

Education Committee
20 September 2012
Research into the Effectiveness of Regulation

<u>Classification</u>	Public
<u>Purpose</u>	For decision
<u>Issue</u>	To consider and advise on the value of research exploring the effectiveness of osteopathic regulation and to make a recommendation that Council should commission such research.
<u>Recommendation</u>	<p>A. To consider and advise on the value of research exploring the effectiveness of osteopathic regulation.</p> <p>B. To recommend that Council agrees to commission research about the effectiveness of osteopathic regulation.</p>
<u>Financial and resourcing implications</u>	We have a budget ring fenced in the reserves in order to undertake appropriate research.
<u>Equality and diversity implications</u>	None.
<u>Communications implications</u>	If the proposal is agreed, we will take steps to publicise the research to all our stakeholders and we will publish any invitation to tender on our website and in appropriate publications to ensure appropriate academic expertise.
<u>Annex</u>	None
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Background

1. There is increasing interest in regulators demonstrating the effectiveness of what we do – that is through demonstrating that we have an effect on outcomes rather than processes.
2. Traditional models of regulation have been criticised as encouraging behaviours that do not deliver the outcomes that are expected as a result of regulation. See for example the following observations¹:
 - a. Regulation has supported the development of negative attitudes towards complaints processes and unintended consequences including:
 - i. The predominance of a regulatory complaints process as the regulatory perception, can lead to an unintended consequence 'defensive' approach to practice (including not reporting issues that should be reported to the regulator).² and ¹
 - ii. The 'vicious circle associated with current healthcare regulation, with NHS professionals and organisations trying to defend themselves against complaints but in doing so frustrating complainants to the point of driving them to litigation [because most complainants want an acknowledgement and an apology, but the regulatory complaints process is designed to do something different.]'³
 - b. Regulation can often lead to gaming, for example, people complete activities to remain registered or to tick a particular box, rather than to achieve desired regulatory outcome. Hood has said that targets can achieve unintended consequences as follows: Targets set at a minimum level 'can destroy incentives for achieving excellence'. Targets set at a minimum level can 'unintentionally encourage managers to hold back on their achievements, in case higher achievement leads to higher targets'. Targets can cause managers to 'focus on incentivised activities at the expense of others'. We see some of these effects in our current CPD

¹ Please note that this is not meant to be a literature review – only a narrative exploring some of the issues about regulatory interventions and their outcomes with a view to framing a research question which will support the development of effective osteopathic registration. It is expected that a formal piece of academic work would explore and challenge the suggestions in this paper where appropriate and would develop an appropriate theoretical framework to inform the research.

² See, for example, McGivern G et al, *Statutory Regulation and the Future of Professional Practice in Psychotherapy and Counselling*, available at <http://www.kcl.ac.uk/sspp/departments/management/news/StatutoryRegulation1.pdf> and accessed on 10 September 2012.

³ See, for example, McGivern G et al, *Statutory Regulation and the Future of Professional Practice in Psychotherapy and Counselling*, available at <http://www.kcl.ac.uk/sspp/departments/management/news/StatutoryRegulation1.pdf> and accessed on 10 September 2012.

scheme for example. There are ways of mitigating these effects including face to face scrutiny.⁴

3. However, positive statements encouraging the regulatory outcomes that we might want to achieve are found too. For example:
 - a. The important of formative spaces – ‘I tell them that it’s good if they fail with me... for me to see the warts and all... because we can change behaviours and turn things around. I preserve their confidentiality and get them feeling... it’s possible to have the support of colleagues, and it’s possible to show one’s vulnerabilities’.⁵ ‘Formative spaces should be preserved in regulation.’ It is argued that formative spaces support and allow honest reflection and action to be taken to support areas of development.⁶
 - b. ‘Registration positive’ work spaces were noted with registrants experiencing a positive impact of registration including ‘increased communication about conduct issues’ and ‘actively seeking out opportunities for supervision in relation to conduct case outcomes and welcomed the increased opportunities for training.’ This is one small finding in a very interesting although small study by Dr Lel Meleyal which also explored some negative consequences of regulation as outlined above.⁷
4. This paper explores a proposal for undertaking some research about the effectiveness of regulation in the osteopathic context to better support us to target our activities to be most effective and efficient to support patient safety and quality of care.
5. The timing is important. We have recently completed the registrants survey which indicates that just over 80% of registrants are fairly confident, confident or very confident that they are well-regulated by the GOsC⁸. However, there are

⁴ See, Hood C., *The Numbers Game*, Ethos available at <http://www.ethosjournal.com/archive/item/49-the-numbers-game?showall=&start=1> and accessed on 10 September 2012.

