One Half of a Dialogue with Enthusiasts for HPC Regulation

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Initial Posting: Arthur Musgrave on July 29, 2009:
My name is Arthur Musgrave and I work in private practice in Bristol. I am accreditedby the British Association for Counselling and Psychotherapy [BACP] as a counsellor/psychotherapist and as a supervisor of individuals and groups. For eight years I have belonged to a Full Member Group of the Independent Practitioners' Network. I regard these two means of making myself accountable as complementary.

During the 1990s I served for a number of years on the Management Committee of what was then the British Association for Counselling as well as on its Standards and Ethics Committee, but I resigned from both over the organisation's approach to professionalisation, which seemed to me to be putting the interests of practitioners before those of the public at large.

"My name is Arthur Musgrave and I work in private practice in Bristol"

I'm going to argue here against a register of counsellors and psychotherapists that involves the protection of titles, and – in particular – against Health Professions Council [HPC] regulation, which I think is an especially bad idea. If regulation is to be introduced at all, it should be done in the most effective way possible and two general principles are crucial – The advantages of any specific form of regulation must outweigh any unintended negative consequences. The merits and demerits of any particular course of action should be dealt with by argument and by looking at all the relevant evidence and experience.

Although the Government has insisted that counsellors and psychotherapists "will be regulated by the Health Professions Council", in her introduction to the White Paper Trust, Assurance and Safety that kicked off this whole exercise, Patricia Hewitt made it clear that any such regulation must have the confidence of both the public and professionals. She listed five key principles "that should underpin statutory professional regulation". These are ambitious. But what if – as seems likely –

none of these are met? Will HPC regulation therefore be halted?

What's become clear is that the HPC can only regulate within very particular, predetermined boundaries. For example, when the HPC began its work, it made what it termed 'A Call for Ideas'. When these were summarised for the body charged with working out the detail of regulation, they were presented as anecdotal assertions (ie "one person says this, another organisation says that…"). There was no attempt to set HPC regulation in context or to examine the research evidence, and the day long meeting that had been scheduled was called to an end just after lunch. In short, if there were a better way of regulating counselling and psychotherapy, the HPC wasn't going to be in a position to deliver it, and – scandalously – no attempt was to be made even to consider it.

The HPC appears to have taken no account of what is by far the most substantial study of psychotherapy regulation ever undertaken. This is an academic 4-volume study that looks into the variety of regulatory systems adopted by the different states in the USA. The author of this study, Professor Daniel B. Hogan, concluded that, at least as far as psychotherapy is concerned, the unintended negative consequences of the kind of regulation currently being considered in the UK by far outweigh any positives. Put briefly, the standards used to regulate the field tend to involve arbitrary, non-evidence-based criteria that protect existing vested interests and thereby both reinforce the status quo and ossify therapy practice. Hogan's view is that, because we know far too little to be able to put together a regulatory system based on appropriate rational (as opposed to emotive) criteria, we need to exercise considerable caution, to conduct detailed research into different regulatory systems, and to seek to create an accountability framework that is not only effective, but which is congruent with the values and ethics of therapy work.

Although his original study was published in 1979, Hogan has produced a much more recent set of recommendations tailored to the situation in the UK. I want to draw attention to just two of these. One is that, in order to deal with the most serious kinds of abuse, we consider possible changes to the criminal law (he writes as a lawyer) – though it would first be necessary to do a proper risk analysis and to determine the nature and extent of the problem (eg to what extent do counsellors and psychotherapists sexually, financially or emotionally exploit their clients, and in what way is the existing criminal law unable to address this exploitation?). Changes of this kind, he argues, might well, on their own, obviate much of the need for regulation via the HPC.

The other recommendation is to develop conflict resolution or mediation schemes. Whereas taking out a formal complaint is almost bound to entail the assumption that therapy has irretrievably broken down (and so easily become a self-fulfilling prophecy), engaging in a carefully designed, scrupulously fair and

appropriately transparent conflict resolution procedure constitutes a progressive step towards repairing what has gone wrong. A small scale pilot scheme indicates that around 50 per cent of matters notified as potential complaints are resolved when complainants have someone allocated to them to help them clarify matters and identify what remedy they want to pursue. Only then is the therapist notified of the complaint. Another 20 per cent of potential complaints are resolved once the therapist has access to similar help. A further 20 per cent or so are resolved through formal face-to-face mediation, and only about 10 per cent go beyond this into a traditional complaints procedure. OK, this might not be incontrovertible evidence, but it is far more "evidence" than the government is drawing upon in its non-evidence-based imposition of HPC regulation! At the very least, the case for caution, and for more careful research before imposing any regulatory system, seems quite unanswerable.

Over the last couple of decades, the British Association for Counselling and Psychotherapy [BACP] has developed a well respected complaints procedure, but it has been so puzzled by how few clients use it that it has supported research with the title, 'Why don't people complain?' It is a considerable indictment of an organisation of some 30,000 members that BACP has never managed to build an initial mediation stage into its complaints procedure. In the present context, what is even more concerning is that the HPC's procedures specifically rule out mediation until after the formal hearings are over – an absurd state of affairs.

Professor Hogan argues for an approach that is far more subtle than the blunder-buss approach to regulation based on title protection, to one that devises a legal framework that facilitates the development of good quality, low-cost, accountable and effective services that maximise access to the psychological therapies. He makes a number of other recommendations that there isn't space for me to address in this initial posting, but the essence of his approach is to be proactive and innovative so as to put the public in a position to make informed decisions based on relevant information.

