to state intervention. The Task Force published 'Alternatives to State Regulation' in July 2000, including one traditional professional area within its case studies.

The National Consumer Council issued a Report entitled "*Leave it to the Professionals?*". That Report took a rather different stance, pointing out that consumers have to trust professionals to act in their interests, making effective regulation a key element of consumer protection. It subsequently published '*Models of Self-Regulation*' in October 1999.

Not a substitute for

The professions themselves, both individually and collectively, are working to fulfil Government and consumer expectations of effective regulation. It is important, however, to understand the role of regulatory or similar bodies and to see that role in the context of a spectrum of regulatory mechanisms.

Professional regulation cannot be a substitute for systems of civil redress. The citizen quite rightly should have recourse to the law when things go wrong. In fact, the disciplinary actions taken by regulatory bodies in relation to individual members of a profession are designed to prevent future problems by restricting the professional practice of that individual. Only exceptionally are they designed to provide compensation for past events. A small number of regulatory bodies have moved towards introducing mandatory schemes of third party dispute resolution, leading to the compensation for the aggrieved client.

Similarly, professional regulation is not an appropriate first port of call for matters that are more properly for the police or the Criminal Courts. It may well be that as a result of action taken by the Courts, a

professional is effectively removed from the profession by the professional body or "struck off" the Register, but this is on the grounds of safeguarding the public interest and not the punishment of an offence. It is for the Courts to exact society's penalty and for professional bodies to consider the risk to the public of continued professional practice.

Professional regulation is also not a substitute for but complementary to the proper management of staff by an employer. The majority of professionals are now employed and it is for those who employ them to take responsibility for the actions they take as employees. It is not in the interests of the public, or of the professions themselves, for employers to avoid taking action on the grounds that professional employees will be dealt with in due course by professional bodies. Nevertheless within some professions, individual employers, who are themselves members of professions, may be accountable to their professional body for the action of employees.

Finally, and perhaps most importantly, professional regulation is predicated on the understanding that members of professions will act with integrity and in a client's interest. There is overwhelming evidence that this holds good for the vast majority of professional people, but no regulatory regime can work if these basic expectations are not met. No matter how good regulatory systems are, they cannot provide a guarantee against professional failure on the part of any particular individual practitioner.

Appropriate Safeguards

Some critics of the UK system of professional regulation have fallen into the trap of trying to find simple solutions and to meet all expectations - redress for the citizen, retribution by the state, discipline in the workplace, public protection. Professional regulation can only be part of that picture but an important part, which provides significant and effective safeguards.

The professions have been highly effective in maintaining and raising standards of entry. They are certainly not closed shops but entry is necessarily restricted to those who have the required level of competence and this is an important public protection. Entry standards are open and transparent, with degree courses and examinations competing for the best students. Many professional bodies have responsibility for standards of publicly funded courses as well as professional examinations. They have an excellent record in ensuring that UK professional standards are world class.

The professions have developed Codes of Practice and Conduct for their members, which are increasingly exacting in line with public expectations. These codes are intended to reinforce professional ethics and are increasingly backed by statute. Recent examples of good practice, which are now integral to most Codes of Practice, are continuing professional education to ensure a practitioner's knowledge and skills remain up-to-date; practice-based complaints procedures to ensure a client's concerns are dealt with at the earliest opportunity; and appropriate professional indemnity insurance.

The existence of sanctions to be applied when Codes of Practice are broken is an important public safeguard. Few professionals, whatever actions have been taken against them by the Courts, an employer or another public body, would regard being "struck off" by their professional body as anything other than the ultimate sanction. As such, it cannot be used lightly and those professions whose procedures are the subject of statute and whose proceedings are judicial in nature, are required to ensure that the rights of all parties to the proceedings are properly observed. What the public expects in terms of public relations cannot be the driving force behind essentially judicial decisions. Nevertheless, the sanctions are there to be used and are used. It is a system of exemplary justice *pour encourager les autres*.

Alternatives

Those who seek to change the existing arrangements may not have considered the consequences or what alternatives there might be. The existing arrangements ensure that the professions themselves accept significant responsibility for the actions of their members. There are a number of different models, but the one which does need careful analysis is the transfer of this responsibility to Government.

In fact, Governments have rarely wished to take responsibility for the individual in this way. The UK way of doing things is for Government to set the framework, to make clear the expectation in terms of procedure, penalty and the exercise of judgement, but to leave these judgements to other agencies. In the world of professional regulation, this is primarily left to the Courts and to non-Government organisations such as professional and statutory bodies. It is hard to see the State wanting to centralise this process and take these matters into state control, particularly given the fact that the current arrangements make no call on public funds but are funded by professions themselves.

Most importantly, however, the current arrangements rely on professional expertise and peer judgement, perhaps the harshest judgement of all. Members of a profession sit in judgement on members of their own profession. In so doing, they consider what might reasonably be expected in the circumstances and must draw on considerable professional expertise in exercising such judgement. Any alternative, whether it involves predominantly lay people whose value in building public confidence is recognised, or Government employees, would be bound to rely on limited professional advice and input. It is hard to see what significant benefit would accrue.

