



# **The Regulation of Psychotherapists and Counsellors in the United Kingdom through the HPC: Between State Powers and International Obligations.**

**Report by**

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“I am myself a supporter of the autonomous value  
of psychoanalysis and its independence [...].  
I have never changed my mind [...] against the apparent  
tendency to transform psychoanalysis into  
a simple assistant of psychiatry”  
Sigmund Freud.

“The High Contracting Parties shall secure to everyone  
within their jurisdiction the rights and freedoms defined in  
Section I of this Convention”  
European Convention on Human Rights  
Art. 1  
Obligation to respect human rights

“The enjoyment of the rights and freedoms set forth in this Convention  
shall be secured without discrimination on any ground such as sex,  
race, colour, language, religion, political or other opinion, national or  
social origin, association with a national minority, property, birth or other  
status.”  
European Convention on Human Rights  
Art. 14  
Prohibition of discrimination

“Persons belonging to national minorities may exercise the rights and enjoy the freedoms flowing  
from the principles enshrined in the present framework Convention individually as well as in  
community with others”.  
Framework Convention for the Protection of National Minorities  
Art. 3.2

“Nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention”

European Convention on Human Rights

Art. 17

Prohibition of abuse of rights

“The restrictions permitted under this Convention to the said rights and freedoms shall not be applied for any purpose other than those for which they have been prescribed”.

European Convention on Human Rights

Art. 18

Limitation on use of restrictions on rights



Two sorts of weights and two sorts of measures.

They are both alike something detestable to the Lord.

The Holy Bible Prv 20:10

20<sup>th</sup> October 2009

Your ref: .....Req. 1<sup>st</sup> October 2009.....

The National Council of Psychotherapists (est. 1971)

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Heanor, Derbyshire

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UNITED KINGDOM

FULL LEGAL REPORT on :

The Regulation of Psychotherapists and Counsellors in the United Kingdom through the HPC: Between State Powers and International Obligations.

Prepared for The National Council of Psychotherapists (est. 1971) on the instructions of Mr David Doohan FNCP, NCP Membership Secretary

Dates of examination: 1<sup>st</sup> October 2009 – 20<sup>th</sup> October 2009

## **PREFACE**

I am preparing this Report at the request of The National Council of Psychotherapists (est. 1971). It is intended as a full analysis of the developments of work that has been conducted towards the actual proposed legislation on the statutory regulation of psychological therapy practitioners in the United Kingdom, through the Health Professions Council (HPC), an independent body set up via the Health Professions Order 2001 – granted of a full Constitution through the HPC Constitution Order 2009 – and aimed at autonomously regulating health professions in the United Kingdom.

This report is based on the assessment and analysis of all the documentation on the proposed legislation available to date. The first material dates back to 1971 with the Foster Report, following its investigation on the relevant activities of the Church of Scientology in the United Kingdom.

Several researches and contacts with both Mr Doohan and other NCP members as well as other professionals have, helped in the writing of this report.

In addition, this report contains only my independent, unbiased and impartial views and opinions which have been elaborated only on the basis of factual information and details.

It should be made clear and apparent that my statements and declarations are only due to my personal opinions and views, which are the result of the assessment of all of the material available during the assessment period and my experience within this

field. It has been based on a structured analysis of the context and background from whence the proposed legislation stems. An analytical review of various statements and provisions has been made so as to compose a report that is as complete and accurate as possible.

I am a barrister belonging to the BAR Council of Ancona (Italy). I hold a Doctoral Degree in Jurisprudence from the “CARLO BO” University of Urbino (Italy) and an LLM Degree in Middle East Studies as well as an MBA Degree in Human Resources and Business Management both issued from the same University. I have also qualified in other fields such as Mediation, Counselling, Psychotherapy, Sustainable Development and Human Rights. These various certifications I have obtained in different countries such as the United Kingdom, the Republic of Ireland, France and others too. Moreover I belong to other professional associations such as the *Association Internationale des Avocats* (International Lawyers Association) within which I am a member of the EU Law Commission, Family Law and Human Rights Commission. Finally I hold a PhD Research Degree in “International Order and Human Rights” issued from the “SAPIENZA” University of Rome (Italy). I have extensive experience in the assessment and evaluation of legal and judicial provisions especially ones that fall within the remit of International Human Rights Law and EU Law. In the field of International and European Laws I particularly specialize in Minorities, Equality and Religious Freedom issues as well as issues concerning the Freedom of Movement and the Recognition of Professional Qualifications obtained

in other countries. In addition to an extensive private practice which focuses on both EU, International and Human Rights Law issues, I also lecture in International Human Rights Law at the “CARLO BO” University of Urbino (Italy) where I am also a member of the related Examiners Board Commission and participate as a speaker in conferences and meetings worldwide.

## **0. EXECUTIVE SUMMARY**

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### **1. DOCUMENTS and MATERIAL USED FOR THE ASSESSMENT**

The following documents were made available to me prior to my examination of the Proposed Legislation on the Statutory Regulation of Psychotherapists and Counsellors in the United Kingdom through the Health Professions Council.

Apart from the necessary time spent reading all of the documentation required for the writing of the report, I need to add that I have been familiar with the British Governments' regulation projects – which I have always followed with great interest – since 2005. Alongside the documentation listed below, I have had the opportunity to review these papers in detail in the light of my personal knowledge and previous experience, in the fields of psychotherapy and counselling and their proposed regulation in the United Kingdom and other countries.

The material about HPC and their activities are available (as at the date of this report) on the HPC website ([www.hpc-uk.org](http://www.hpc-uk.org))

Various statements and reports issued by different organizations

Commentaries raised during debates on regulation

HRH Prince Charles Speeches

Sigmund Freud's statements

The documentation supplied by the NCP

European Convention on Human Rights

European Court of Human Rights case law

European Union Treaties

European Court of Justice case law

The Foster Report 1971

The Sighart Report 1978

Mental Health Act 1983 (amended)

Shipman Inquiry Report

Human Rights Act 1998

The Health Act 1999

Lord Alderdice Proposal of a General Psychotherapy Council 1999

Health Professions Order 2001

White Paper “Trust, Assurance and Safety – The Regulation of Health Professionals in the 21<sup>st</sup> Century”, February 2007

The HPC Constitution Order 2009

## HPC Consultation Responses by NCP, UKCP, BACP, CAPCAB

Other documentation and material relevant to the aims and purposes of the present report.

I will refer to the contents of the above documents either explicitly or implicitly in later sections of this report.

### **2. SUMMARY OF INSTRUCTIONS**

- a) “ [...] provide the National Council of Psychotherapists with a full report concerning the legality of the proposed regulation of psychological therapies in the United Kingdom by the Health Professions Council (HPC)”.
- b) “ [...] further request that this report examines the proposals from all points of view, not just the legal aspects”.
- c) “ [...] We will leave the full scope of this report to you to ensure that it is as broad and wide ranging as possible”.

### **3. NCP PROFILE**

The National Council of Psychotherapists, one of the longest established societies of

its type in the country, being formed in 1971 following the 'Foster Report' on the statutory registration of psychotherapists, is a national association of therapists, mainly in private practice, to whom the public may confidently refer. Most schools of psychological thought are represented and a wide variety of therapeutic approaches are offered. Since its inception in 1971 the Council has provided a home for many thousands of Members from all backgrounds. They are used to declaring that their aim has always been to be as inclusive as possible within the constraints of the profession which they serve.

It is also declared by the NCP that:

The National Council *was* an Organisational Member of the British Association for Counselling and was always an active participant within their proposals for a United Kingdom Register of Counsellors. This changed in 2009/9 when it became apparent that the UK government, through its quango the Health Professions Council (HPC), had a hidden agenda that did not include listening to the profession, only forcing their own views upon the majority.

Moreover Administration of the NCP is by Committee of Management, comprised of both appointed officers and representatives elected at the Annual General Meeting (at which time accounts are presented and made available for inspection). Complaints against individual members, should they arise, are thoroughly investigated by the Complaints & Disciplinary Sub-committee. Continuing Professional Development

(CPD) is encouraged by the Council for all Members.