⁵ See, for example, McGivern G et al, *Statutory Regulation and the Future of Professional Practice in Psychotherapy and Counselling*, available at <http://www.kcl.ac.uk/sspp/departments/management/news/StatutoryRegulation1.pdf> and accessed on 10 September 2012.

⁶ See McGivern G, *The Visible and Invisible Performance Effects of Transparency in Medical Professional Regulation: Implications for the GMC*, available at http://www.gmc-uk.org/McGivern_The_Visible_and_Invisible.pdf_30868616.pdf and accessed on 10 September 2012.

⁷ See Meleyal L., *Reframing conduct: A critical analysis of the statutory requirement for registration of the Social Work Workforce*, 2011, available at http://sro.sussex.ac.uk/7665/1/Meleyal%2C_Lel_Francis.pdf and accessed on 10 September 2012. There is also an interesting article about this by Exworthy M, *The teacher and the cop: the role of 'private space' in increasingly transparent clinical practice*, 2011, *Journal of health services research and policy*, 2012 Jan;17(1):60-2. Epub 2011 Oct 18

⁸ GOsC, Registrants Survey, 2012, planned for publication in October 2012.

also indications that registrants are not achieving the regulatory outcomes that we might desire. For example, the Registrants Survey indicates that a small, but significant proportion of osteopaths would not take action if they were concerned about a colleague's behaviour or competence.⁹

6. The timing is important too, as we have almost completed the revalidation pilot which provides a significant cohort of people to explore the importance of formative spaces and educational feedback and the effectiveness of regulation. We have also almost completed a large amount of supportive work on the implementation of the Osteopathic Practice Standards. Few regulators have had the opportunity to undertake regulatory interventions on this side of the spectrum with such a large sample within their population. This means that much research so far has been conducted with registrants whose main experience of regulation is the more traditional approach outlined above.

Discussion

What will this research do?

7. The research is designed to help us to explore which regulatory interventions have been successful in helping us to achieve the regulatory outcomes that we are seeking in a profession that works mostly independently and without teams or employers.
8. There are two proposed research questions:
 - a. What are the outcomes that osteopathic regulation seeks to achieve?
 - b. What regulatory interventions and other activities best support osteopaths to deliver those professional regulatory outcomes?
9. It is expected that the research questions will be framed using an appropriate theoretical framework to ensure academic independence and integrity in the work.

What are the outcomes that osteopathic regulation seeks to achieve?

10. The researchers will first work with us to precisely define the outcomes that we are seeking to achieve based on our own definitions and also any relevant literature.
11. As osteopaths work in a mostly independent context and without teams or employers around them, it is important for us to understand what outcomes we are seeking to achieve in this context (as distinct from a context with many more players in the firmament).
12. These outcomes might include, but are not limited to:
 - a. Complying with the Osteopathic Practice Standards.

⁹ See above

- b. Working in partnership with patients to put their interests first.
- c. Working within the limits of competence.
- d. Exploring strengths and areas for development in practice.
- e. Seeking feedback on practice.
- f. Seeking help and advice to support the development of practice.
- g. Exploring adverse events or near misses and making changes to practice where necessary.
- h. Supporting colleagues to develop practice.
- i. Taking action when patients are put at risk, including, where appropriate, addressing issues directly with colleagues, with another local body or reporting colleagues to the regulatory body.

What regulatory interventions best support those professional regulatory outcomes?

- 13. Regulatory interventions include any functions that we undertake and also the way in which we undertake them.
- 14. We are hoping to explore our approaches to regulatory interventions to explore which work well and to build on these.

Why is this research important?

- 15. We are interested to understand what regulatory interventions, if any, have supported effective regulatory outcomes including the development of professional behaviours and safe and effective practice without the unintended consequences of regulation as set out above. We currently have little direct evidence about this.
- 16. A better understanding of what regulatory approaches are effective will help us to better target our regulatory approach in the future and to better support patient safety and enhanced quality of patient care.
- 17. The CHRE have also commissioned and published a Scoping Study about 'the effects of health professional regulation on those regulated' by Dr Oliver Quick. Particular findings from this study noted that:
 - a. The literature shows an under use of 'behavioural theory'
 - b. That in a limited way, the available research shows that behavioural change is more likely when a combination of factors is available including: 'contracts, clinical guidelines, professional regulation, leadership, law and financial incentives.' And
 - c. That there is a tension between the exercise of clinical governance and clinical judgement.¹⁰

¹⁰ See Quick O., A Scoping Study on the effects of health professional regulation on those regulated, 2011, available at https://www.chre.org.uk/img/pics/library/110516_Literature_review.pdf and accessed on 10 September 2012.