The reason it is important to weigh up the merits and demerits of any approach to improving public protection is that no approach is likely to be perfect. HPC regulation uses the blunt, non-discriminating weapon of legalistic procedure to stop both the unregistered and the deregistered from using a protected title. But both are free to use any other title, to continue to work with existing clients, and to continue to attract new clients through word of mouth recommendation! All they can't do is lay claim to a protected title either directly (eg through advertising) or indirectly (eg by implication). At best, the protection this provides is partial – and the propaganda on behalf of HPC regulation may well cause some to lower their natural protective guard, and hence, ironically, be more susceptible to abuse! This is – to put it mildly – deeply unsatisfactory. And it simply won't do to respond to this by arguing that the state

should therefore regulate by function as well as by title, as the diversity in the therapy field has made it impossible even for therapists themselves to define what is and what is not 'psychotherapy' or 'counselling' – let alone state functionaries who know that much less about the field.

The situation is not helped by the fact that some of the most widely circulated material in favour of HPC regulation is emotive and based on mere assertion. For example, in May 2009 BACP published in its journal Therapy Today a piece by Jonathan Coe from Witness that was accompanied by a lengthy case history, which (misleadingly) asserts that "following statutory regulation the therapist… would not be able to continue to practise as a counsellor or psychotherapist". This isn't the first time that BACP has argued the case for regulation in this way. Three years ago in May 2006 it published another lengthy personal account, which (also wrongly) concluded with the assertion, "State regulation provides the best way to ensure that professionals offering psychological support can be held accountable."

But for me the biggest stumbling block with HPC regulation is the medical model. Many argue that this isn't an issue – and quote the case of arts therapists who have been regulated by the HPC for years, seemingly without difficulty. Evidence is emerging that, in the longer term, HPC regulation is likely to considerably restrict the range of talking therapies available in society as a whole – which of course constitutes a major client interest. A raft of changes emanating from the Department of Health is, at present, profoundly reshaping psychotherapy and counselling. The uncritical and un-researched drive to HPC regulation also needs to be seen within the context of a wider shift in the field as a whole. This shift is powered by a commitment to a particular version of so-called 'evidence-based practice' that, in reality, is based on a highly selective understanding of what constitutes relevant evidence, and which predominantly favours one therapy approach – CBT – which is a highly inappropriate 'treatment' for many presenting problems.

The only 'brands' of counselling and psychotherapy likely to win approval from NICE are those that can be tested by randomised control trials. This means reducing interactions to a manual, much as call centres restrict the interactions of their workforce with members of the public to a robotic script. This view of research rests on the presupposition that the interventions that are distinctive about a given therapy are those that make the key difference to client outcomes. This assumption, in turn, is based on another one, namely that psychotherapy is most appropriately viewed as a medical intervention – that is, that 'the patient' has a disorder, problem or complaint for which there is a psychological explanation, and that the mechanism of change involves delivery of specific therapeutic ingredients that are remedial.

Both of these assumptions are simply wrong, as Professor Bruce Wampold (University of Wisconsin-Madison) has shown in a meta analysis of thousands of studies (see his book The Great Psychotherapy Debate, ISBN 0-8058-3201-7). The medical model does not adequately explain the benefits of psychotherapy – and he contrasts it with a model that fits the research data much more closely. This is the one proposed by Jerome Frank and his daughter Julia (see Persuasion and Healing: a comparative study of psychotherapy, ISBN 0-8018-4067-8). Wampold's is a devastating scientific finding for anyone who regards the HPC as the appropriate regulator for counselling and psychotherapy – and one that has been systematically either ignored or discounted by advocates of HPC regulation, which is after all, given the manifold vested interests involved, hardly surprising.

Let's spell this out. If HPC regulation goes ahead (and assuming Wampold's findings stand), it's difficult to see how anyone learning the subject for the first time will end up anything other than deeply confused. The research will point in one direction, but Government policy and the need to find employment in another. The casualty is likely to be due regard for evidence and research: most people will reach after the obvious conclusion, namely that if counselling and psychotherapy are regulated by the Health Professions Council, then counselling and psychotherapy must, to all intents and purposes, therefore be health professions. And Wampold's research will be conveniently sidelined as being of no practical consequence.

Few people in the UK seem to have much understanding of how deeply the practice of counselling and psychotherapy will be affected by the imposition of the pernicious principles of narrowly defined 'evidence-based practice'. For anyone interested, a recently published American book, The Clinician's Guide to Evidence-Based Practices (ISBN 978-0-19-5333532-3) spells this out in considerable detail, using three extended scenarios to illustrate what will be involved.

The difference is between a psychotherapy that is based on deference to external authority and centrally drawn up guidelines, and one that is based on critically reflective practice. These are such profoundly different approaches that it can now be argued that what we are currently seeing is the emergence of two quite distinct professions. The one, evidence based practice, is essentially a subset of psychiatry, where the prime focus is on the containment of mental-health difficulties (and where treatment is secondary), while the other is traditional non medical-model counselling and psychotherapy. The one prioritises a managerialist approach that seeks to micro manage decision making and referral, while the other has at its core the notion of the critically reflective practitioner who has the capacity to respond appropriately to the unique, ungeneralisable contingencies that emerge in psychotherapy relationships. The one claims that it will

eventually be possible to build a coherent set of working practices based on the principles of evidence based practice. The other claims that there is insufficient scientific evidence to justify such a belief – and certainly far too little to impose such a model on the rich diversity that currently exists.