A quarterly Journal, “Fidelity”, is published, which now carries an International Standard Serial Number and copies are lodged at the British Library, the National Libraries of Scotland, Wales and Ireland and the University Libraries of Oxford and Cambridge.

To become registered members of the Council, evidence of training, knowledge and experience, together with character testimonials, must be submitted to an Examination Committee. Written and oral examinations may also form part of the admission procedure. All members are encouraged to meet regularly for peer-support/ supervision and are bound by both a published Code of Ethics & Practice and comprehensive Rules & Constitution. A mandatory requirement that all members must be insured for professional indemnity and public liability, complement the safeguards set in place for the protection of the public.

Although the Council itself is not a training organisation, a facility does exist whereby either member-run or external courses may be approved as offering suitable tuition towards the minimum standard necessary for application to Affiliate or Licentiate Member status.

#### **4. THE UNITED KINGDOM and the REGULATION of health professions: THE ESTABLISHMENT OF HPC AS AN INDEPENDENT REGULATOR**

The United Kingdom has a central role in the International Organization. It is a Member of the United Nations Organisation since its creation in 1945, of the European Union since 1972 and has belonged to the Council of Europe since its creation in 1945 through the Statute of the Council of Europe, also referred to as the Treaty of London which was enacted on the 5 of May 1945, furthermore Sir Winston Churchill was one of the proposers of the Council of Europe's creation.

The past eight years have been lively as far as developments on regulations of liberal professions within the field of health are concerned.

The United Kingdom has a longstanding tradition with regards to development of integrated health. HRH Prince Charles has expressed on several occasions his favour towards this field and the necessity to allow CAM therapies practitioners to self-regulate; this interest of His Royal Highness Prince Charles was also made officially known through the creation of the Prince of Wales Foundation for Integrated Health in 1993, among others one aim of which is to help and assist professions become self-regulated<sup>1</sup>.

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<sup>1</sup> “We are infinitely complex beings - mind, body and spirit - that cannot just be reduced to mechanical functioning. Healthcare should, and must, attend appropriately to all three aspects”. HRH Prince of Wales Charles with this statement makes his view on the importance of integrated health very clear. On the Foundation's website many speeches of HRH Prince Charles are available. HRH Prince Charles always emphasizes the importance of observing the European and International Laws.

Whereas the United Kingdom has a long tradition in the field of integrated health and therapies generally well developed and spread throughout the country, - the United Kingdom does not have a tradition of State intervention aimed at regulating liberal professions. Many of the attempts (or maybe temptations) to regulate some professions in a strict way for one reason or another have always failed up till now, the first reason being the general opposition of both the public and the professionals involved.

Many acts and initiatives have been approved and started since 1999 with the Health Act 1999 followed by the Health Professions Order 2001 which set up the Health Professions Council (HPC). The HPC would have been later requested by the Government through the White Paper on “Trust Assurance and Safety” issued on February 2007 to start a study to ascertain whether they would have been capable of also accommodating counsellors and psychotherapists. HPC activities to regulate the field became more vital over the period 2007 and 2009.

The Health Professions Council has no links and no connection with other State initiatives concerning psychological services and therapies generally such as the NICE, the IAPT, SfH and NIMHE to name but a few.

To give some explanations: for instance, *Skills for Health* is a standards organisation charged with drawing up sets of *National Occupational Standards* (NOS) for different psychotherapy modalities. Despite being created by State to do so, the

Health Professions Council has denied its competency to set standards to be considered by them as the generic HPC standards.

The HPC has produced a FAQs factsheet about themselves in which it is also stated that “There is no direct link between the Improving Access to Psychological Therapists (IAPT) project or the clinical guidelines published by the National Institute for Health and Clinical Excellence (NICE) and regulation” (answer to Q.9)<sup>2</sup>. This concept is also emphasized and highlighted later on when answering Q.10 concerning the educational requirements and standards to become registered with them, they declare “We do not use the NOS in any of our processes, including the approval and monitoring of education and training programmes”.

IAPT stands for *Improving Access to Psychological Therapies* (IAPT) an initiative spearheaded by Lord Layard. They have worked closely to the NICE, the *National Institute for Health and Clinical Excellence* who had to demonstrate the effectiveness of therapies. The result of such experimentations created the basis on which to accept some modalities rather than others. Another Institute working in the field is the *National Institute for Mental Health in England* (NIHME) that constitutes a semi-autonomous part of IAPT.

Given that, as reported, the HPC have declared they have no links with these initiatives it is not very clear the reason why they were set up by the Government and

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<sup>2</sup> “Journalist FAQs”, enc.

particularly why they have not been used for some aspects of regulation such as educational standards.

Another unclear point is why it was planned that psychotherapists and counsellors had their own regulatory body like doctors, dentists, pharmacists and osteopaths, just to mention some health professionals.

It is not clear why professionals considered as belonging to the same field are regulated in different ways, i.e. independent regulations for doctors, pharmacists, osteopaths and so on and a single body for all the other health professions among which also psychological professions have been included.

The Health Professions Council was set up through the Health Professions Order 2001 and requested by the White Paper ‘Trust, Assurance and Safety – The Regulation of Health Professionals in the 21<sup>st</sup> Century’ issued in 2007 in which it was also stated that they had to ascertain whether the HPC would have been capable of regulating counsellors and psychotherapists. Particularly it was affirmed that “...psychotherapists and counsellors will be regulated by the Health Professions Council, following the Council’s rigorous process of assessing their regulatory needs and ensuring that its system is capable of accommodating them” (page 85). Other relevant pieces of legislation do include the HPC Constitution Order that has provided the HPC with a full Constitution in 2009.

The HPC is, then, a self-governed body with its own constitution and rules and attributions and because of this they have produced the mentioned FAQs factsheet about themselves to try to answer the most common questions about HPC as mentioned above.

From that factsheet we gain the following picture of the HPC.

The HPC present themselves as an independent body, a UK wide health regulator created with the core aim to protect the public. They originated from the deletion of CPSM, Council for Professions Supplementary to Medicine which was replaced by HPC in 2001. They also hasten to add they are completely independent and not part of the Department of Health or the Government. They maintain their own independence also by being paid for entirely by registrants' fees and finally declaring they are not a charity. At present the HPC regulates 14 professions which are Arts therapists, Biomedical scientists, Clinical scientists, Chiropodists / podiatrists, Dietitians, Occupational therapists, Operating department practitioners, Orthoptists, Paramedics, Physiotherapists, Prosthetists / Orthotists, Practitioner psychologists, Radiographers, Speech and language therapists. The HPC was originally composed of 27 members of whom 13 were practitioners – one from each one of the then regulated professions – and 13 lay people from different walks of life and 1 president. Actually, due to the approval of the mentioned HPC Constitution 2009, the HPC now has 20 members of whom 10 are professionals and 10 lay members. They also

declare on their factsheet that : “We have an operational business consisting of around 120 members of staff. The HPC employees are in charge of the day-to-day running of the business, for example the registration process”. And that “The HPC also works along-side approximately 400 Partners (again half professional, half lay). Their roles include assessing international applications, sitting on hearings and approving courses for registration” (answer to Q.9 of HPC FAQs factsheet).

