

## **Psychotherapists and Counsellors Professional Liaison Group (PLG)**

### **Summary of working regulatory model**

### **Executive summary and recommendations**

#### **Introduction**

This paper provides a brief summary of the working decisions made by the Group. It is intended to help the Group keep track of its previous discussions and help to structure any subsequent discussion, which may feed into future papers for the Group.

The paper also reproduces information from previous papers considered by the Group where this might prove helpful to the group's subsequent discussion.

This paper will be updated in light of the Group's discussions and brought back to each meeting.

#### **Decision**

This paper is to note; no decision is required.

The Group is particularly invited to note the information in section 3.2 in relation to the previous discussion about protecting the title 'counsellor'.

#### **Background information**

None

#### **Resource implications**

None

#### **Financial implications**

None

#### **Appendices**

None

#### **Date of paper**

19 February 2009

# Summary of working model

## 1. Introduction

At the PLG meeting on 28 and 29 January 2009, the Group discussed how the Register for psychotherapists and counsellors should be structured. The Group considered the structure of the Register and protected titles.

The Group agreed early on that decisions taken were inevitably working positions which would need to be tested at future meetings. This paper provides a summary of the working model that emerged from the Group's discussions.

### 1.1 Summary of working decisions

The following working decisions were made about the structure of the Register and protected titles.

- To structure the Register to differentiate between psychotherapists and counsellors.
- To protect the title 'psychotherapist' and explore the possibility of protecting the title 'counsellor'.

A brief summary of relevant information is given in subsequent sections. Information reproduced from previous papers considered by the Group is included where this might be helpful to ongoing discussions.

## 2. Structure of the Register

### 2.1 Differentiation

The group considered whether or not there should be a differentiation in the Register between psychotherapists and counsellors.

The implications of differentiation were considered by the group and are reproduced from the paper considered at the last meeting below.

Differentiation between psychotherapists and counsellors would mean:

- There would be two sets of profession-specific standards of proficiency setting out the standards required for safe and effective practice.
- Practitioners would have access to the title(s) for psychotherapists, or the title(s) for counsellors, or both if they were dual registered.
- There would be approved qualifications for each – i.e. approved qualifications leading to the eligibility to register and use the title(s) for psychotherapists, and approved qualifications leading to the eligibility to register and use the title(s) for counsellors. Some programmes might be successful in being approved for both.
- The threshold educational level has to be set at the level necessary to achieve the standards of proficiency. As there would be two separate sets

of standards of proficiency, this would mean that the level could potentially be set at different levels for psychotherapists and counsellors.

No differentiation between psychotherapists and counsellors would mean:

- There would be one set of standards of proficiency setting out the standards required for safe and effective practice.
- Practitioners would have access to any protected titles for the part of the Register (e.g. they could use both 'psychotherapist' and 'counsellor').
- There would be approved qualifications that lead to the eligibility to register and use any of the protected titles.
- The threshold educational level has to be set at the level necessary to achieve the standards of proficiency. As there would be one set of standards of proficiency, this would mean that only one level could be set for entry to the part of the Register.

In the working model of differentiation between psychotherapists and counsellors, a title (or titles) would be protected for each of psychotherapists and counsellors.

This approach would rely upon being able to specify differentiated standards of proficiency for psychotherapists and for counsellors so would need to be tested when the group considers the standards of proficiency at a later meeting.

The Group further agreed that any standards of proficiency should contain three elements:

- Generic standards of proficiency (applying across all of the professions regulated by the HPC).
- Profession specific standards which would be common to both psychotherapists and counsellors.
- Profession-specific standards for psychotherapists; and profession-specific standards for counsellors.

These structures are outlined in the minutes being considered at this meeting of the PLG.

## **2.2 Psychotherapeutic counsellors**

The consensus agreement of the group was that the Register should not differentiate between psychotherapeutic counsellors and counsellors. However, this was flagged as a topic that the might be raised at future meetings.

## **2.3 Modality**

The Group considered whether the Register should be further differentiated by modality.

The implications of differentiation by modality were considered by the Group and are reproduced below from the paper considered at the last meeting.

A modality specific approach to regulation would mean the following.