HPC regulation will sow muddle and confusion at the very heart of psychotherapy practice because of a fundamental disregard for evidence and argument that has characterised the whole enterprise of HPC regulation. This is likely to have a deeply corrosive impact on training courses everywhere, as trainees attempt to jump through the hoops that they believe will lead them to gainful employment.

In conclusion, in view of the foregoing arguments, the case for an independent commission to investigate thoroughly the various regulatory possibilities is, in my view, absolutely unanswerable.

Response to Zarathustra (1) - Arthur Musgrave on August 3, 2009 at 6:16 pm

Thanks, Z, for your very helpful comments. I will deal with them in order but leave the points you raise about the practical impact of the medical model to a separate response to Em's piece.

1. Mediation – I don't want to claim too much for mediation. I just want to argue that – done properly – it could make a huge difference by making it easier for anyone dissatisfied with the counselling or psychotherapy they've received. Because it's less stressful, many more dissatisfactions would be raised, they'd be raised earlier and – often – there would be the possibility of repairing, and perhaps at times even strengthening, a disrupted therapeutic relationship. Nick Totton has written a thought provoking piece about all this called Scapegoats and Sacred Cows: towards good enough conflict resolution in a book edited by Roger Casemore – Surviving Complaints Against Counsellors and Psychotherapists: towards healing and understanding (PCCS Books, 2001 – ISBN 1-898059-38-1).

This isn't a question of finding perfect solutions to every scenario. Rather it's matter of weighing up the pluses and minuses of the various alternatives. The example you give from your own work doesn't sound to me as though it would be dealt with appropriately through the kind of mediation process I've described. There are clear legal procedures available in cases of child protection. The extent to which these are satisfactory is another question altogether, but we'd be veering into different territory if we started exploring that here.

2. My argument is not so much that arts therapists will be required to work differently – though I have heard some argue that there are pressures that do have this effect. My argument is much more that it's the range of talking therapies available that will be restricted, not by virtue of HPC regulation alone – I agree with you on that point – but as a result of the cumulative impact

of the changes coming out of the Department of Health. Here I'm thinking about the impact of NICE guidelines, the IAPT [Improving Access to Psychological Therapies] initiative and the re commissioning of GP counselling services at PCT level.

And, locally, we certainly are already seeing an impact on the ground. I know a number of experienced and highly respected practitioners working in GP counselling services who have lost their jobs and have been replaced by lower paid, IAPT compliant trainees. I am referring here to practitioners who were highly respected by patients, GPs and practice managers.

Locally, too, I am aware of one training course that has already closed because of changes made in preparation for HPC regulation – it wouldn't fit within the bureaucratic format required – and I understand another is likely to close. Trainings are threatened when students choose not to undertake them not because there's anything wrong with them – they can be widely acknowledged as excellent trainings – but because they want to know that the course they invest time and money in completing will be more rather than less likely to lead to paid work. Many of my colleagues are desperately completing expensive CBT or EMDR courses because they think that will mean they won't be shut out of employment opportunities.

One of the arguments that HPC regulation is wrong is that it will have the effect of imposing NHS priorities on all counselling and psychotherapy. As far as I can see NHS managers don't actually need many different kinds of talking therapies – they'd be quite happy with (say) the first half a dozen or so brands that get approved by NICE. I can see that, in some respects, their jobs would be easier if everything else was weeded out. Does this matter? I think so – and not just to me and those of my colleagues squeezed out by the juggernaut of 'evidence-based' practice. I believe it is in the public interest that a wide diversity of talking therapies flourish.

There's a sense in which it's unhelpful that the impact of all these changes has become entangled with the arguments over HPC regulation – the different strands inevitably get conflated together and it can take an inordinate amount of time to separate out the various issues. However, if we cut the argument to the bone, I think it is right to see all these changes as part of a common agenda that is driven by a specific set of beliefs that makes selective use of the research evidence. And the one point at which counsellors and psychotherapists have any meaningful choice in all this is over whether to allow their names to go forward on to the HPC register.

3. Will the HPC prove a "good-enough" regulator? Good enough for whom? I think you're in danger of short-circuiting matters here. Legislation is likely to be bad when the various counter-arguments haven't been properly examined. One reason this hasn't happened is because there has been an unhealthy collusion on the

part of many of the organisations representing counsellors and psychotherapists. These bodies have been keen to get the status and financial rewards that come with professional recognition. This was clearly an important factor in getting arts therapists regulated – many, if not most of them, were previously working alongside NHS colleagues but on much lower rates of pay, a matter which I understand has been rectified following HPC regulation.
Arthur

Response to Em - Arthur Musgrave on August 3, 2009 at 6:19 pm
You raise some interesting points, Em, and I will do my best to respond. My interest is as a practitioner rather than as a researcher and I am primarily concerned by the way in which government policy is shaping what happens on the ground.

Take IPT (interpersonal psychotherapy), for example. This is a NICE recommended intervention, but as far as I can tell from the literature it was initially devised as "a research intervention, described in clinical research trials but otherwise unknown to practising clinicians" (The Journal of Psychotherapy Practise and Research 1998 p.185). There doesn't appear to be much that is especially distinctive about it, but it's now a brand name and practitioners can receive an accredited training in it. There are even circumstances, according to one of the case histories in The Clinician's Guide to Evidence-Based Practices (see pp 221/3), in which it would be unethical not to make it available to certain clients.