So, we can definitely say that the HPC is an independent body that does not constitute a part or an agency of State. In fact they call the kind of regulation independently administered and managed by them as “statutory regulation” rather than “State regulation”. The difference being that **State regulation** is organized and managed directly by State, maybe with some contact with professional bodies, but having the State maintaining all of the decision making powers concerning the professions regulation. The so called “**statutory regulation**” whose name stems from the fact that the HPC was created by a piece of legislation called the Health Professions Order 2001, is a wholly different kind of regulation in which an independent entity like HPC is granted of full powers concerning the step by step process of regulation. This makes also a strong difference between the HPC, Health Professions Council and the abovementioned CPSM, Council for Professions Supplementary to Medicine. Whereas the HPC is an independent and autonomous regulator, the CPSM was a State regulator than a part of State. Furthermore registration with CPSM was not mandatory and professionals were free to choose

whether to become **members or not. Only those working in the public sector and those employed by the NHS, National Health Service**, did usually choose to do so. The freedom of choice whether to become State-registered or to simply remain practitioners in private practice was up to each professional. The Council for Professions Supplementary to Medicine was then a State body, created by State and covering a public function whose membership was facultative. The HPC is, instead, an independent body with no links with State – a sort of a private agency created by State being granted with full regulation powers covering all of the aspects of a profession from educational standards to prosecutions and, indeed, aimed at a public function whose membership is mandatory for those using one of the titles they protect and generally those who provide the public with services regulated by them, although the latter point is argued by many and not completely clear over all.

The public function of this independent body is made much more understandable in the mentioned FAQs factsheet about HPC. Three questions, namely – “Who are the HPC?”, “What does the HPC do?” and “What powers do the HPC have?” apart from some specifications for each of them, all of the answers do contain clear statements about the public oriented function of the State-autonomous HPC. “We ... protect the public”. “Our job is to protect the health and wellbeing of people”. And “The HPC has one core function; to protect the public”. So, two points regarding the nature of the HPC and its orientation are absolutely clear and straightforward. The HPC is a completely autonomous and independent body with no links with State, either the

government, the department of health or parliament. The HPC public function to protect the public is also indisputable and incontrovertible.

The extension of the independence and complete decision-making powers of HPC are made also apparent by HPC themselves in another factsheet concerning more directly the regulation of psychotherapists and counsellors in the United Kingdom<sup>3</sup>. Reading this factsheet in fact the HPC state that their independence, autonomy and complete decision making powers with regards to all the aspects of regulation are so wide that “There is no direct link between the Improving Access to Psychological Therapists (IAPT) project or the clinical guidelines published by the National Institute for Health and Clinical Excellence (NICE) and regulation” (answer to Q.9). This concept is also emphasized and highlighted later on when answering Q.10 concerning the educational requirements and standards to become registered they declare “We do not use the NOS in any of our processes, including the approval and monitoring of education and training programmes” (FAQs factsheet on the regulation of psychotherapists and counsellors issued by HPC and available on their website).

The complete self-governing powers of HPC and their margin of appreciation are so wide-ranging that they are not only attributed the power to hold hearings and to prosecute those illegally using a protected title but also to investigate to ascertain whether a practitioner is in any way misleading the public providing them with services reserved to registered professionals only by using a different title which is

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<sup>3</sup> “Frequently asked questions on the statutory regulation of psychotherapists and counsellors”, enc.

not protected as such. So it is clear that the HPC has been attributed with full investigative powers in order to prevent people using a not-protected title and thus not registered with them and providing the public with services which could in some way be linked with the work of HPC registered professionals from continuing to do so. On this point they affirm in fact that : “We also have the power to prosecute individuals falsely claiming to be health professionals. For example using the title ‘physiotherapist’ or misleading the public by offering ‘physiotherapy services’. Prosecution can result in a criminal record and a fine of £5,000” (answer to Q.7 on the HPC FAQs factsheet) and even more unambiguous that “Our primary concern is that the public are not misled as to who is, or is not HPC registered and that protected titles are not misused (or implied) by those who are not registered. It would be a decision for the individual practitioner whether they needed to become HPC registered or, indeed, whether they needed to retain their registration with another body, taking into account factors such as the professional title they were practising under, the nature of their practice and any requirements of their employer” (answer to **Q.7: What is the HPC’s position on people practicing under a non-regulated title?** of the HPC FAQs factsheet on the regulation of Psychotherapists and Counsellors). The last statements make it clear that the HPC is allowed not only to prosecute those practicing under a protected title and being not registered with them but also all those who so do implicitly using a different or similar title to one of those protected but providing the same services.

The HPC has a “Code of corporate governance” about which they say : “The Health Professions Council’s Code of Corporate Governance incorporates a series of regulatory documents and policies which govern how we operate, take decisions and the procedures followed to ensure that our actions are fair, efficient, transparent and accountable to our stakeholders”<sup>4</sup>.

The Scheme of Delegation illustrates what powers the HPC have and their degree is made apparent immediately in the introduction where it is stated that “The Scheme is designed to ensure that, so far as possible, the Council and its Committees set policy and strategy and that the Executive implements that policy and strategy and is responsible for all operational matters” (point 1.2). Then both policy and strategy are in the hands of the independent regulatory body called HPC, Health Professions Council which has no links with State at all.

## **5. THE MOST RECENT DEVELOPMENTS: THE HPC over 2007-09**

First we need to point out that there is no actual evidence of any independent study carried out for either the HPC or the government stating the clear necessity of a regulation, nor is there any study making it indisputable and firm that the HPC

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<sup>4</sup> The Code is divided into four sections. Enc.

“system is capable of accommodating” psychotherapists and counsellors as required in the White Paper 2007 issued by the Government in February 2007.

In fact, the HPC, in a document issued the 13 of December 2007 and called “Counsellors and Psychotherapists – road map to their statutory regulation” declare that the whole regulation is based on the assumption that the actual present self-regulation of therapists “may affect the health and well being of clients, patients or service users”<sup>5</sup>.

This affirmation is not evidence-based in any way. No facts and figures regarding the assumed level of dissatisfaction of clients with therapists’ services are provided, either real or supposed. Instead, surprisingly, the HPC have carried out a survey concerning the delivery of psychological services available in the United Kingdom and as a result, contrasting with their own theoretical assumption, 87% of respondents were more confident than in the past with the psychological services provided at present and we can definitely say that surely this level of satisfaction cannot be attributed to the HPC since up till the 1<sup>st</sup> of July 2009 they had only regulated health professions and none of the psychological ones.

As visibly described and demonstrated above, being a self-governed body which is completely independent of State, namely government and parliament, the HPC have received complete decision-making powers directly delegated by State that have then

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<sup>5</sup> Counsellors and Psychotherapists – road map to their statutory regulation. Enc.

decided to pass on to an independent, autonomous and self-governing body like the HPC all of the decision-making powers regarding regulation – powers usually in the hands of State – and inspired to the principle that the process of regulation had to be as much independent as possible by State<sup>6</sup>.

On the basis of the Health Professions Order 2001 and further legislation – such as the HPC Constitution Order 2009 – being a full decision making body the HPC decided to create a PLG for the regulation of counsellors and psychotherapists.

PLG stands for a Professional Liaison Group, a group created by HPC to discuss the regulation's issues with those people more directly involved with the profession whose regulation was being discussed, namely psychotherapists and counsellors in this case.

On 11<sup>th</sup> August 2008 the HPC issued a letter inviting groups and individuals working in the fields of psychotherapy and counselling to join the HPC created PLG for psychotherapists' and counsellors' regulation through the invitation to send nominations<sup>7</sup>.

During the same period when the letter was sent to prospect members of the PLG also a so called "Call for Ideas" consultation was being run<sup>8</sup>. That first consultation was

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<sup>6</sup> Scheme of Delegation of Powers, enc.

<sup>7</sup> "HPC PLG Invitation to nominate", enc.

<sup>8</sup> "The statutory regulation of psychotherapists and counsellors: call for ideas", enc.

aimed at seeking “at an early stage the views of stakeholders about the potential statutory regulation of psychotherapists and counsellors”<sup>9</sup>.

In the mentioned PLG membership invitation letter Mr. Michael Guthrie - Head of Policy and Standards, anticipates that “we will receive far more nominations for this PLG than available places and consequently it is likely that we will disappoint a significant number of nominees”. Moreover he wrote “Decisions about membership of the PLG will be made by the HPC President and chair of the PLG”. These powers are self-attributed from HPC to themselves on the basis of those delegated powers the HPC received from State and on the basis of which HPC has created its own internal rules which also govern the PLG operations. They have in fact issued a PLG operating manual on May 2008<sup>10</sup>. The aim of the PLG was “To investigate and make recommendations to the Council on the future regulation of counselling and psychotherapy. The group should discuss and recommend the following: • Structure of the Register; • Protected title(s); • Voluntary register transfer and Grandparenting arrangements; • Standards of Proficiency; • Standards of Education and Training”<sup>11</sup>.