- Adjectival titles relating to a discrete range of identified modalities would be protected. These titles would only be available to those practitioners who had trained in / demonstrated competence in the relevant modality. In order to avoid the evasion of registration, the protection of additional titles for the whole part of the Register might be considered – e.g. protecting the stem ‘psychotherapist’ to prevent its use by those who were not registered.
- Registered practitioners would still be able to use other, non-protected adjectives to describe their area of work, as long as they did not use another protected title to which they were not entitled; and did not mislead the public as to their qualifications and experience, or work outside their scope of practice.
- Standards of proficiency would be produced which describe the standards of safe and effective practice necessary in order to practice in each modality. (The existing standards for arts therapists might provide a model for this.)
- Pre-registration education and training programmes would be approved against the standards of education and training to ensure that they successfully delivered the standards of proficiency relating to the specific modality.
- Members of the public wishing to search the Register would be able to check whether someone was qualified to practise and use the protected title in a particular modality.

An approach to regulation that was not modality specific would mean the following.

- A smaller number of titles would be protected. For example, the stems counsellor and psychotherapist might be protected. As the stem would be protected, this would cover usage of these titles as part of an adjectival descriptor. For example, someone using the title ‘psychodynamic’ in front of psychotherapist would need to be registered. If there was differentiation between psychotherapists and counsellors, additional protected titles might be considered, for psychotherapists, for counsellors, or for the whole part of the Register, in order to prevent the evasion of registration.
- Registered practitioners would be able to use adjectives in front of the protected title to describe their area of work as long as they did not use another protected title to which they were not entitled; and did not mislead the public as to their qualifications and experience, or work outside their scope of practice.

- Standards of proficiency would be produced which describe the standards of safe and effective practice necessary in order to practice as a psychotherapist/counsellor, or separately as a psychotherapist, and as a counsellor. (The existing standards for clinical scientists might provide a model for this.)
- Pre-registration education and training programmes would be approved against the standards of education and training to ensure that they successfully delivered the standards of proficiency.
- Members of the public wishing to search the Register would be able to check whether someone was fit to practise as a psychotherapist/counsellor, or as psychotherapist, or as a counsellor.

The Group overall decided that the working assumption was that the Register would not differentiate between modalities. However, it was agreed that this would need to be revisited in light of the Group's discussions about education and training.

## **2.4 Client groups**

The Group discussed whether the Register should differentiate between those qualified to work with children and young people and those qualified to work with adults.

This topic may need to be revisited in light of the Group's decision in relation to modality specific differentiation (see 2.3).

## **3. Protected titles**

### **3.1 Psychotherapist**

The title psychotherapist would become protected. Any further discussion about modality specific titles may influence the decisions in this area.

### **3.2 Counsellor**

The arguments for and against protecting the title 'counsellor' discussed by the Group / summarised in the previous papers considered are reproduced below.

The arguments for protecting the title 'counsellor' include:

- The title has wide currency and is used by a large number of practitioners.
- The title is readily recognised and understood by members of the public.
- The title is not widely used outside of therapeutic settings.
- If the title 'counsellor' was not protected this would mean that a significant number of practitioners would not need to register and might choose not to.

The arguments against protecting the title 'counsellor' include:

- The title is often misunderstood and is in use outside of therapeutic settings.
- The title cannot be protected because of its use outside of therapeutic settings.
- Adjectival titles suggested in the Call for Ideas/discussed in the last meeting included therapeutic counsellor; psychotherapeutic counsellor; registered counsellor.

The Group agreed that it was preferable that 'counsellor' should be protected but that 'registered counsellor' or another similar title might be protected instead.

The HPC Executive has undertaken some initial investigations into whether it might be possible legally to protect the title 'counsellor', perhaps by attempting to differentiate in law between uses of the title in other contexts, so that the circumstances in which there would be an 'intent to deceive' are made clear. This work is ongoing.

A paper will be brought back to the Group at its April meeting and the Group invited to agree appropriate recommendations on this topic.

## **Appendix 1: Background information reproduced from ‘Structure of the Register and protected titles’ (considered by the Group at its meeting on Wednesday 28 January 2009 and Thursday 29 January 2009)**