There seems to be no acknowledgement of the problems that can arise from the rigid application of such an approach to endorsing certain brand name therapies over others – for example, the work of Professor Bruce Wampold that I referred to in my initial posting seems to have been completely discounted and government policy proceeds as though he had never published The Great Psychotherapy Debate. Equally, there appears to be no critical awareness of some of the major problems with randomised controlled trails (eg the difficulties posed by the apparent extent of publication bias) or of the unsatisfactory nature of findings that ignore researcher bias, something that Bruce Wampold goes into in some detail.

And this is even before we get into the problems posed by the availability of funding. In July 2008 BACP published a short item in Therapy Today (p 10), from which I will quote an extract –

'Professors Mick Cooper and Robert Elliott of the University of Strathclyde, William B Stiles of Miami University and Art Bohart of Saybrook Graduate School claim the government, the public and health officials have been sold a version of the scientific evidence that is not based in fact, but on a logical error. In a collective statement, they said: "This is how it works: 1) more academic researchers subscribe to a

CBT approach than any other. 2) These researchers get more research grants and publish more studies on the effectiveness of CBT. 3) This greater number of studies is used to imply that CBT is more effective." '

Perhaps one of the problems lies with beliefs and values of some of the individuals involved in shaping government policy. I came across an interview with Steve Pilling, one of key people making recommendations to NICE (published in Therapy Today Nov 2008 pp 12/16). In it he was asked about the tendency for therapists to become more eclectic as they gain experience. My own position is that I think it's important to be open to learning and changing as a result of feedback from clients about what works and what doesn't work so well. Steve Pilling thinks this is "a dangerous path". He quotes an example from his own practice when he noticed that he was no longer following a particular CBT framework "and I thought, I've stopped doing that, that's not very good. And I shifted my practice back again." Notice that he didn't pause and ponder what might be the right thing to do: it didn't seem to cross his mind that he might just possibly have come across a new and better way of working.

Steve Pilling goes on to assert that, "We have evidence that when people stick within those frameworks they get better outcomes." Now this is interesting, because in The Great Psychotherapy Debate (pp 175/183) Bruce Wampold shows that such evidence is weak and not strong enough to guide practice.

Like many counsellors and psychotherapists, I find my beliefs and values are fundamentally different from the ones Steve Pilling seems to hold – so much so that, as I argued in my initial posting, I think we may well be engaged in two fundamentally different activities.

The difference between these two boils down to how you view the evidence about the validity of the medical model. Some – the Government, the HPC and a few counsellors and psychotherapists – choose to be selective and refuse to take account of, for instance, Wampold's meta-analysis (or show in what way it is wrong). Yet they want to impose their view of counselling and psychotherapy on everyone.

This is a complex issue and I agree with you, Em, and with Zarathustra that there is a great deal of practice within the NHS doesn't fit tidily within the theoretical definition of the medical model. But that's not my point. It's hard to convey the specifics of how practice will be reshaped without going into a great deal of tedious detail – and it can be boring reading lengthy spiels about this kind of thing on a computer screen. The book I referred to in my initial posting, The Clinician's Guide to Evidence-Based Practices, teases out the practical implications of all this with very specific case histories. Now I agree that many practitioners will often be able to get away with ignoring these "good practice" guidelines and continue with their existing way of working. If they are well respected and sensitively managed they may even

continue to be judged by the results they produce. But that doesn't alter my underlying point about the muddle and confusion that will result on training courses where DoH practice points practitioners in a different direction from the research data. Nor does it alter the long-term disastrous impact that such a disregard for evidence and argument is likely to have on counselling and psychotherapy as a whole.

Arthur

Response to Howard Martin (1) - Arthur Musgrave on August 3, 2009 at 6:21 pm

Howard, I'm not afraid of anything. I'm just concerned that we should have a proper system in place and not one where the negative unintended consequences outweigh the benefits. I've suggested that, before there is any attempt at legislation, the pros and cons of different options should be weighed up carefully. I've quoted an eminent legal authority who has examined – in great detail – the ways in which therapists have been regulated under different legal systems and he says that priority should be given to tightening the criminal law. And then you challenge me to produce a specific legal draft. What on earth would be the point? I have already said that any such draft should be based on research data as to the harm that needs to be remedied and, once that research is done, it seems obvious to me that any such draft should be produced by someone with an expert understanding of the law.

You go on to quote the example of Derek Gale, but what you overlook is that he is still free to practice. And he would still be free to practice even after HPC regulation of counsellors and psychotherapists – he just wouldn't be able to advertise using a protected title or imply that he was entitled to use one. But he can go on seeing existing clients and he can also work with new ones. Reading your piece I have to question whether you are seriously interested in protecting the public. What you've written is that it's enough if the client is appeased, the therapist is sanctioned (though ineffectively) and "the criminal law obligation fulfilled".

As regards Hogan, how can you be so sure that his research is out of date (he produced a brief update specifically for the UK situation only six years ago)? And how do you know that, as regards the question of psychotherapy regulation, the American situation "bears no relation to the contemporary situation in the UK"?

I suspect I share a good number of your reservations about the self–serving attitudes of many in the mainstream counselling and psychotherapy world, but I think you do this case no favours at all when you make such wild assertions as "the psychotherapy industry here in the UK has systematically failed to undertake any research of any worth whatsoever in the last 30 years".