18. It is worth noting that osteopathy and its distinct context will not have featured in this review as no research in this area has been carried out in osteopathy to inform the literature review. It is also worth noting that some of the factors identified above are not, perhaps, as present in osteopathy, as perhaps in some other professions, which means that the findings will not necessarily be as applicable in the osteopathic context.
19. The CHRE Performance review also confirms that the GMC have 'commissioned research concerning the factors that influence doctors' decisions on whether or not to follow guidance and/or raise concerns where patient care or safety may be at risk, and the barriers that prevent them from doing so. The outcomes of the research will inform decisions about the future formats of guidance and learning materials. It will also help the GMC develop its approach to promoting awareness and use of the guidance, by both patients and colleagues. We consider that the outcomes of this research will be useful for the other regulators in understanding the behavioural impact of their guidance.'¹¹
20. Again, whilst there will be much to learn from the GMC's research the absence of many of the factors outlined above in relation to the Quick study may challenge the generalisability of some of these findings in relation to osteopathy.
21. Osteopathic regulation has adopted a more active approach to regulation – encouraging adherence to standards targeted to all osteopaths and awareness of standards with other stakeholders, rather than a passive approach – only intervening when something has gone wrong. This is evidenced by our extensive engagement with registrants both in writing but also in person. For example:
- a. Almost 20% of the profession have attended regional conferences this year to hear about research informing complex areas outlined in the Osteopathic Practice Standards.
 - b. The Chief Executive has spoken with around 800 osteopaths (around 17% of our registrant population) as part of his commitment to visit all the local regional communications groups in the UK.
 - c. Almost 10% of the registrant population remain on the revalidation pilot as at September 2012. Informal feedback, from some participants, about the revalidation pilot has indicated some benefit to the supported formative self-reflection, peer- reviewed activities and self assessment activities in terms of registrants reporting the achievement of some of the regulatory outcomes that we have set out above.
 - d. A relatively high response to our recent registrant's survey (30% of the population)¹²

¹¹ See CHRE, Performance Review Report 2011-12, para 7.23, page 14 available at [http://www.chre.org.uk/img/pics/library/120620_CHRE_Performance_review_report_2011-12_Vol_II_\(Colour_for_web_-_PDF\)_1.pdf](http://www.chre.org.uk/img/pics/library/120620_CHRE_Performance_review_report_2011-12_Vol_II_(Colour_for_web_-_PDF)_1.pdf) and accessed on 10 September 2012.

¹² As above

- e. Regular seminars with osteopathic educational institutions and other groups to support the development of collective strategic leadership in this sector.
- f. Production of patient leaflets to support patient expectations of osteopathic treatment.
- g. Activities to support the implementation of the Osteopathic Practice Standards. It is of note that awareness of the CPD Discussion Document as at March 2012 (when it had been publicised in the monthly e-bulletins and also the Osteopath, but no other awareness activities had been undertaken) was at 55% whereas the awareness of the Osteopathic Practice Standards (with increased awareness activities as outlined in our Osteopathic Practice Standards implementation paper) was at 72% according to our recent registrants study¹³.

22. It is submitted that it is an appropriate time to embark on this work to support the development and regulation of the profession as we move towards legislative change in 2017.

How will we undertake the research?

23. We are looking for advice and guidance from the Committee today to explore the matters set out in this paper.

24. If the Education Committee is content, we would invite the Committee to recommend this work to Council incorporating the advice and guidance of Committee members. Next, we would plan to seek the agreement of Council along with agreement to a selection mechanism involving Council and Education Committee members.

25. If Council is content to agree the work, we would plan to prepare and issue an invitation to tender for the research for advertisement during November to enable the research to begin to capture the cohorts that we have discussed above.

Recommendation:

- A. To consider and advise on the value of research exploring the effectiveness of osteopathic regulation.
- B. To recommend that Council agrees to commission research about the effectiveness of osteopathic regulation.

¹³ GOsC, 2012, Planned for publication in Autumn 2012.