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<sup>9</sup> The Statutory regulation of psychotherapists and counsellors – consultation on the recommendation of the psychotherapists and counsellors Professional Liaison Group. Introduction, page 2.

<sup>10</sup> Revised Professional Liaison Groups operating manual, HPC May 2008, enc.

<sup>11</sup> “Psychotherapists and Counsellors Professional Liaison Group (PLG) PLG workplan Executive summary and recommendations” issued by HPC as a workplan to be followed and made available to PLG membership at the first meeting of the PLG the 4<sup>th</sup> of December 2008. Enc.

According to what HPC stated in fact several groups and organizations and individuals also applied for membership of the PLG for the regulation of psychotherapists and counsellors through the HPC. The number of applications received by HPC has not been made available to the public; we only know that only 11 of them were considered as fulfilling the requirements for organizations and people to become members of the PLG. The criteria on which the selection was made and the requirements applicants had had to fulfill had not been known by applicants nor is there any evidence of how the selection was conducted. The names and affiliations of those accepted as members of the PLG have been listed by HPC on a document called “The Statutory regulation of psychotherapists and counsellors – consultation on the recommendation of the psychotherapists and counsellors Professional Liaison Group”<sup>12</sup>. All those accepted as members of the PLG had belonged to organizations and groups historically in favour of regulation. In fact

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<sup>12</sup> Appendix 1, List of members of the psychotherapists and counsellors Professional Liaison Group, page 46. The list enumerates 17 members, of whom 6 from the HPC and namely Mary Clark-Glass, lay member of the HPC Council; Jeff Lucas, lay member of the HPC Council; Graham Smith physiotherapist member of the HPC Council; Eileen Thornton, alternate physiotherapist member of the HPC Council; Annie Turner, occupational Therapist member of the HPC Council; Diane Waller, arts therapist member of the HPC Council and Chair of the PLG and 11 from different organizations, namely Sally Aldridge, Director of Regulatory Policy of BACP, British Association for Counselling and Psychotherapy; Fiona Ballantine Dykes, Head of Qualifications of CPCAB, Counselling and Psychotherapy Central Awarding Body; Jonathan Coe Chief Executive of Witness, nominated by the We need to Talk campaign; Mick Cooper, Professor of Counselling, University of Strathclyde; Peter Fonagy, Chair, Strategy Group, National Occupational Standards for Psychological Therapies, Skills for Health; Julian Lousada, Chair, British Psychoanalytic Council; Brian Magee, Chief Executive of COSCA, Counselling and Psychotherapy in Scotland; Linda Matthews, Consultant psychotherapist, representing the British Association for Behavioural and Cognitive Psychotherapies; Nick Turner, Head of the Relate Institute; Jean McMinn, Teaching Fellow, School of Education, Queen’s University Belfast and Kathi Murphy, senior Trainer Metanoia Institute, representing the United Kingdom Council for Psychotherapy.

because of this peculiar composition consisting of only people approving regulation, the PLG agreed that “in making its recommendation, it was important that the views of those with dissenting views or concerns about certain aspects of statutory regulation should be listened to and taken into account”<sup>13</sup>. The only way to listen to the dissenting voice would have been reading the responses to the “Call for Ideas” sent by those with dissenting views because they were not allowed to take an active part to the PLG decision making activities. The other way will be to take into account the responses sent by dissenting organizations answering the Consultation on the PLG Recommendation. However since also those supportive of regulation and particularly those belonging to the PLG have replied to the Recommendation whose content they have contributed to determine, it results in being very difficult to imagine how the HPC will deal with this issue.

In fact the BACP, historically in favour of regulation, have replied to the HPC Consultation they do not agree with the differentiation between counselling and psychotherapy adding the “BACP is strongly of the opinion that to separate two professions on the basis of five uninformed, non-evidence based standards is unacceptable and flies in the face of common sense” and they disagree with the threshold level of qualification and the standards of proficiency also emphasizing “The HPC's anomalous position with regard to setting academic threshold levels”.

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<sup>13</sup> The Statutory regulation of psychotherapists and counsellors – consultation on the recommendation of the psychotherapists and counsellors Professional Liaison Group, par. 25, pag. 8.

Furthermore the BACP declare on their response to HPC that “BACP has not sought entry to the Health Professions Council and has opposed the HPC as a suitable regulator; preferring a newly-constituted, Psychological Professions Council” and that “BACP is concerned that the proposed Standards of Proficiency for psychotherapists only, would place members of the public at risk by indicating a level of competence that is currently not required or delivered in training [...] The medical model used in and by the HPC and expressed in this consultation in the Standards of Proficiency is questioned and rejected by BACP”. BACP also affirm “the inappropriateness of the HPC's medical model for counselling and psychotherapy” and that “BACP and its members believe that regulation based on these proposals will have a series of negative impacts on the delivery of counselling and psychotherapy in the United Kingdom”<sup>14</sup>. The UKCP have, to date, sent two official statements on the regulation, one issued in July 2009 and called “Consultation! Consultation!” and the other one, the official response, called “UK Council for Psychotherapy Submission Response No. 1” issued on 15 of October 2009. Another one is expected by the end of October. The UKCP among other statements for instance specifies that “UKCP ideally *would like* to see a Register that contains three titles under the overall heading in the register of Psychotherapy and Counselling: a. Psychotherapist b. Psychotherapeutic Counsellor c. Counsellor” (point 2.1). This

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<sup>14</sup> BACP's response to HPC Consultation on the statutory regulation of psychotherapists and counsellors available online at [www.bacp.co.uk/regulation](http://www.bacp.co.uk/regulation).

opinion is not shared with any other organization. They add that they “recommend the protected titles be Psychotherapist and Counsellor with differentiated minimum threshold levels of entry to the register” (point 2.1). And regarding the licence to work they specify that “It is important to UKCP that it is made clear that registration with HPC would signify a licence to practice under specified professional titles and that it in no way defines job roles or the licensing of any job” (point 2.3). At point 2.7 they declare “We believe it is vital that both the SOP and the eventual SETS for the two protected titles of Psychotherapy and Counselling incorporate comprehensive and specific requirements for all practitioners working with children and / or young people, we further recommend that in the case of SETs these are clearly delineated for each title as separate sections of the SETs”. Instead on this point the BACP affirm that “BACP does not support the differentiation between practitioners qualified to work with children and young people and those qualified to work with adults”. The same subject is differently dealt with by CPCAB who wonder about the likely possibilities to cope with this issue. They in fact declare “We agree there may be an issue here but the implications of such a route need to be thought through. What implications would this have for training? Is this a later ‘specialism’ or is it entry level training? Would this mean that practitioners could not also work with adults? Would it be possible to have additional SOPs for working with children and young people that individual practitioners could meet either at entry level or at a later stage which would enable them to apply for a protected title?” With regards to entry level

qualifications whereas the BACP proposes NQF level 6 for both counsellors and psychotherapists specifying that the entry level will concern only future professionals, instead UKCP declares that they would prefer level 4 for counsellors instead of the proposed level 5 which would risk of excluding too many present practitioners. As regards entry level for psychotherapists they agree with the proposed level 7. They finally add that “Entry levels as they are constructed in the current model of HPC regulation make it difficult to develop a regulatory system that reflects the many professional environments in which counselling and psychotherapy operate”. Different views were outlined by these three organizations as regards the registers transfer issue and other issues too.

It is clear that what everybody would have expected from the PLG for counsellors and psychotherapists whose members were all in favour of regulation has not occurred. In fact no wide consent about the regulation rules was achieved and then all the groups belonging to the PLG have decided to challenge the proposed regulation for counsellors and psychotherapists and the HPC itself, instead of working towards its wide approval by other professionals who were excluded from the PLG and the general public also. This issue allows me to talk about the topic of PLG appointment. Particularly as a matter of fact the way of appointing PLG membership is not completely clear as not clear is the way inclusions and exclusions were managed; the members’ short-listing was in fact decided by only two people, HPC President and PLG Chair. This makes obvious why they only chose those originally sharing similar

views to their own. However the shared views concerned only the supposed need of a regulation and not its contents as shown above.