### **1.1 The structure of the Register**

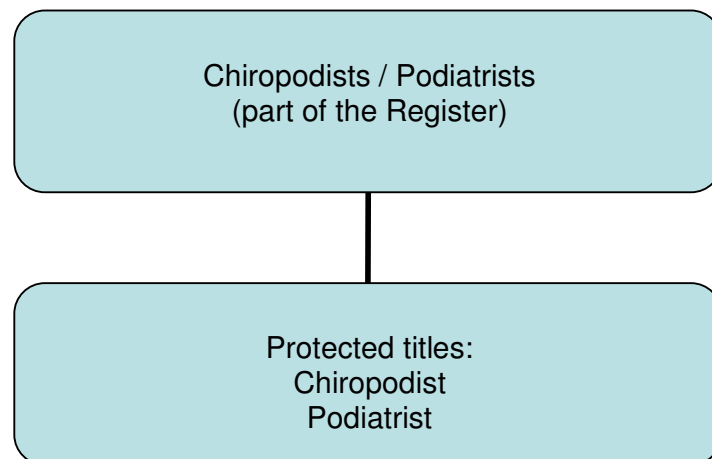
In the call for ideas we asked for views about how the Register should be structured for psychotherapists and counsellors.

#### **1.1.1 About the structure of the Register**

The HPC Register is currently structured into thirteen parts. Each of the parts has at least one protected title (please see section 1.2.3).

Figures 1, 2 and 3 below and overleaf illustrate how different parts of the existing HPC Register are structured.

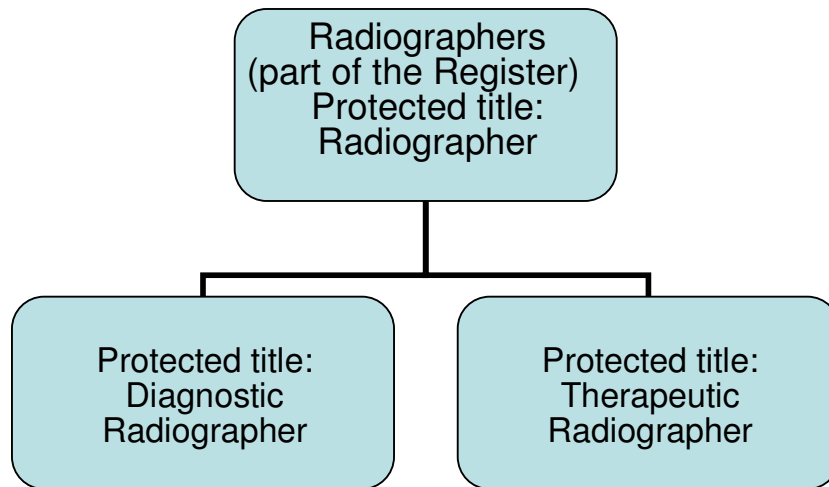
*Figure 1: Chiropodists / Podiatrists*



The structure of the Register for chiropodists / podiatrists does not differentiate between ‘chiropodists’ and ‘podiatrists’. Someone who successfully completes an approved programme is registered in the part of the Register and has access to both titles.

A consequence of this is that there is a single set of standards for safe and effective practice (‘Standards of proficiency’) for this part of the Register. The approved pre-registration programmes may differ in content and title but there is no differentiation between ‘chiropody’ programmes and ‘podiatry’ programmes.