Those of us who are keen to see a proper system of accountability in place are up against, on the one hand,

the mainstream counselling and psychotherapy bodies who are pursuing power, status and money and, on the other, people like yourself who, it would appear, are unwilling to pay attention to important evidence that deserves to be taken into account before we rush into a half-baked regulatory framework.
Arthur

Response to Howard Martin (2) - Arthur Musgrave on August 9, 2009 at 4:15 am
Howard – Thanks for you long response. I will to respond as best I can to what I think are the key points you make, taking them in order.

I differ from you in believing that it will be possible to do much to modify and improve HPC regulation, once it is in place. The HPC has one size fits all approach to the health professions and shows little sign of being able to make significant adjustments to the specific needs of any of the various professions it regulates.

You persist in asserting that Hogan's research is out of date. I repeat my earlier question – on what basis do you know this to be so? As I said he specifically updated his argument and tailored his recommendations to the UK situation in 2003.

Why do you say what I'm asking for is impossible to achieve? I'm making a middle of the road case for sound legislation (ie first identify evidence of the nature and extent of problem(s) you want to address and then make sure your proposed remedy/remedies are appropriate). The groundwork undertaken by the Government and the HPC on counselling and psychotherapy has fallen badly short of this standard.

When I said that you did not appear to be serious about public protection, I quoted your own words back at you (BTW I didn't call you 'uncaring' and it would be unfair of me to do so). But it does seem to me that you overrate the value of client appeasement and the therapist being (ineffectively) sanctioned, when the real issue is setting up an effective framework for public protection. I very much appreciate your willingness to talk in detail about your experiences with the HPC. It is invariably worthwhile to look closely at how procedures work in practice and we all owe you a debt of gratitude for your readiness to talk about what happened when you made your complaint. There's clearly much to learn from your experience.

I think you overrate the importance of having UK originated research. I believe it's possible to learn from research done elsewhere. The rigorous examination of the research data you claim not to want to rely upon has been done (though for technical reasons it's not possible to blind test psychotherapy). Much important and relevant material is included in the book by Professor Wampold that I referred to earlier. If you want to look at what has been done in the way of outcome research on counselling and psychotherapy in the UK try www.coreims.co.uk .

I'm not sure what you're arguing about when you dismiss mediation. It would be perfectly possible for a mediation scheme to be funded by government or run by an independent body. I think you misunderstand the value and purpose of mediation as a preliminary step. If the existence of a mediation scheme increases manyfold the number of complaints that clients bring, surely that is valuable – especially if the overwhelming majority of these are settled to the client's satisfaction? This preliminary step would be additional to any other procedure: at the very least it offers a user-friendly interface for complainants. The difficulty with the HPC's procedures, as I understand them, is that mediation is specifically prohibited until the formal investigation and the hearing are over.

Your proposal for a new law is a version of regulation by function (as opposed to regulation by title, which is what the HPC set up to do). Lawyers have argued that this is particularly tricky to do because it is hard to define precisely enough what psychotherapy is (to take just one example, your definition of a psi industry service provider would cover all members of the clergy, as they undoubtedly are concerned with improving the spiritual well-being of members of the public). There's much more we could say on this score, but one thing is certain and that is that regulation by function isn't "that simple".

Finally, I am about to go away on holiday for 10 days so please don't take any lack of response as an indication that I don't want to reply to anything you add to this discussion. I'm conscious I haven't yet responded to the questions you raised on the other blog, but I find it confusing keeping two similar threads going simultaneously. I'm still hoping I will eventually find ways of introducing what I would say there here, but if not and if the blog is still open I intend to reply.

Best wishes

Arthur

Response to Howard Martin (3) - Arthur Musgrave on August 24, 2009 at 11:09 pm

Dear Howard

Thanks once again for the trouble you have taken to reply. To respond –

1. I'm sorry I dismissed your idea for regulating the clergy as well. I just jumped to the conclusion that it would be hard – if not impossible – to get sufficient support for such a broad brush approach.

2. You have misunderstood me completely if you think I am opposed to research being done in the UK on the nature and extent of the problem that needs to be addressed. My point is exactly the opposite – I don't think it's sensible to agree solutions until such research has been done in this country. And it's wrong to target therapists for this lack of research. It's a fundamental principle of law making that if Government wants to propose good legislation it needs to do so on the back of sound research (which it has failed to undertake in this case).

3. You persist in attributing to me beliefs I don't hold. I think that what is needed is a creative, proactive search for ways of improving the present situation without creating negative unintended consequences that outweigh the purported benefits of what is put in place. I'm very interested in pragmatic achievable goals and I suspect the single biggest gain for dissatisfied clients might be the establishment of an adequate national mediation framework. At the same time, only once proper UK research has been done, will it be possible to pinpoint potential alterations to the criminal law in order to deal with gross misbehaviour by counsellors and psychotherapists.

4. Is your query about whether I am a psychoanalyst intended as a sideswipe at me or what? I said who I was and what I work as at the beginning of the piece that kicked off this thread.

5. I really don't understand your last paragraph. You seem to want to blame me personally for the lack of progress when, as I have said, I am a relatively lowly self employed practitioner. I have absolutely no wish to overturn hundreds of years of judicially based structure – what I want is to see it tweaked/improved in order to it to make it more effective.

