

Briefing document for Counselling Services and Student Services Managers

The Proposed Regulation of Counselling  
and Psychotherapy in the UK:

# **Implications for Counselling Services in Further and Higher Education**

**Andy Rogers MBACP**

Student Counsellor and Service Coordinator in Further Education  
February 2010

# Contents

---

3. The Context
3. The Controversy
4. So what is wrong with HPC Regulation?
5. Issues for Counselling Services in FE and HE
6. Alternative Professional Accountability (APA)
7. Changes necessary to facilitate APA in FE & HE
9. Conclusion
9. References
10. Appendix: Diagram - transition to HPC regulation in FE & HE counselling services, incorporating APA

# The Proposed Regulation of Counselling and Psychotherapy in the UK: Implications for Counselling Services in Further and Higher Education

---

## The Context

The Government plan to regulate the professions of counselling and psychotherapy. The intended legal mechanism will be to protect the titles 'counsellor' and 'psychotherapist', making it an offence to use these titles unless the practitioner is registered with the Government's chosen regulatory body, which is the Health Professions Council (HPC). Since being instructed, HPC appointed a Professional Liaison Group (PLG) to draft the 'standards of proficiency' that all counsellors and psychotherapists would be obliged to meet and by which they would be judged in the case of a complaint. In 2009 and in advance of legislation being written, HPC undertook a consultation on the draft standards and – following intense criticism from the professions – reported to the Department of Health that while more work on the detail is required, the proposed regulation should go ahead.

## The Controversy

HPC were selected as regulator against the advice of all the major counselling and psychotherapy organisations. The resulting proposals have generated a huge controversy in the professions, with thousands of counsellors, psychotherapists, artists and intellectuals signing petitions against regulation by HPC, and hundreds of letters, articles, interviews and comment pieces appearing in both professional journals and the national media. The largest professional organisation – the British Association for Counselling & Psychotherapy (BACP) – has deemed the proposals 'not fit for purpose' (BACP, 2009a), while in 2009 the leading psychotherapy organisation – the United Kingdom Council for Psychotherapy (UKCP) – elected a new Chair (Andrew Samuels) who stood openly as an anti-HPC candidate. The issue has also seen the emergence of a diverse network of counsellors, psychotherapists and psychoanalysts – the Alliance for Counselling and Psychotherapy Against State Regulation – which in Autumn 2009 published a book criticising both the HPC's draft standards and the underlying arguments for such regulation (Postle & House, 2009). In the same year, a group of psychoanalytic organisations produced the Maresfield Report, condemning the HPC proposals and the process by which they were created. Recently, the authors of that report instructed the leading human rights law firm Bindmans to challenge HPC's conduct via judicial review, while other legal commentators have questioned the legality of the proposed regulation under European Law.

## So what is wrong with HPC Regulation?

Opinion is divided over the likely impact of regulation by HPC. Some support the move, claiming that it will enhance public protection and raise the status of the profession. However, for the purposes of understanding the controversy and its implications for services in FE and HE, here we focus on the main arguments against regulation by HPC, which are summarised below:

- HPC is not an appropriate body for the field because:
  - i. Counselling and psychotherapy are categorically not ‘health’ professions, nor are they usually ancillary to healthcare or medicine.
  - ii. Most practitioners do not work in healthcare or medical settings.
  - iii. The HPC draft standards of proficiency are ill-suited to the work (more below).
  - iv. Its complaints processes (‘fitness to practise’ hearings) are not suitable for the intricate relationship issues that can arise in counselling and psychotherapy.
  
- The ‘draft standards of proficiency’, comprising generic standards applicable to all HPC professions, plus a set specific to counselling and psychotherapy, are inappropriate because:
  - i. They change rather than clarify the meaning of ‘counsellor’ and ‘psychotherapist’, such that many have said they do not recognise their work in the draft documents.
  - ii. They use a ‘medical model’ to understand human experience and relationships, which most counsellors and psychotherapists do not (BACP, 2009b).
  - iii. They differentiate between the roles of ‘counsellor’ and ‘psychotherapist’, a separation disputed by a substantial portion of the profession (BACP, 2009b).
  - iv. The entry level requirements they set are inappropriately academic and potentially prohibitive for certain groups.
  - v. They will stifle creativity in the field by encouraging a fearful, risk averse and ‘defensive’ practice, which some approaches would see as harmful to clients.
  