The same approach of “power concentration” in the hands of the few and aimed at making decisions easier to take, also concerns, for instance, the issue of which registers to transfer and the one concerning the management of cases of prosecution which will be assessed by a single officer until their conclusions as specified below.

So we can definitely say that the number of applications for PLG membership has not been made available, that only groups supportive of regulation were shortlisted and allowed to participate as PLG members to the HPC? Furthermore the criteria on the basis of which selections were made have not been made available and explanations for membership denial have not been issued. In this way the reasons why the National Council of Psychotherapists (NCP), a body founded in 1971 and professionally and ethically working since then were not allowed to become members of the HPC PLG groups has not been declared nor is it clear in any way provided that the person designated as a prospect member had a broad curriculum and years of activity and experience in the field of psychotherapy and health care too.

Over the period December 2008 to May 2009 the PLG for the regulation of counsellors and psychotherapists met five times in total. They were not able to state any clear differentiation between counselling and psychotherapy. They simply agreed very generally - as listed on the Summary of Recommendation on page 3 of the HPC

document “The Statutory regulation of psychotherapists and counsellors – Consultation on the recommendation of the psychotherapists and counsellors PLG” – the following:

- The Register should be structured to differentiate between psychotherapists and counsellors
- The titles counsellor and psychotherapist should be protected
- The criteria for registers transfer
- The grand-parenting period should be two years in length
- The draft standards of proficiency
- The threshold level of qualification: NQF level 5 for Counsellors and NQF level 7 for psychotherapists.

By reading the above PLG outcome it could be assumed that the PLG members agreed the above points. Instead there are points and areas of “certain uncertainty”. In fact as mentioned also, the associations historically agreeing with a State intervention in the field of psychotherapy and counselling services through a regulation and belonging to the HPC appointed PLG group responded to the consultation launched in July 2009 and closed 16<sup>th</sup> October 2009. The reasons were many. Indeed as demonstrated above BACP, UKCP and CPCAB whose representatives have taken active parts as members of the HPC PLG works have finally decided to respond to the HPC Consultation on the draft regulation of counsellors and psychotherapists

launched in July this year. They have clarified that they do not agree on many points of the proposed regulation, for instance, rejecting the medical model imposed on them as well as declaring the incompetence of HPC to regulate them. This makes it clear that the final statements have been probably outlined without being a result of an intense group work and without being truthfully shared by all of the membership.

One point to underline in a decisive way is that the HPC PLG would have been expected to define the matter they were about to work on, i.e. psychotherapy and counselling along with providing a definition of psychotherapists and counsellors and their works. Instead such definitions have not been given and then many of the problems that resulted from the HPC PLG work are due to this abnormal absence of any definition differentiating between the two kinds of intervention in the therapeutic field, counselling and psychotherapy. Despite this, however, they have decided to differentiate the register in two different parts assuming *some* differences between counselling and psychotherapy. Once again assumptions rather than clear statements and evidences have led the entire PLG activities.

Many of the mistakes and inaccuracies found in the proposed legislation are due to the same problem : it was not clear to the PLG members and the HPC above all what they were working on; in fact it had not been ascertained and demonstrated whether the HPC would have been capable of accommodating counsellors and psychotherapists within the HPC system (White Paper 2007, page 85). They have

failed to demonstrate this and then they are clearly unsuitable and inappropriate for this kind of work.

In this way they have several times associated counselling and psychotherapy to psychiatry which is in fact a completely different discipline pertaining additionally to the medical world. This kind of approach is also determined by the fact that the Health Professions Council is indeed an independent body aimed at regulating Health Professions such as paramedics, physiotherapists and dieticians who have nothing to share with counsellors and psychotherapists who are, instead, professionals belonging to the world of psychological professions. Also, Sigmund Freud declared that psychoanalysis was not a simple assistant of psychiatry and that psychotherapy had to remain independent of the medical professions. (FREUD S., The Complete Work, Vol. X, It. Ed.) The opposite has occurred with the HPC work. In fact the proposed regulation clearly associates counselling and psychotherapy with the medical model and with psychiatry more specifically. Also once considering counsellors and psychotherapists as if they were nurses or in any way members of a hospital based team. This is contained in the Appendix 2 to the Recommendation and concerning Standards of Proficiency for psychotherapists and counsellors which reads as follows: “Psychotherapists and counsellors must be able to contribute effectively to work undertaken as part of a multi-disciplinary team” (page 4). Furthermore “...using appropriate techniques and equipment” (page 6); “be able to engage in evidence based practice” this last point fits more to psychiatry than psychotherapy and

counselling which are talking therapies; counsellors and psychotherapists do not supply any drugs and it is very difficult to say that a modality can ensure the same results when used with different clients. Psychotherapy is not surgery and it does not deal with physical problems like, for instance, physiotherapy does. The same personal problem can be dealt with by different therapists in different ways and be resolved equally as well as the same therapist who would use different approaches with different clients for the same problems. It is incorrect to expect that psychotherapy and counselling could be evidence based in a scientific and medical meaning, although some modalities do have a more direct link with the “scientific method” and it is possible to expect the same likely results with different clients. Also other statements such as “be able to formulate specific and appropriate management plans including the setting of timescales (...) be able to conduct appropriate diagnostic and monitoring procedure, treatment, therapy or other actions safely and skillfully” (page 7) make it clear the fact that the HPC have intended counselling and psychotherapy as medical modalities; in fact HPC stands for Health Professions Council, whilst counselling and psychotherapy belong to the psychological field. Moreover the above statements are completely wrong for and extraneous to many psychotherapeutic modalities that do not accept any idea of time scaling as well as they would not accept the idea of “engage in order to progress/develop a working understanding of psychological difficulties and their origins” simply because many modalities are not involved in problem finding and problem solving, being instead

focused on the goals to achieve and client-centred (for instance brief solution oriented psychotherapies) rather than focused on the main problem and its origins as other modalities actually do (for instance psychoanalytical and generally analytical ones).

Also another statement makes the wording much closer to psychiatry than psychotherapy: “be able to keep accurate, legible records and recognize...in accordance with legislation, protocols and guidelines...to use only accepted terminology in making records” (page 8). Many modalities, e.g. solution focused and goal oriented ones would probably not accept the idea of keeping any records being in fact the responsibility of the client to work towards the goals set in advance with the help of the practitioner who acts as a facilitator and so is, in fact, not “curing” a patient.

And again “be able to monitor and review the ongoing effectiveness of planned activity and modify it accordingly” (page 9) does not fit properly the psychotherapeutic model of many modalities that do not accept the idea of planning in therapy, which is instead, considered as a step by step discovery; for instance the idea of planning is obviously completely absent in classical psychoanalysis as well as in some other analytical approaches to psychotherapy. Also the concept of effectiveness of a treatment as shown in the preceding lines is much closer to the medical model, i.e. psychiatry, rather than to the talking therapies, counselling and psychotherapy.

Another peculiar point is “know and understand... the structure and function of the human body... the evaluation of treatment efficacy and the research process” which is directly linked with the psychiatric practice (page 10) as well as the following point that requires psychotherapists to “understand typical presentations of severe mental disorder. Understand methods of diagnosis of severe mental disorder appropriate to the theoretical approach and be able to conduct appropriate diagnostic procedures. Understand and implement treatment methods to address symptoms and causes of severe mental disorder”. Simply many modalities do not accept clients with severe mental disorders which is instead what psychiatrists indeed do. Otherwise the result of such an approach proposed by HPC would be that the only difference between psychiatrists and psychotherapists should be that psychiatrists are allowed to prescribe drugs because they are doctors. Instead differences are many, one of which being the above, another one being that psychotherapy is not only a simple set of skills and technical knowledge that a psychotherapist supplies to a client; instead psychotherapy is a mix of skills and knowledge indeed, along with which there also is the personal experience of a psychotherapist who works deeply with a client in order to find a solution to a problem or to achieve a goal or “simply” to allow the client unlock their inner self through a thorough self discovery. Psychotherapy in fact originates from the Old Greek words “Psyché” and “Therapeia” and it means the “cure of soul”. There are no pills, tablets or any other drugs to cure the soul nor is there any universally and scientifically evidence-based method which can cater for all

people's needs in the same way with different clients. Every client's journey in therapy is unique and exclusive as unique as are all human beings over all.