What is important is that the public should have confidence in professional services and the systems by which professionals are allowed to practise. The important principles put forward by the Better Regulation Task Force and the consumer expectations described in the National Consumer Council Report are to be welcomed in taking forward the debate. The professions themselves see consumer protection as a cornerstone of professional standards.

Annexes

- A:** The Principles of Professional Regulation set out by the United Kingdom Inter-Professional Group
- B:** UKIPG Guide to the Revalidation of Professional Competence
(Issue 1 – developed during 2002 by UKIPG representatives)

PRINCIPLES OF REGULATION

Introduction

1. A Profession is an occupation in which an individual uses an intellectual skill based on an established body of knowledge and practice to provide a specialised service in a defined area, exercising independent judgement in accordance with a code of ethics and in the public interest.
2. Some areas of work are reserved by statute to members of a profession for the protection of the public, on the basis that the profession's governing body will ensure that those licenced to practice are properly qualified and conduct themselves in a professional manner.
3. A Governing Body may be established by Statute, by Royal Charter or incorporated as Company limited by guarantee. Governing Bodies are accountable to the public they serve and should be independent of all other interests.
4. Governing Bodies are required support a fair and competitive market in which the public can make informed choices between the providers of professional services in each area, as well as between the qualified and unqualified.

Principles of Regulation

5. The purpose of Professional Regulation is to assure the quality of professional services in the public interest. The regulation of a profession involves the setting of standards of professional qualifications and practice; the keeping of a Register of qualified persons and the award of titles; determining the conduct of registrants, the investigation of complaints and disciplinary sanctions for professional misconduct.
6. All procedures for regulation should be open, transparent and auditable. Lay persons should be involved, where appropriate.
7. Governing Bodies should keep the standards of education, training and practice required to enter the profession under regular review and relevant to the needs of those who require professional services.
8. The competence of those seeking professional qualifications should be determined by peer review. In areas of work involving health, safety and environment, professional competence should be subject to periodic assessment and re-certification or re-validation.
9. Governing Bodies should require registrants to take a personal responsibility to monitor their own performance, to undertake such further learning and training necessary to maintain their competence, and to maintain their commitment to a high standard of professional conduct.
10. Governing Bodies should provide a clear and accessible complaints procedure which distinguishes between the investigation and the disciplinary process. Disciplinary procedures should follow the requirements of natural justice and include an appeal procedure to an independent forum. The outcome of any disciplinary hearing should be published.

(Principles reviewed May 2001)

GUIDE TO THE REVALIDATION OF PROFESSIONAL COMPETENCE

This outline framework has been prepared for the guidance of Governing Bodies responsible for the regulation of a profession, and who may be contemplating revalidating the professional competence of all or part of their list of registrants. Governing Bodies should adapt the guidance to their individual situation. The guidance relates to the revalidation of the competence of the individual and may not be wholly applicable to the revalidation of corporate or business competence.

Introduction

1. The UKIPG definition of a Profession is:

' an occupation in which an individual uses an intellectual skill based on an established body of knowledge and practice to provide a specialised service in a defined area, exercising independent judgement in accordance with a code of ethics and in the public interest.'

2. The UKIPG further defines the purpose of Professional Regulation as:

' to assure the quality of professional services in the public interest. The regulation of a profession involves the setting of standards of professional qualifications and practice; the keeping of a Register of qualified persons and the award of titles; determining the conduct of registrants, the investigation of complaints and disciplinary sanctions for professional misconduct.'

3. There is considerable public concern when professional practice falls short of expected standards or is judged not to be in the public interest. There is an increasing public expectation that a professional should be competent to current standards. The public must have confidence in professionals to follow a Code of Conduct, maintain their competence and only undertake professional tasks for which they are competent. There is therefore a need to have evidence of competence and for regulatory bodies to be more pro-active in maintaining professional standards, rather than merely reacting to complaints
4. The Revalidation of Professional Competence is a procedure for the periodic assessment of registrants holding professional qualifications to ensure that they are competent to practise to contemporary standards in the area in which they claim expertise.

Scope

5. There is a wide range of professional registers, from lists of members of professional bodies to statutory lists of those licensed to practice in a reserved area of work. Revalidation of Professional Competence would normally apply to all professionals who, through being on such registers, hold themselves out to the public as having expertise in their areas of work.
6. Many areas of work are reserved by statute to Approved Persons who are generally required periodically to revalidate their competence. The Government has determined that it is in the public interest for the competence of health care professionals to be revalidated.
7. It is also in the public interest for professionals engaged in all unreserved areas involving the health, wealth, safety and the environment of the individual to demonstrate through a transparent system of

revalidation that they have voluntarily kept up to date and are competent in their area of expertise. The public are not obliged to use such persons for such work nor is the work they do restricted to them.