Finally, there is one other matter I would like to put to you fairly forcefully, given your comments elsewhere about the income psychotherapists receive. Why have you been so preoccupied with what therapists earn when the HPC has undoubtedly been paying lawyers several times the hourly rate that the average therapist receives into order to present the case against Derek Gale? And therefore why target therapists in this way rather than lawyers? How much do you think it cost the HPC to take your case through to its conclusion? I'm sorry to be blunt and I'm not sure anyone outside the HPC is in a position to answer this, but I think there's a real question to be asked about whether or not the Derek Gale case represents value for money. How many such cases a year do you think the HPC can possibly afford to fund in this way? And, given that Derek Gale can still practice (and will still be free to practice after HPC regulation of counselling and psychotherapy), in what sense does HPC regulation therefore represent effective public protection?

Response to Howard Martin (4) - Arthur Musgrave on August 27, 2009 at 2:18 am

Howard, thanks once again for your spirited defence of the HPC and the tenacious way you pursue your points. The way we're going about this I think we're starting to test both sides of this particular argument pretty thoroughly.

To recap – the case for the HPC is that it offers the public protection against bad practice by counsellors and psychotherapists. The case against is that the protection it offers is spurious.

But surely it doesn't matter that much what Derek Gale calls himself? If he's a danger to the public and he

can go on working calling himself a voice coach, a group worker or a personal coach (to take just three possibilities), then that's a problem, isn't it?

I don't know anything at all about Derek Gale's current working practice, but my understanding is that, so long as he doesn't either advertise himself using a protected title (eg arts therapist, or in the future – perhaps – counsellor or psychotherapist) or imply that he is entitled to use a protected title, he can still work with existing clients and he can still see others who come, for instance, by word of mouth referral. Why won't you accept, Howard, that, while you personally clearly received incredible 5 star support and backing from the HPC, you can't generalise from your particular experience? What is important about the Derek Gale case is not how good HPC regulation is (by contrast with what was available to you from the AHPP or UKCP), but how bad it is (because, even when no expense is spared, its sanctions offer inadequate public protection).

Howard, if as you say the law therefore needs strengthening, then you come back to my (and Hogan's) original point about considering changes to the criminal law, which can only be done satisfactorily after proper UK research has been done about the nature and extent of the problem we're all concerned to address. So why not do the job thoroughly from the outset without first setting up a whole pile of other negative consequences (ie negative for the public as well as for the quality of counselling and psychotherapy available)? It's just plain daft to create a lot of mess and confusion and then say that you hope it can all be sorted out later.

Finally, I clearly need to spell out why I think the costs involved in the Derek Gale case are important. The HPC has a budget of some £13m a year. It raises this money from fees it charges registrants. The registrants in turn raise the money they pay the HPC from the fees they charge their clients. So, in the end, the very charges that you consider exorbitant will need to be even higher in order to fund more cases like the one taken out against Derek Gale. This is conceivably justifiable if the sanctions imposed work, but if they don't how can you possibly justify these extra costs? I repeat my point – apart from a symbolic victory and any personal satisfaction you obtain, it's the lawyers who are the main beneficiaries from this scam. And the public lose out both ways round because they end up paying higher fees and getting inadequate protection.

Response to Zarathustra (2) - Arthur Musgrave on August 28, 2009 at 1:02 am

Thanks for your input, Zarathustra. Can I reply to your comment about fees now and return to your first point later on as I think it's important and responding to it fully will require more time and attention than I have available at the moment?

You're obviously right that £76 is a very small amount in relation to a full time worker's annual income. But –

1) This annual fee will be enough to prevent many an experienced and respected volunteer counsellor from being able to continue working for a voluntary counselling service with a limited budget. This is something that has scarcely been touched on anywhere in the debate about HPC regulation. Many thousands of volunteer counsellors are affected and statutory services refer clients to them all the time.

2) I have made this point about HPC fees because (a) Howard has made great play both of what he sees as the exorbitant fees that counsellors and psychotherapists charge and (b) he doesn't agree that the cost of bringing the Derek Gale case matters. To which I'd reply (a) that the average counsellor or psychotherapist on a recognised NHS scale undoubtedly earns considerably more per year than the average self-employed practitioner – so, while I think it's unfair to attack private practice in this way, Howard appears to believe that private practitioners earn far too much anyway, which means that any increase whatsoever would push their unacceptable fees up even further, assuming the cost is passed on; (b) the work that the HPC can do is dependent entirely on the fees it charges registrants – so if it was to take up many more cases of this kind it would have to raise its fees even higher; and (c) I would be particularly incensed if any fees I was paying were being wasted on ineffective action against poor practice because the framework for regulation had been badly thought through.

3) You don't take account of the fact that, if regulation goes ahead, many counsellors and psychotherapists will have to apply through the grand-parenting route and find an initial fee, not of £76, but of £420. I can't see that not being passed on. Again the same arguments apply about it being a waste of money, since as this debate continues it's becoming increasingly clear that HPC regulation is ineffective. And this charge will result in more experienced and respected volunteer counsellors having to stop working.

I'm sorry, but the more we go into the detail, the clearer it becomes how unsatisfactory HPC regulation would prove to be.

Best wishes

Arthur

Response to Zarathustra (3) – Arthur Musgrave on September 15, 2009

My apologies for the delay in posting this, the second part of my response to your comment – Arthur

Your point about a solution to the current debate as to who should have prior claim to the titles 'counsellor' and 'psychotherapist' demands careful consideration.