Another point of regulation that needs commenting on is the issue of registers transfer.

In my view, should be it proven that the HPC has legally and competently worked, and first of all that it had been created according to the EU guidelines for the regulation of professions in EU countries, in the event of an implementation of the proposed legislation all the existing registers should automatically transfer in to the HPC register. Such a claim is based on a basic and fundamental democratic principle. It is the principle of "iura quaesita" – which is the plural of "ius quaesitum" – i.e. the principle of "acquired rights". If at present a professional practitioner is legally working within the British legal framework, either voluntarily or being paid, they have to be allowed to join the new register without any further training or any other requirement to fulfill. The simple reason is that in the contrary the professional work would become outlaw because the State has decided to change the rules which had allowed them to legally work up to that moment. The problem making the professional's work outlaw would be an external one not attributable to the professional behaviour. It would be like changing the basic rules which govern football during a football match. Rules can be changed indeed but they cannot affect the work and the lives of those already working legally and professionally at present.

Furthermore, the way in which and which of the registers should transfer into the HPC register is clearly outlined in the PLG Recommendation text where it is stated that “information supplied by organisations will be scrutinised by a member of the HPC Executive” (page 30). This provision is on the same wavelength of what has occurred with the PLG membership selection; the difference being that in that case two people, namely PLG Chair and HPC President shortlisted the Membership applications, in the present case instead only one member of the HPC will have to decide about this issue.

## **6. THE REGULATION OF PSYCHOTHERAPISTS AND COUNSELLORS: STATE POWERS AND THE INTERNATIONAL OBLIGATIONS OF THE UNITED KINGDOM**

The United Kingdom is a member of the United Nations, the European Union, the Council of Europe as well as other international organizations and is thus bound by the contents of treaties of which is a member such as the International Covenants of New York, the European Convention on Human Rights, the Framework Convention for the Protection of National Minorities to name but a few.

The UK is also bound by the EU guidelines and policies concerning the regulation of liberal professions in the EU area. They were clarified by the European Court of Justice. The European Court of Justice (ECJ) has the primary function of interpreting EU Law and assuring its standardised application in all of the EU member States.

Three important ECJ judgments have stated and clarified the EU Law relevance; e.g. the judgment issued in 1963 in the “Van Gend & Loos” case when the European Court of Justice introduced the principle of direct effect of EU Law within member states: this allows citizens claim the respect of EU Laws before national judges.

Another relevant judgment was issued in 1964 in the case “Costa” in which the European Court of Justice declared the principle of supremacy of EU Law on national legislation. Then in the event of a contrast between a national legislation and one or some EU provisions the latter prevail on the national legislation. The other judgment whose content deserves to be mentioned was issued in 1991 and concerned the case “Francovich” and others. In this case the ECJ elaborated another fundamental principle governing EU Legal system; this is the principle of the direct responsibility of States for damages caused to EU citizens by national legislations adopted against the EU Law provisions. Since then EU citizens are allowed a means to seek compensation in case of violation of EU Law provisions adopting national legislations.

On the basis of the above principles, the ECJ judgments concerning the regulation of liberal professions in the EU countries and the guidelines States are required to follow, acquire a primary role and function over all.

The relevant judgments were issued by the ECJ in the cases “Arduino” and “Wouters” in 2002.

The Arduino judgment clarifies that Member States have the right to regulate professions.

A report requested by the European Commission from an independent research body on the regulation of liberal professions in the European Union territory demonstrated that “countries with most regulations for all professions are Austria, Italy, Luxembourg, Germany, and possibly Greece. Belgium, France, Portugal and Spain appear to be in the medium field, whereas the UK, Sweden, Denmark (...) show rather liberal regulatory regimes (...)”<sup>15</sup>.

The Arduino also added that Member States are allowed to associate professional bodies in this task as long as they retain the decision-making powers and establish sufficient control mechanisms. They must not abdicate their powers to professional bodies without clear instruction and control.

In the case of HPC regulation the only instruction given by State were that the HPC had to ascertain whether its system was capable of accommodating counsellors and psychotherapists as content in the “White Paper - 2007”. Such a capability has not been demonstrated by HPC in any way, instead as shown in preceding lines all the work of HPC has been founded on vague and theoretical assumptions. The instruction given was really vague too. No clear indication of the steps to be taken has been

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<sup>15</sup> Speech on “Competition in Professional Services: New Light and New Challenges”. By Mario Monti, European Commission, for Bundesanwaltskammer, Berlin, 21 march 2003, page 9.

dictated by State. At the same time no control systems have been established by State authorities when delegating their powers to HPC. The only means in the public hands is the pronouncement on the final approval. Then we can definitely say that the public authorities have abdicated their powers to an independent self-governed body – which can be defined as a private body whose members are State appointed – providing it with full public functions. As pointed out the Arduino judgment has declared that States are allowed to regulate professions – perhaps associating professional bodies – but has also added that they can do so as long as they retain the decision-making powers – that in the HPC case are in the hands of HPC itself – and that States establish sufficient control mechanisms – completely absent in the HPC case. So the ECJ prescription according to which States must not abdicate their powers without clear instruction and control has not been followed by UK authorities when setting up the HPC, Health Professions Council, intended as a “completely independent” body (HPC FAQs factsheet Q/A n°5) and a self-governing organisation that is independent of the day to day decision making within government and their departments (HPC FAQs factsheet on the regulation of psychotherapists and counsellors Q/A n°1).

The Wouters judgment has recognised that “some types of rules and regulations can be considered as inherent to a particular profession and, therefore, cannot in principle be caught by the prohibition of anti-competitive agreements, decisions and practices.

Without such genuine ‘deontological’ rules the profession would be deprived of its essential character and could not function as such”. (Monti’s speech page 7)

In the same speech EU Commissioner Monti has recalled that national regulators should act in defence of the public interest in their territory refraining from undue and disproportionate and unjustified restrictions (page 6).

An overall picture of the differences between states with low and high regulation was also given by the EU Commissioner who declared that “another observation is that in countries with low degrees of regulation, there are relatively lower revenues per professional, but a proportionally higher number of practicing professionals generating a relatively higher overall turnover. This would suggest that low regulation is not a hindrance but rather a spur to overall wealth creation. [...] A high level of regulation would discourage efficiencies and lower wealth. As an extreme example I would mention Italy and Spain [...]”.

Reading the above judgments and the EU specification it is made apparent that the whole HPC regulation affair has not followed the EU Law statements, guidelines and policies concerning the regulation of liberal professions within the EU.

Other authorities have been invited to properly follow the EU policies about regulation of liberal professions. Recently the Italian Antitrust Authority has expressed its concerns on the proposed reform of the regulation of barristers, which is

being discussed by the Parliament since a long time. Particularly the Parliament has decided to restructure the regulation of barristers that already are one of the most regulated professions in Italy and surely the most regulated in Europe with regards to barristers.