Figure 2: Radiographers

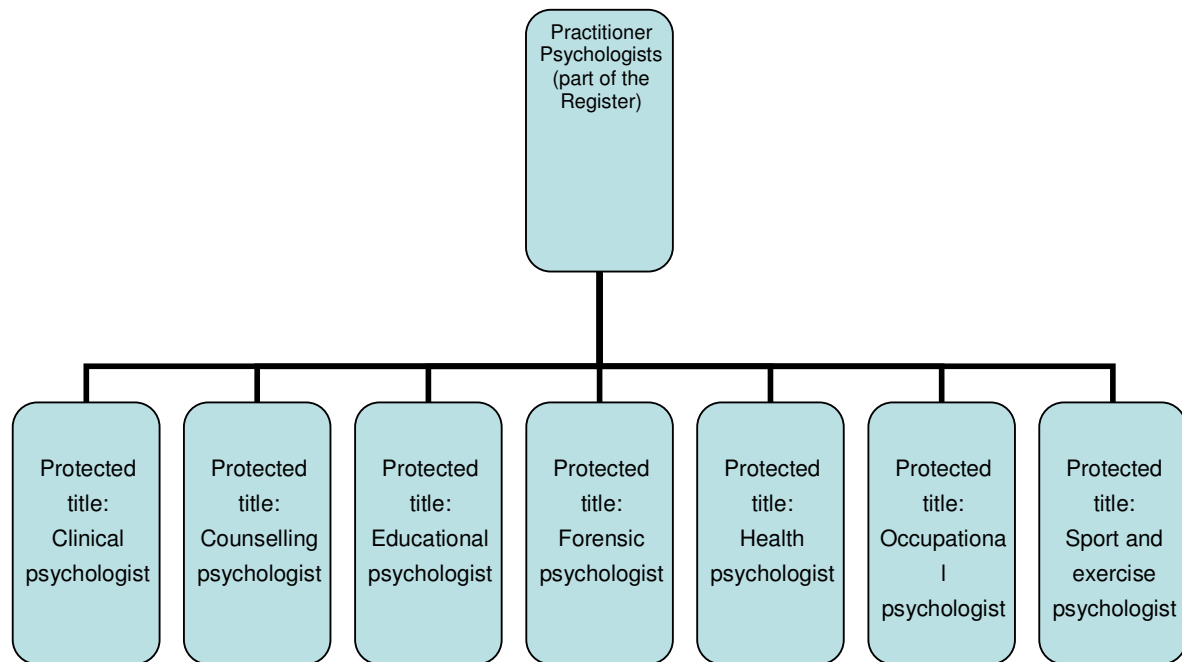


The structure of the Register for radiographers differentiates between diagnostic radiographers and therapeutic radiographers. Someone who successfully completes an approved programme in diagnostic radiography is registered in that part of the Register and has access to the protected titles 'radiographer' and 'diagnostic radiographer'. However, they would not have access to the protected title for therapeutic radiographers; there are separate approved pre-registration education and training programmes leading to the eligibility to use this title.

A consequence of this is that there are separate profession-specific standards in the standards of proficiency for radiographers that apply only to diagnostic radiographers and those that apply only to therapeutic radiographers. This structure relies upon differentiation in education and training programmes (i.e. there are approved programmes in diagnostic radiography and approved programmes in therapeutic radiography).



Figure 3: Practitioner psychologists (proposed)



The diagram above is the proposed structure of the Register for the regulation of practitioner psychologists. The structure of the Register differentiates between the seven different domains of practitioner psychology and their respective protected titles. For example, someone who successfully completes an approved programme in sport and exercise psychology will in future be able to register in the practitioner psychologists part of the Register with access to the proposed protected title 'sport and exercise psychologist'. However, they would not have access to the protected titles for the other domains.

A consequence of this is that the draft standards of proficiency consulted on between December 2007 and February 2008 included profession-specific standards which apply only to specific domains (e.g. only for health or forensic psychologists). This structure relies upon differentiation in education and training programmes (i.e. there are separate programmes of education and training for each domain).

N.B. The proposed structure for the practitioner psychologists also includes two proposed protected titles which would be available to the whole part of the Register (i.e. to registrants in every domain) – practitioner psychologist and registered psychologist.

### **1.1.2 Dual registration**

A small number of existing HPC registrants are dual registered with other statutory healthcare regulators or are registered in more than one part of the HPC Register.

For example, some operating department practitioners are also nurses; some physiotherapists are also registered as podiatrists. Other registrants may be registered with voluntary organisations – e.g. some art therapists are also members of psychotherapy and counselling registers.

Each part of the Register attracts a registration fee. Therefore, someone who was registered as both a physiotherapist and a podiatrist would pay two registration fees. Whether they needed to be registered twice would be a professional decision for the individual, taking into account the role they were undertaking. However, if they wished to use a protected title they would need to be registered in the relevant part of the Register.

However, someone 'registered more than once' in the same part of the Register would not need to pay two registration fees. For example, someone who was both a diagnostic and a therapeutic radiographer would only pay one registration fee. They would have one registration record but would have access to both protected titles and these would appear on their registration certificate.

## **1.2 Protected titles**

In the call for ideas, we also asked which titles should be protected and why.

### **1.2.1 About protected titles**

The HPC regulates by protection of title. Each of the professions regulated has at least one title which is protected in law. This means that only someone who is registered in the relevant part of the HPC Register is able to use that protected title.

The HPC's powers to protect titles are contained within Article 6 (2) of the Health Professions Order 2001 ('the Order'). The parts of the Register and the protected titles are set out in a schedule to the Health Professions Council (Parts and entries in the Register) Order of Council 2003.

### **1.2.2 Protection of function**

The HPC regulates by protection of title. This approach to regulation tends to be common amongst the UK regulators of healthcare professionals. However, some regulators also have protection of function. This means that a particular task or role is protected by law and can only be undertaken by someone who is registered.