- As is made clear in a number of full-length books on the subject (see references), the evidence suggests that the potential harm caused by HPC regulation will far outweigh any benefits. No similarly substantive case *for* regulation has ever been made.

- The argument that regulation protects the public from abuse lacks supporting evidence. If anything, regulation could put more clients at risk by encouraging them to trust counsellors simply because they are HPC registered, when in fact HPC has lower standards than most existing counselling and psychotherapy organisations (Maresfield Report, 2009).
- Prospective counselling clients might be better protected if they were educated about the work of counselling and psychotherapy and encouraged not to rely on a professional's credentials. This would be more in tune the aims and ethics of most counselling approaches, which support the client to make their own choices and value judgements rather than to defer to external authority.
- The 'professional liaison group' (PLG) has been accused of bias. It included no representation from the substantial number of practitioners who oppose regulation by HPC (Maresfield Report, 2009) and doubts have been raised about the Chair's objectivity (BACP, 2009b).
- The HPC ignored an essential part of its remit in the process, which was to assess not just *how* they could regulate the field but *whether* they were the appropriate body to do so. This latter question did not feature in the PLG discussions (Maresfield Report, 2009).
- At no time was consideration given to alternative regulatory models for counselling and psychotherapy, such as those operated in Australia and some US states, versions of which also exist as local and web-based pilots in the UK.
- In making its recommendations, HPC has ignored both the substantial 'grass roots' opposition from working counsellors and psychotherapists and the robust challenges made by some of the most esteemed academics in the field.

## Issues for Counselling Services in FE and HE

Clearly there are very strong arguments against HPC and regulation of this kind. Some of the issues pertinent to college and university counselling services are summarised below:

- Most counsellors in FE and HE are not employed as medical or healthcare professionals and it is undesirable for colleges and universities to have employees forced into a personal and professional ethical conflict between the realities of their practice and the expectations generated by an unwanted regulator.

- Many counsellors argue that being re-defined as a health profession will create difficulties for students choosing to engage with counselling services. Practitioners already have to work hard to challenge the idea that they 'fix' or 'cure' unhappiness as if it were a medical condition and regulation by HPC will only exacerbate this confusion.
- As the draft proposals stand, 'counsellors' will not be able to work with students with 'mental illness' because this is deemed the exclusive work of 'psychotherapists'. This creates a number of confusions and operational difficulties for counselling services in FE and HE, in which counsellors often work with students who have received mental health diagnoses.
- Some practitioners are considering not registering with HPC and instead seek 'alternative professional accountability'. This has major implications and is discussed in detail below.

## Alternative Professional Accountability (APA)

Many counsellors and psychotherapists are considering not registering with HPC because they believe the definitions of the proposed protected titles will change fundamentally what is meant by 'counselling' and 'psychotherapy'. They believe such regulation will damage their work and be harmful to clients, thereby forcing upon them an ethical conflict they cannot resolve within the HPC system. These practitioners have been exploring how they might practise as part of an Alternative Professional Accountability (APA) model, which supplies a system of ethics, continuous professional development and complaints procedures more in keeping with their values (values that were once those of counselling and psychotherapy) and within which they use alternative titles and other terms that more accurately describe the nature of their work.

It has emerged recently that there is support in law for such an approach, provided the practitioner ceases to use the protected titles and issues carefully worded disclaimers stating that they are not a 'counsellor' or 'psychotherapist', nor practising 'counselling' or 'psychotherapy', nor offering 'counselling' or 'psychotherapeutic' services (Bindmans, 2009). APA has also been recognised as legitimate by leading professional organisations: BACP are considering how they can support members who refuse to register with HPC and have said they 'respect as an individual's right' (BACP, 2009c) the decision to do so, while UKCP in their April newsletter called it an 'ethically sound choice'. Some commentators have also made the case for APA as an act of conscientious objection or 'principled non-compliance' (House 2009), enhancing both the legal and ethical position.