The proposed ongoing regulation is aimed at delegating more powers – namely regulatory ones – to the National BAR Council which should be allowed to decide on an amount of matters such as the entry requirements to access the BAR Council (at present a five-year degree + two years not-paid professional training + 3 written papers and oral examinations on six subjects are required); the standards of proficiency; the fee scale also granting the exclusive attribution to the BAR Council Members to provide the public with legal advice services. The National Antitrust Authority has informed the Parliament that, should this legislation be approved, it would surely constitute a violation of the EU guidelines on the regulation of liberal professions on the ground that the level of decision-making powers in the hands of the BAR Council would be too high and disproportionate in comparison to those allowed – the latter do not include any regulatory powers. One of the consequences would also be the difficulties trainees would encounter becoming members of the BAR Council because of the disproportionate restrictions aimed at limiting the number of practicing professionals. At the same time the Authority added that it will constitute a violation of the competition policies the provision aimed at allowing only registered members to supply legal advice services. The same principles can be

applied to the regulation of psychotherapists and counsellors through the HPC. It will constitute a violation of EU competition policies to allow only HPC registered professionals to provide their services to the public. It could probably be requested that those practitioners who express their intention to work within the NHS, National Health Service be required to register with the HPC leaving others to decide whether to register as State-professionals or not as used to happen with the CPSM in the past until 2002.

**Prior to commenting thoroughly the proposed regulation we should wonder on the following questions:**

### **IS LEGISLATION THE ANSWER?**

Is legislation the answer? Was legislation required by EU authorities? Are there any alternatives? What happens with other professions? Are they sure that present professionals would not continue working using a different professional title? Do other provisions such as the linguistic requirement comply with other international obligations of the United Kingdom? What will be the future of existing schools whose courses do not recognize an NQF award in case only NQF level 7 qualifications will be accepted for psychotherapists to register with the HPC? Do public hearings held in complaint cases respect the ECHR provisions concerning the right to a fair trial according to art. 6 and the right to privacy according to art. 8 ECHR? Can the absence of any impact assessment which should have been carried

out by HPC in order to ascertain the likely consequences of regulation and the capability of HPC of accommodating psychotherapists and counsellors according to the White Paper 2007 provisions be justified?

Did the regulator wonder about the socio-anthropological, criminological and economic consequences of such a regulation? What would be the impact on minorities providing counselling and psychotherapy services? National minorities providing their members with psychotherapy and counselling services in their own languages would not be allowed to do so any longer unless they hold an IELTS certificate. The result of such a provision will surely be that those working as psychotherapists and counsellors will continue to do so using the professional title in their own language. This will create more ghettos among the British Isles instead of favouring a positive integration of minorities. In anthropological terms the provision of a linguistic requirement constitutes the intention of creating an assimilation of cultures under a common language, preventing those speaking another language from working freely within their professional competencies. The result is the exact opposite: ghettos instead of an intended homogeneous community of English speaking professionals. With regards to the criminological consequences, one of the expected outcomes is that those professionals providing services in their own languages will keep doing so and then they will be enacting *contra legem* – against Law – then they will be prone to evade payment of taxes too because they will be not

able to justify their income<sup>16</sup>. Then what would be the impact on national economy? Furthermore, what would be the impact on churches and religious groups providing counselling and psychotherapy services? It is clearly stated that if the proposed regulation comes into force, not only will the professional titles be protected but also professionals not registered with the HPC will risk persecution if they declare that they provide counselling and psychotherapy services; in fact HPC FAQs factsheet Q/A n° 7 outlines the likely risks of someone claiming to provide clients with physiotherapy services. Than the opposite of what the HPC declare they only have to regulate titles not practice. If churches and religious groups were not to be allowed to provide counselling and psychotherapy services to their devotees this will surely constitute a violation of Art. 9 of the European Convention on Human Rights on Freedom of thought, conscience and Religion; in fact it is clear that such an intervention of the public authorities does constitute an undue interference with religious rights beyond the powers that States are allowed, according to ECHR art. 9 para 2. States are not allowed to interfere with the internal organizations of religious

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<sup>16</sup> Statements concerning psycho-criminological matters are the result of a personal consultation with Mr Michele Amicarelli, psychotherapist and criminologist. He has also focused the attention on the “symbolic function of language and its centrality to notions of identity, both as a source of individual self-identification and as a crucial element in the collective cultural identity of many communities (especially in Europe)”. Furthermore “Any threat (real or perceived) to the use of language, such as inadequate opportunities to learn or use one's own language in public or in private, is interpreted as tantamount to a threat to the very identity of those involved, thus provoking understandably strong and defensive reactions. This entanglement of issues of language with such a sensitive phenomenon as identity provides fertile ground for conflicts”. Finally “States have an obligation [...] to encourage conditions for the promotion of identity that goes beyond mere protection and requires special or "positive" measures to ensure equal enjoyment and development of the rights of minorities in fact as well as under law. Crucial in this regard are the language and educational policies of the State concerned” (statements from HOLT-PACKER, *OSCE Developments and Linguistic Minorities in International Journal on Multicultural Societies*, Vol. 3, No. 2, 2001).

communities, the European Court of Human Rights (ECtHR) has at different **times** affirmed<sup>17</sup>. And surely what services to provide to devotees does constitute one of the fundamental aspects of the community's life. Moreover States are not allowed to intervene so as to investigate on religious groups' tenets and beliefs<sup>18</sup>. This also makes it clear that in case the public authorities should decide the application of the proposed regulation to prevent existing religious groups from providing therapeutic services of every nature that would constitute a clear violation of the ECHR provisions. The aspect regarding the linguistic requirement assessment from a strictly legal point of view is thoroughly commented on in a later section of this report.

As stated previously many attempts to regulate psychotherapy and counselling have failed up till now, the reason being the general opposition of both the public and the professionals involved.

This opposition is due to the actual fact that professional services in the United Kingdom cater for all public needs and the general public is usually well satisfied with the services provided to them. Actually such a statement is also made indisputable by evidences provided by HPC themselves; in fact the results of the mentioned HPC survey have highlighted that the "Eighty seven per cent (87%) of those questioned in the survey felt it was more acceptable to seek psychological

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<sup>17</sup> ECtHR, *Hasan and Chaush v. Bulgaria*, 26 October 2000.

<sup>18</sup> ECtHR, *Church of Scientology of Moscow v. Russia*, 6 April 2007.

assistance now than it was during their parents' generation"<sup>19</sup>. Moreover for almost all professions practitioners also are covered by relevant professional insurances. Then only recently British governments have expressed their inclination to factually regulate liberal professions in the United Kingdom. As outlined above as regards psychotherapy and counselling, after almost forty years since the issue of the Foster Report – which focused on the activities carried out by the Church of Scientology – several steps have been taken towards the regulation of psychotherapists and counsellors and generally psychological therapies in the United Kingdom. So far none of the proposed models of regulation has been yet considered as completely satisfying and complying with the general principles at which the general life of the United Kingdom is inspired and on which it is shaped.

The reason for a regulation of psychotherapists and counsellors seems to have always been posed on the need for the general public to be protected. I will be discussing this point at different times in subsequent sections of the present writing.

What I hasten to add is that, since the issue of the Foster Report, no State agency nor the HPC have yet been able and capable to define what counselling and psychotherapy are, what the differences and affinities between the two and what counsellors and psychotherapists actually do and/or what they would be allowed to do on the basis of the proposed legislation. Nor has the HPC demonstrated how they

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<sup>19</sup> HPC website News 01/07/2009. 1<sup>st</sup> July was the day of the open of the practitioners psychologists register.

fulfill the requirement to be capable of accommodating psychotherapists and counsellors within its system as requested in the White Paper 2007.

In fact apart from a series of instructions concerning some generally acceptable and expectable professional behaviours and standards of proficiency for health professionals there is no one single clear statement as regards the main activities of counsellors and psychotherapists. The absence of any definition of counselling and psychotherapy is probably at the very basis of such a lack of confidence in defining the main competences of counsellors and psychotherapists. The HPC have clearly demonstrated they are neither able nor capable of accommodating counsellors and psychotherapists within their system.

In fact in the proposed regulation there are series of measures and do not in most cases also not pertinent with the professions of counselling and psychotherapy. Indeed this last affirmation is fostered by the actual fact of a general confusion that seems to govern HPC about psychotherapy which is often confused with psychiatry within the draft legislation. A thorough analysis demonstrating this assertion has already been demonstrated in the preceding sections and is further provided underneath.