An example of this is the fitting of contact lenses which has to be undertaken by someone who is appropriately qualified and registered with the General Optical Council. Internationally, some of the state boards in the United States regulate by protection of function – their legislation prescribing what licenses in each profession can and cannot do.

Sometimes other legislation outside of professional registration also acts to protect or 'restrict' certain functions. For example, only a podiatrist who successfully completes approved education and training and has their entry in the Register appropriately annotated is able to supply certain prescription only medicines and administer certain local anaesthetics. This is a requirement under the Prescription Only Medicines (Human Use) Order 1997, an Order under the Medicines Act 1968.

The relative advantages and disadvantages of protection of title versus protection of function are often the subject to debate. A common criticism of protection of title is that this does not prevent individuals who wish to avoid regulation 'rebranding' their services and continuing in practice.

Conversely, a common criticism of protection of function is that this would fetter the change and development of professions, and the emergence of new roles and new professions. Further, whilst it might be possible to define in law specific 'physical' functions that are specific to a small number of professions, this may be far more problematic for other professions where the nature of the intervention would be far harder to define in law. In addition, multi-disciplinary team working means that tasks that in the past that may have been undertaken by one profession are now undertaken by a variety of different professions.

### 1.2.3 Existing protected titles

A list of the existing protected titles is provided below for information.

<b>Part of the Register</b>	<b>Protected title(s)</b>
Arts therapists	Art psychotherapist
	Art therapist
	Dramatherapist
	Music therapist
Biomedical scientists	Biomedical scientist
	Medical laboratory technician
Chiropodists / Podiatrists	Chiropodist
	Podiatrist
Clinical scientists	Clinical scientist
Dietitians	Dietitian
	Dietician
Occupational therapists	Occupational therapist
Operating department practitioners	Operating department practitioner
Orthoptists	Orthoptist
Prosthetists / Orthotists	Prosthetist
	Orthotist
Paramedics	Paramedic
Physiotherapist	Physiotherapist
	Physical therapist
Radiographer	Diagnostic radiographer
	Therapeutic radiographer
Speech and language therapist	Speech and language therapist
	Speech therapist

In some professions more than one title is protected. This is often where there is differentiation in education and training and standards of safe and effective practice between titles - for example, the arts therapists and radiographers parts of the Register.

However, in some parts of the Register where there is no differentiation, more than one title is protected. For example, for chiropodists / podiatrists both titles are in wide current usage. They are sometimes used interchangeably by practitioners and therefore both titles are protected.

In other instances, more than one title is protected to prevent an obvious evasion of protection of title. For example, the title 'physical therapist' is not commonly used by physiotherapists in the UK but is used internationally, and is therefore protected to prevent an obvious evasion of registration.

#### **1.2.4 Legal powers**

The HPC's powers relating to protection of title are included in the Order and reproduced below. These powers are explained further overleaf.

Article 39 of the Order sets out a number of offences relating to the misuse of protected titles.

Article 39 (1) of the Order says:

*Subject to paragraph (2), a person commits an offence if with intent to deceive (whether expressly or by implication)—*

- (a) he falsely represents himself to be registered in the register, or particular part of it or to be the subject to any entry in the register;*
- (b) he uses a title referred to in article 6(2) to which he is not entitled;*
- (c) he falsely represents himself to possess qualifications in a relevant profession.*

Article 39 (3) of the Order says:

*A person commits an offence if—*

*(a) with intent that any person shall be deceived (whether expressly or by implication) he causes or permits another person to make any representation about himself which, if made by himself with intent to deceive, would be an offence under paragraph (1); or which*

- (i) is false to his own knowledge; and*
- (ii) if made by the other person would be an offence by him under paragraph (1)*

#### **1.2.5 Grandparenting**

Whenever a profession becomes statutorily regulated for the first time, and a title or titles are protected, there will be a time limited 'grandparenting' period.

The 'grandparenting window' allows people who have previously been practising the profession, but who could not become voluntarily registered, to apply for registration, provided that they can meet certain criteria.

After the grandparenting period has closed, the only way to become registered for UK-trained individuals is to successfully complete a programme approved by the HPC.

As the grandparenting period is about protecting the acquired rights of those who have been in practise before the opening of the statutory register, the Order provides an exemption for those who continue to use a protected title without being registered during the grandparenting period.

Someone who has been using the relevant title before the opening of the Register can continue to do so until the end of the grandparenting period or until such time as a final decision is reached on their application. This means that someone who makes a grandparenting application at the end of the period can carry on using that protected title until a final decision has been made on their application, including any appeal. (The PLG will consider the topic of grandparenting at a future meeting.)