While some practitioners will be able to switch titles fairly easily – if they work in private practice, say, and have been known previously by an unregulated title – for counsellors and psychotherapists in FE

and HE the situation is rather more challenging because context, culture and employment contracts define the work as much as practitioners do themselves. Given the numbers opposed to HPC regulation, however, it is important to consider how practitioners in our sector might be supported if they choose Alternative Professional Accountability. We should also remember the decision is not one that will be taken lightly – it would always be a reluctant action forced by circumstance and many counsellors and psychotherapists are deeply troubled that they will have their professional title taken from them. It is important to note too that this is an area early in its development, so while it is essential we discuss these proposals, *practitioners and services do not yet have to commit to anything*. In the event that regulation happens in the next year or two, there will follow what is known as a ‘grandparenting period’ – likely to be set at three years – when it remains legal to use the protected titles and in which time APA models will continue to evolve.

### Changes necessary to facilitate ‘alternative professional accountability’ in FE and HE

Current thinking, informed by the Bindmans legal advice, suggests that for APA to work in our sector a number of changes would be required (see also diagram in the appendix, p.8):

- Those practitioners choosing APA will have to refer to themselves professionally as something that differentiates their work from the new counselling and psychotherapy. Titles such as ‘humanistic psychology practitioner’ have been proposed and it is likely – should HPC regulation be introduced – that there will be a range of idiosyncratic phrases in circulation.
- In the FE and HE settings, however, we will also need to think about the titles used by colleagues, students and in job descriptions and service literature. Given that students might feel wary of asking to see the ‘humanistic psychology practitioner’ and that APA practitioners might be using a range of other professional self-descriptions, new workplace specific job titles will become necessary. Practitioners, services and institutions will have to grapple with which titles and descriptions are most appropriate for students, practitioners, the service and the institutional culture – this is a key task for us in the immediate future.
- These new job titles, whatever they end up being, will need to identify the role as *equally specialised* but distinct from counselling and psychotherapy. The role should also sit at the same level as counsellors and psychotherapists in the organisational structure and have equivalent pay scales etc. This clarity will help maintain the quality of support by ensuring that employees in APA positions require qualifications and experience equivalent to counsellors and psychotherapists and over and above that required of other student support roles (e.g. welfare). So the employment criteria for these new roles would initially include experience in counselling or psychotherapy in a similar setting and a professional counselling

or psychotherapy qualification, until such time as APA practitioners and organisations establish their own training and qualification systems.

- If this seems rather complicated, then – at least in the period immediately following HPC regulation – institutions concerned about who should be employed (and in which role) will still be able to assess both current employees’ and new job applicants’ pre-regulation qualifications in counselling or psychotherapy, as well as their relevant experience. It is likely that professionals applying for such roles would be asked to demonstrate they had previously practiced legitimately as ‘counsellors’ or ‘psychotherapists’. So initially it will be no more difficult to compare experience and training, even if practitioners are using different titles. Beyond that the field will evolve in ways that are hard to predict.
- Employment contracts would need to be amended to reflect any changes and would use the workplace specific title, rather than the practitioner’s professional self-description.
- The ‘Counselling Service’ could not remain known as such because it would need at least to include some other reference in its name to cover those who are choosing APA. So, purely as examples, we might have a ‘Personal Support’ or ‘Wellbeing’ service, where no HPC registered counsellors or psychotherapists work, or a ‘Counselling and Support Service’, within which you find HPC registered counsellors *and* former counsellors now practising using APA. As an unintended side-effect, the new terminology might even benefit students by reducing some of the stigma involved in seeing ‘the counsellor’.
- The service would also need to amend its literature, not just to reflect the name change suggested above, but also to make clear through disclaimers that counselling and psychotherapy are only offered by HPC registered counsellors and psychotherapists (where there are any) and that there are also staff offering an *alternative*. The material would need to communicate the fact that although these alternative support staff qualified originally as counsellors or psychotherapists (note that ex-counsellors and psychotherapists will still be entitled to be open about their pre-regulation counselling and psychotherapy qualifications), they have opted not to register because they do not practice ‘counselling’ or ‘psychotherapy’ as recently defined in law by HPC. These disclaimers might need to be reiterated by APA practitioners with the students they see, perhaps by offering them explanatory literature or links to web resources.
- Finally, the practitioner would still be required to demonstrate that they were part of an accountability system, which ensured a commitment to supervision and continuous professional development and had its own ethical framework and complaints procedure. If,