I agree with you that the business of psychotherapy/counselling is done with people who are suffering and in psychological distress. I also agree with you that personal coaching is generally seen as a self improvement thing. In other words these two activities are distinct. But the HPC doesn't regulate

activities – it regulates titles. So, as far as the principles underpinning this form of regulation are concerned, provided people don't either use a protected title or imply they're entitled to use it, they can do what they want. So there's still the problem that HPC regulation will allow someone like Derek Gale to practice, even though he has been struck off the HPC register.

But you seem to be arguing that, despite the huge cost of the Derek Gale case and the resulting unsatisfactory sanction, nonetheless HPC regulation is still worth pursuing because, once the terms 'counsellor' and 'psychotherapist' can only be used by those registered by the HPC, the public will be well enough protected – and they will be well enough protected because, although some people may still make use of someone like Derek Gale, if people are clear they're after a counsellor or psychotherapist, they would be less likely than now to end up seeing the wrong person.

This is all well and good as far as it goes. But I think that, if the whole field of counselling and psychotherapy is to be reshaped in the fundamental way it will be by a regulatory process that discounts the scientific and other research evidence, then we should be thinking about this problem not in terms of how a prospective 'consumer' might be encouraged to think (ie "I'm looking for a counsellor/psychotherapist registered by the HPC"), but in terms of the product that will be on offer. In other words, if we're thinking about the distinctions that need to be made in order to set up proper systems of accountability, the better analogy is with consumer protection legislation.

To answer your original point properly, we first need to step back and view HPC regulation of counselling and psychotherapy in its wider context. That context includes the raft of changes emanating from the Department of Health. It includes NICE Guidelines, the Improving Access to Psychological Therapies initiative and the re-commissioning of GP counselling services at PCT level. These initiatives are underpinned by a commitment to a particular view of 'evidence based practice' that is founded on a skewed or partisan view of the evidence. This view is predicated upon the medical model of counselling and psychotherapy (see Bruce Wampold's book The Great Psychotherapy Debate for a precise definition). This version of 'evidence based practice' overvalues evidence derived from randomised controlled trials and seeks to impose on everyone a definition of counselling and psychotherapy that may suit the needs of NHS managers, but which is otherwise inadequate and unsatisfactory.

The benign view of all this is that those driving these initiatives forward have a superficial but honestly held belief that their view of counselling and psychotherapy will eventually be vindicated by the research data. This way of thinking has much in common with party politics and Government Department policy making. It is utterly unsatisfactory as a foundation on which to build good professional practice. That has to start from

scrupulous and detailed attention to evidence, if there is not to be endless muddle and confusion.

If this argument is right – and there has been no serious counter argument I have heard that suggests it is not – then we have the basis for disentangling terminology. Here I'm making the obvious point that any attempt to re define existing practice should, for the sake of clarity, use different concepts.

The terminology already being used by proponents of these changes provides the best pointer. The term 'psychological therapy' is a recent invention and it came not from the field but from NHS initiatives. It is prominent in the title IAPT (Improving Access to Psychological Therapies) and it has been used extensively in by Skills for Health. Why not stick with it? In other words the right term for an exponent of the particular version of evidence based practice promoted by the NHS would be 'psychological therapist'.

Let's pause a moment and take stock of the position in which we find ourselves. Let's assume, for the sake of argument, that counselling and psychotherapy don't end up being regulated by the HPC – perhaps because a new Government takes a different view of the issue. What would things then look like?

Psychologists and arts therapists are already regulated by the HPC. Taken together IAPT, NICE Guidelines and the re-commissioning of GP counselling services are already beginning to re-shape practice within the NHS so that there is greater focus is on treatment that is based on the precise diagnosis of narrowly defined psychological conditions. This is in line with the psychiatric profession's use of classificatory systems such as DSM-IV. From an NHS management perspective it is clearly important to make the most efficient use of limited resources and it is equally quite legitimate to want to tidy up the whole arena of psychological therapy into a coherent framework of 'stepped care'.

Furthermore it seems unlikely to me that NHS mental health services will ever need very many NICE approved talking therapies. From the point of view of the skewed view of evidence based practice I referred to above, as far as I can see the NHS could manage quite well with not much more than CBT plus a few variants, such as CAT and behavioural family therapy, along with something more expressive, such as the various arts therapies for those who struggle with words and thinking based (as opposed to feeling based) approaches to therapy. In addition there's an existing term – 'counselling psychology' – available that has a large overlap with counselling (the difference being in the prior requirement for a first degree in psychology rather than in anything particular in the training). The standards of proficiency on which the HPC is currently consulting attempt to define the distinction between counselling and psychotherapy solely on the basis of the extent to which psychotherapists are better equipped to address severe mental disorders. This is seen as a matter of additional training and experience

(defined for counsellors as level 5 and for psychotherapists as level 7 in terms of the National Qualifications Framework). It wouldn't be difficult, then, for the NHS to implement fully its particular agenda of 'evidence-based practice' without taking over the label 'counsellor' or that of 'psychotherapist'. It would be better off with two levels of 'psychological therapist' operating above the IAPT categories of High Intensity Worker and Low Intensity Worker.

Much of the disagreement about HPC regulation is based on a fundamental confusion about purposes. The priority for the NHS is to manage and, if possible treat, various conditions that medical science has been able to diagnose. Traditionally counselling and psychotherapy, while on the surface being about the management of the problems of everyday life, are at a deeper level also about meaning making. They are fundamentally different from the notion of 'evidence based practice'. The Department of Health is slowly but surely making changes that ought eventually to result in the emergence of two distinct professions. This should therefore be made explicit to all at this stage.