### **1.2.6 Prosecution of cases**

The HPC's legal powers outlined in section 1.2.4 mean that it can prosecute individuals who use a protected title whilst not registered, if they do so with 'intent to deceive'. A person found guilty can be liable to a fine on level 5 of the standard scale (up to £5000).

This means that in any proceedings brought by the HPC, the HPC has to prove that the title was used with the intention of misleading members of the public. The intention to deceive can be both express and implied. This means that the HPC is able to deal with cases where the title may not be used, but its use is implied in others ways.

To illustrate:

1. An individual advertises in a directory service as a physiotherapist but is not registered. This person could be liable for prosecution under Article 39 (1) b; there is evidence of an express use of a protected title to which the individual is not entitled.
2. An individual advertises in a directory service, is not registered, and does not use the protected title 'physiotherapist'. However, in their advert they say that one of the services they offer is 'physiotherapy'. This person could be liable for prosecution under Article 39 (1) b; the protected title is not used but its use is implied.

The two examples given on the previous page are not intended to be an exhaustive list of the kinds of cases that the HPC is able to handle. However, they do provide an illustration of how the legislation functions.

The HPC's fitness to practise department is responsible for investigating complaints about protection of title. Case Officers are responsible for gathering

relevant information to ascertain whether an offence might have been committed. In summary, a three stage process is normally followed:

- The person concerned is asked to explain their alleged conduct (unless there is evidence that the complaint has no basis – e.g. the person is registered under another name).
- If there is clear evidence of an offence (or if no response as been received to correspondence), a cease and desist letter is sent, warning the individual that their misuse of a protected title must stop, or steps will be taken to prosecute.
- Dependent on the evidence and the response received, steps are taken to make a decision about prosecution, which may include obtaining witness statements and interviewing the alleged offender.

Information may also be passed to the police and trading standards as appropriate.

To date, the HPC has found that this approach has been an effective way to prevent the misuse of protected titles (please also see the section overleaf on communication). Whilst the HPC has not yet taken prosecution action itself, it has worked with the police and other agencies to assist in their investigations. For example, in November 2007 an individual was cautioned by Essex Police for misuse of the protected title 'physiotherapist'.

As the purpose of protection of title is the ability to take appropriate action against those who would mislead members of the public, there are some uses of a protected title that may not cause concern. For example, those undertaking training may use the title but with an adjective that makes it clear that they are not registered – for example by using the prefixes 'trainee' or 'student'. In these circumstances it is clear that the individual is in training and therefore there is no intention to deceive.

Other examples include the use of terms such as 'animal', 'equine', 'veterinary' or 'industrial' before the protected title which show there is no intention to deceive; the prefix clearly indicates that the person concerned does not treat human beings. For example, some individuals use the title 'animal physiotherapist' and provide physiotherapy solely for animals.

## **1.3 Standards of proficiency and standards of education and training**

### **1.3.1 Standards of proficiency**

The standards of proficiency are the threshold standards for safe and effective practice in each of the professions regulated by the HPC. They are set at the level necessary for public protection.

The standards consist of generic standards which apply across all the professions, and profession-specific standards which apply to specific professions.

The structure of the Register influences the standards of proficiency (and vice versa). For example, the arts therapists part of the Register differentiates between art, drama and music therapists. The standards of proficiency for arts therapists include generic standards that apply to all professions, profession-specific standards that apply across the arts therapies and profession-specific standards that apply to each of art therapists, music therapists and dramatherapists.

### **1.3.2 Standards of education and training**

The standards of education and training are generic standards which apply to education and training programmes which lead to eligibility for registration. They cover areas such as admissions, curricula and assessment and are set at the level necessary to deliver the standards of proficiency.

Programmes are assessed against the standards of education and training. A programme that meets the standards of education and training will also allow a student who successfully completes that programme to meet the standards of proficiency. Once a programme is approved, someone who successfully completes that programme is eligible to apply for registration.

Standard one of the standards of education and training ('SET 1') sets out the normal threshold level of entry to the Register in the professions we regulate. This is articulated as a threshold academic level. Every time a new part of the HPC Register is opened, the threshold level of qualification for entry for the new profession is determined and added to the standards.

The threshold level has to be set at the level necessary for someone successfully completing an education and training programme to meet all of the standards of proficiency. As the threshold is the 'minimum', programmes above the threshold academic level may be approved.