as expected, these systems emerge from and are modelled initially on existing ones, it is likely – ironically – that APA practitioners will be working to higher standards than those demanded by HPC of its registrant counsellors and psychotherapists.

## Conclusion

This document is not an exhaustive account of the regulation issue but highlights the key issues for FE and HE, with a view to stimulating discussion among counselling and student services teams. While the changes outlined here might be daunting to contemplate, they also offer the chance for creative thinking and new ways forward. If HPC regulation is introduced, counselling and psychotherapy will have been re-defined. Some counsellors will decide to register with HPC – and they should be supported to do so – but others might be forced to find new ways to explain both what they do and how it differs from the re-defined versions of ‘counselling’ and ‘psychotherapy’ that HPC will have created. Although some FE and HE institutions might feel inclined initially post-regulation to employ only HPC registered practitioners to new positions, at the very least we must consider how to support experienced and committed colleagues, already working in our counselling services, who make the ethical choice of alternative professional accountability.

## References

- BACP (2009a) Report on the statutory regulation meeting convened by the Shadow Health Minister at Westminster. Retrieved December 04, 2009 from <http://www.bacp.co.uk/regulation/>
- BACP (2009b) BACP's response to HPC Consultation on the statutory regulation of psychotherapists and counsellors. Retrieved December 04, 2009 from <http://www.bacp.co.uk/regulation/index.php?newsId=1603&count=18&start=0&filter=<h2>REPORT%20ON%20THE%20STATUTORY%20REGULATION%20MEETING%20CONVENED%20BY%20THE%20SHADOW%20HEALTH%20MINISTER%20AT%20WESTMINSTER,%202/11/2009&cat=&year=>
- BACP (2009c) Response from the Chair to the letter, ‘Regulation, principled non-compliance and BACP membership’.
- Bates Y. & House R. (eds) (2004) *Ethically Challenged Professions*, PCCS Books, Ross-on-Wye.
- Bindmans (2009) Legal opinion supplied to the Alliance for Counselling and Psychotherapy Against State Regulation.
- Hogan D.B. (1979) *The Regulation of Psychotherapists*, Ballinger, 1979.
- House, R. (2009). Video. Retrieved November 16, 2009 from <http://ipnosis.postle.net/pages/HPC01.htm>
- House R. & Postle D. (eds) (2009) *Compliance? Ambivalence? Rejection? Nine papers challenging the Health Professions Council 2009 proposals for the state regulation of the psychological therapies*. Lulu.com
- House R. & Totton N. (eds) (1997) *Implausible Professions: Arguments for Pluralism and Autonomy in Psychotherapy and Counselling*, PCCS Books, Ross-on-Wye.
- Maresfield Report (2009) Arbours Association; Association for Group and Individual Psychotherapy; Association of Independent Psychotherapists; Association of Psychoanalysis Users; Cambridge Society for Psychotherapy; Centre for Freudian Analysis and Research; College of Psychoanalysts-UK; Guild of Psychotherapists; Philadelphia Association; Site for Contemporary Psychoanalysis.
- Mowbray M. (1995) *The Case Against Psychotherapy Registration*, Trans Marginal Press, London.
- Parker I. & Revelli S. (eds) (2008) *Psychoanalytic Practice and State Regulation*, Karnac, London.
- Postle D. (2007) *Regulating the Psychological Therapies: From Taxonomy to Taxidermy*, PCCS Books, Ross-on-Wye.

**Appendix: An example of transition to HPC regulation in FE & HE counselling services, incorporating alternative professional accountability (APA)**