8. Many Registers are generic and include professionals providing services in a wide range of specialist areas; revalidation may best apply to each specialist sub-set. Some Registers include non-active and retired professionals; revalidation would apply only to active members who should be clearly indicated on the Register and on revalidation may be shown to hold a current practice certificate or licence to practice.

Procedures

9. Revalidation procedures should be transparent and proportional to the risk of harm that incompetence of the professional might cause to the individual. It is not in the public interest for revalidation to be on a sample basis; all those registrants whose listing is subject to periodic revalidation of competence must be revalidated within the prescribed period. A revalidation system needs to be as administratively simple as possible in order to ensure that costs are not disproportionate.
10. The revalidation of professional competence requires professionals to demonstrate that they can meet current benchmark standards of practice in their area of work. The revalidation should be based on evidence provided by the registrant and assessed by a third party. A CPD record dependant on accumulating hours or points based on course attendance does not meet the basic requirements of revalidation. A written examination may not be appropriate.
11. The benchmark standards of competence should be set by practising professionals in the Governing Body with lay participation as appropriate. The terms in which the competence standards are set will vary in each profession and each area of work. For many professions work has already been done on knowledge and competency standards. The standards should relate to current practice.
12. The evidence to be provided by the registrant might include:
 - Evidence of recent and relevant experience
 - Evidence that they have kept up to date e.g. a record of relevant CPD in the context of a Personal Development Plan.
 - An appraisal of competence against the benchmark standards.
 - Evidence of good health and good conduct
13. The appraisal of competence may be self assessed, or undertaken by a professional mentor or colleague or as part of a performance appraisal by an employer.
14. Assessment of the evidence should preferably be by an independent third party peer review. It will probably be a consideration of a paper submission with the option to call for interview or to undertake a practice inspection. There is scope for evidence to be computer based, delivered over the internet. The assessors might be:
 - a. A professionally qualified administrator of the Governing Body, or
 - b. A peer registrant appointed by the Governing Body, or
 - c. An employer accredited by the Governing Body, or
 - d. A peer group of 2 or 3 with lay representation if appropriate,

- e. An appropriate combination of ‘a’ to ‘d’ above.

Assessors should be trained and those with a large work load paid.

Period of Revalidation

- 15. The period between revalidations varies from 12 months to 5 years. Twelve months might be appropriate for areas of work where professional incompetence could lead to serious personal injury or death. Twelve months is also the normal period for renewal of Registration with the payment of a subscription; some professions also requiring evidence of CPD and PI insurance.
- 16. Five years seems to be a better practice for revalidation of professional competence, if only because of the resources involved in a 100% sample. It is also compatible with the European Standard for the certification of skill (EN45013).

Cost

- 17. Although revalidation is in the public interest, the main immediate beneficiary is the registrant who is able to continue to practice in a reserved area of work or in an unreserved area to demonstrate current competence in the market. The cost should therefore be born by the registrant and may be tax deductible. Responsible employers may reimburse the registrant. The cost of not monitoring competence could be much greater and not just to the registrant.

Sanctions

- 18. Registrants failing a revalidation assessment should be given the opportunity to make good their deficiency, for example through a period of supervised practice or additional CPD. For a registrant on a Statutory Register, the ultimate sanction is to be ‘struck off’. For a registrant on a non-statutory register of professionals in membership of a professional body, the sanction might be to lose the annotation in the list of members that the registrant holds a Practice Certificate or is otherwise certified as of current competence. This may not involve the loss of a professional title. Care must be taken not to mislead the public if a non certified member is still able to offer professional services.
- 19. Registrants whose names are removed from a register or whose practice certificate or licence to practice is not renewed must have the facility of making an Appeal against the decision.

Accreditation

- 20. A Governing Body might seek to add to the standing of its Practice Certificate and revalidation procedures by having the certification procedures accredited to European Standards by the UK Accreditation Service (UKAS).

Note on the Professional Regulation Working Party of the UKIPG

The UKIPG has a wide and diverse range of interests. The full Group meets quarterly. To give sufficient attention, and to provide expert contribution to discussion of specialist topics, the UKIPG operates through Working Parties. Currently, these are:

- *Professional Regulation*
- *Further and Higher Education*

In addition, there are two wider Forums. These have an even broader membership across the professions and those who work with them. The two Inter Professional Forums deal with:

- *Europe and International Affairs*
- *Continuing Professional Development.*

The Professional Regulation Working Party deals with all issues impinging on the regulatory role of professional and statutory bodies. It cannot do this in isolation. Indeed, as a complementary booklet to this one has shown, the educational role of these bodies has a major impact on regulation. Moreover, with continuing developments (both in the European Union and within the World Trade Organisation) affecting the 'free movement of professionals', and the vital link between continuing competence to practice and regulation, the Working Party must keep in close touch with the two Inter Professional Forums.

The Working Party is chaired by Jane Hern, Chief Executive and Registrar of the Royal College of Veterinary Surgeons. Her predecessors were Ros Hepplewhite of the GDC and Chris Swinson of the ICAEW, who led much of the work on the original paper.

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