At present an attempt is being made to impose the HPC version of what counselling and psychotherapy is on the very much larger group of practitioners who work outside the NHS. Many of the representative bodies are going along with this because of the economic and vested interests involved. Many trainees and less well established practitioners are also going along with it because they want the widest possible access to jobs. These are bad reasons for colluding with a form of regulation which will do little to protect the public and will bring with it a whole series of further problems that are likely to set the field back for years to come.

Response to Zarathustra (4) on 18 September 2009 at 1.19am

Hi Zarathustra – I think we're somewhat at cross purposes here. My point is not about what the HPC's remit is or what it thinks it is trying to do. Instead I'm trying to step back and understand what the effect of HPC regulation will be – after all that's what will count in the long term and we surely agree that the intention of HPC regulation is that it should lay down for the foreseeable future the parameters within which counselling and psychotherapy will develop?

But if you want to quote a selection of what, on the face of it, seem to be eminently sensible "standards of proficiency" (the HPC's jargon) let me quote a further selection from that same document-

· know how to operate equipment and minimise the risk of infection.

· know how to select appropriate hazard control and risk management, reduction or elimination techniques.

· have a knowledge of health, disease, disorder and dysfunction.

· be able to evaluate and implement intervention plans using recognised outcome measures.

· know how to use protective equipment.

· know how to formulate and deliver plans and strategies for meeting health and social care needs.
· understand the principles of quality control and quality assurance and conduct audits correspondingly.
· maintain an effective audit trail, participate in audit procedures and work towards continued improvement.
· be able to formulate specific and appropriate management plans including the setting of timescales.
· demonstrate a logical and systematic approach to problem solving and be able to initiate problem solving techniques.
· be able to demonstrate effective and appropriate skills in communicating information, advice and instruction.
· understand the need to engage service users and carers in planning and evaluating the diagnostics, treatment and interventions to meet their needs and goals.
· understand the importance of maintaining their own health.

The HPC's standards of proficiency constitute the yardstick against which courses training counsellors and psychotherapists will be judged by the HPC.

The ones I have quoted are all 'generic standards' that apply across all the health professions regulated by the HPC and, even if some of them accurately describe some aspects of the way some counsellors or psychotherapists work, they have very little to do with the general practice of counsellors and psychotherapists outside the NHS. What is utterly outrageous about their inclusion in this consultation process is that, in its consultation document, the HPC admits (section 7.1.3 Generic standards) that they cannot be altered as a result of this consultation! Instead comments about their inappropriateness will be noted and fed into a subsequent review. In short, we are being asked to accept for the purposes of regulation an inaccurate description of counselling and psychotherapy, which may or may not be altered as a result of a review that may or may not be carried out at later date. Given the range of health professions regulated by the HPC it seems obvious that very few changes will be possible without all the other health professions complaining about a watering down of standards. In other words this turns this consultation into an absurdity and shows up the HPC as incompetent.

Surely, Zarathustra, on the basis of this evidence alone, you must agree that these standards are drafted with the needs of the NHS taking precedence over the needs of the great majority of counsellors and psychotherapists who work outside the NHS?

Which goes back to main point of the piece with which I kicked off this thread – if we're going to sort this mess out we need two separate professions, one based on the research evidence (eg Wampold's detailed and scrupulous meta-analysis of the scientific evidence) and the other, if need be, based on NHS management needs which purports to present itself as 'evidence-based practice'.

Response to Howard Martin (5) on18 September 2009 at 1.27am

Hi Howard – Thank you once again for a very informative contribution. I appreciate you may not be in a position to reveal details, but it's good to hear that the HPC is very concerned that its sanctions are ineffective and it isn't quite sure how to get them to work. But surely what the Derek Gale case shows more than anything else is that the Government would be wise to delay HPC regulation for counselling and psychotherapy until they are quite sure they have a system that actually does protect the public?

My earlier points still stand, namely –

· It is already clear that HPC regulation, at present is cumbersome and expensive.

· There is a real question as to whether it represents value for money.

And please understand that in saying this I'm not here to defend any of the procedures you have been at the receiving end of, Howard, nor would I want to do so. It sounds from all you're written you've been through an extremely difficult time.

Nor am I arrogant enough to presume that I know the answers. I have some suggestions and I outlined these in the previous thread ['A Psychotherapist responds (1)'], but there are undoubtedly other ideas that should be considered as well. My hunch is that, in the end, what will be needed will be series of complementary initiatives that, taken as a whole, will have a greater cumulative impact on public protection than the proposals from the HPC that are out for consultation at present – and without the unintended negative consequences.

The best I can offer is a procedure for getting to an answer –

· The HPC should recommend to Government that it is not appropriate for it to proceed further.

· Government should then call a halt to HPC regulation and set up an enquiry that will (1) undertake research to identify the nature and scale of the problem to be addressed, (2) take account of all the relevant evidence, (3) build on best practice from around the world and (4) devise a scheme in which the benefits to the public exceed any negative unintended consequences. It's important not to bodge this.

As for who should run whatever results I'm open minded – though it's clearly crucial that, whoever they are, they should have the confidence of everyone affected.

Best wishes

Arthur

Text from:

Mental Nurse': the Regulation of Psychotherapy – a psychotherapist responds (1) http://www.mentalnurse.org.uk/2009/07/regulation-of-psychotherapy-a-psychotherapist-responds-1/

and: http://www.mentalnurse.org.uk/2009/09/regulation-of-psychotherapy-response-to-zarathustra/