So, is legislation the answer? Initially the regulation aim was one of convenience; it was proposed and planned in order to obtain the protection of the general public, i.e. psychotherapy and counselling users, as if they were not yet protected by organizations and professional bodies such as the NCP established in 1971, the

BACP established in 1977 and the UKCP created in 1985 to name but a few. Later, opponents say, it developed into a full system to control professionals' activities, an interference with professionals' services in the consulting rooms and aimed at giving instruction on what to say / not to say, how to use verbal and non verbal communication, what to do when clients provide only limited information<sup>20</sup>, on the presupposition that only a public intervention of State and government on professionals' activities would ensure the delivery of truly professional services as if professional services had not yet been ensured in the United Kingdom during the last centuries. Furthermore in the already mentioned HPC FAQs factsheet on the regulation of counsellors and psychotherapists the HPC answering question n° 4 "How does statutory regulation increase public protection?" state that "No system of regulation can protect the public entirely [...] Statutory regulation means that the very small minority of practitioners who do not practice safely and effectively can be removed from the Register and prevented from continuing to practise and continuing to cause harm". And in order to justify the latter affirmation do proclaim that "At the moment, a psychotherapist or counsellor who is removed from the membership of their professional body, for example, can simply continue in practice without any legal means for preventing continuing harm to members of the public". The point that needs to be accentuated here is the assumed absence of any legal means to prevent a

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<sup>20</sup> Proposed Regulation Appendix 2; articles 1.b.3 and 2.b.2 specific provisions for psychotherapists and counsellors.

therapist who has committed maybe a sexual abuse from continuing working and possibly committing other abuses. This statement needs to be commented on. Surely means to seek justice are available to the general public: first of all there is the courts' justice as well as there are the means of mediation and ADR, Alternative Dispute Resolution too; in any case, a therapist, as well as any other professional who is found guilty of criminal offences, will surely be condemned by a court and not allowed to work during the period of their detention. It is not expectable that a person be condemned for life. What will they do to live if they are not allowed to do what they are trained for? This, possibly, will foster an antisocial behaviour of the condemned person who will be likely to commit other offences as demonstrated by social sciences and criminology. And moving to another field, what are the consequences for an electrician or a plumber that has sexually abused a client? Apart from the condemnation for the criminal offences committed are they also prevented from working as either electrician or plumber or what else from that moment onwards...?

Moreover the mentioned HPC survey on psychological services has shown that the 87% of psychological services users are more confident with the services offered at present than it could have been in their parents' times. The survey was conducted at a time of self-regulation and it was focused only on psychological services; than it is rather straightforward that such a positive result of satisfaction cannot be ascribed to the HPC which in fact as to the 1<sup>st</sup> of July 2009 had regulated only Health

Professions, not Psychological ones. Albeit the HPC have presented their work with enormous emphasis as if it was an unique opportunity also for professionals involved in the sector of counselling and psychotherapy, instead most schools of psychological thought and professional organizations have not accepted their views and generally this kind of State intervention in the field of talking therapies; it was in fact considered and felt as an undue interference and hindrance with the professionals' independence and the freedom of determination and choice of clients too. Such arguments raised by psychotherapists, counsellors and psychoanalysts are based on different reasons and motivations and pose arguments on different grounds, either philosophical or practical. For instance psychoanalysts declare they are not therapists at all; psychoanalysis being a wholly different kind of intervention; other complainants base their concerns on the fact that psychotherapies and psychological therapies in general should be intended like talking therapies and as such they have no links with the so called health professions including paramedics, dieticians and physiotherapists to name but a few. In the abovementioned reports, for instance the Maresfield Report, the HPC competence to regulate psychological therapies is put under discussion and significantly denied.

Moreover all those who have expressed their positions and concerns against the regulation through the HPC, Health Professions Council, have alleged and argued that this independent regulator had poor connections with their actual work and poor competence and skills to regulate psychotherapists and counsellors above all.

According to the Trust Safety and Assurance – White Paper 2007, the HPC was given powers to assess the “regulatory needs” of the talking therapies and whether “its system is capable of accommodating them” (page 85).

The Maresfield Report reads “At that time, nearly all the counselling and psychotherapy organisations in the UK had agreed that HPC was not suited to regulate the talking therapies, and a variety of alternative models were discussed”.

All of this on the account that “The HPC has not done what it was required to do, failing to conduct a proper assessment of the regulatory needs of the field and of its capacity to accommodate the talking therapies”. (Maresfield Report, p. 6)

The allegations resulted in these organisations and professional bodies merging into umbrella organizations such as the Alliance for Counselling and Psychotherapy and others such as the one that issued the Maresfield Report<sup>21</sup>.

Finally as a result of these contextual facts I have to point out that due to the already highlighted inexperience of the British authorities to regulate liberal professions and because of a sort of sense of general reluctance with reference to the external influences the UK authorities have committed an amount of irregularities during the

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<sup>21</sup> The umbrella group that produced in October 2009 the “Maresfeld Report” consists of the following groups and associations: The Arbours Association, The Association for Group and Individual Psychotherapy, The Association of Independent Psychotherapists, The Association of Psychoanalysis Users, The Cambridge Society for Psychotherapy, The Centre for Freudian Analysis and Research, The College of Psychoanalysts-UK, The Guild of Psychotherapists, The Philadelphia Association and The Site for Contemporary Psychoanalysis.

process of regulating liberal professions as shown above and further state in the subsequent sections.

## **OPINION**

I am of the opinion that with the HPC regulation the problems are multifaceted and, therefore, it will only be possible for the government to rethink the whole process.

Therefore, I feel that complicating issues include those outlined above and recalled here below:

- HPC Creation: it was created with the Health Professions Order 2001 allowing it full decision-making and self-governing powers against the EU policies clarified by the European Court of Justice in 2002.
- PLG establishment: the PLG for psychotherapists and counsellors regulation included only people and groups in favour of regulation (11 external members and 6 HPC members) and the fact that they were selected without any officially announced clear criteria by two members of the HPC, namely the PLG Chair and the HPC President makes it likely that everything had already been planned by HPC to smoothly reach the regulation approval as declared by some opponents.
- Absence of any assessment plan : the HPC did not produce any assessment, neither a necessity assessment nor an impact assessment. How could a

regulator, the HPC, decide on a regulation of such an impact having completely no idea of the consequences once approved? The burden of proof is up to the government. The government has delegated its power to HPC. HPC then should have proven such a necessity of regulation. This has not happened. As the ancient broccardo says: *Onus probandi incumbit ei qui dicit non ei qui negat*. The regulator, whether the government or the HPC have to demonstrate factually that regulation is needed. What occurred demonstrates that HPC and government have not done what they were expected to do, instead those who were not in favour have expressed their clear reasons against such an intervention. This constitutes a breach, an inversion of the above mentioned broccardo which is one of the fundamentals of European Law. The burden of proof has been satisfied by the opponents to this regulation.

- Misunderstandings with regard to the nature and meaning of counselling and psychotherapy often confused with psychiatry and other medical modalities generally. The UKCP have declared that in this view “It is difficult, if not impossible, to have impermeable boundaries around the work done by the talking therapies whether it is psychiatry, psychology, counselling, mental health work, health work or voluntary support”. However they are psychological professions, not health professions like psychiatry, that indeed has many links with psychology but is clearly confined in the world of medicine, since in fact a psychiatrist is also a doctor who prescribes drugs.

- Level of qualifications: the HPC appointed PLG for the regulation of counsellors and psychotherapists has decided that NQF level 5 qualification will be required for counsellor and NQF level 7 qualifications will be required for psychotherapists to be registered with HPC. It is not clear who will be charged with deciding on the level of qualifications: the CPCAB, the ASET, the NCFE or whoever else? Who will decide whether present qualifications issued by schools, institutes and colleges will be considered at either level 5 or 7 of the NQF, National Qualifications Framework or whatever level? What will happen if a school, college or institute issues a qualification that is not recognized by any present national awarding body? Will existing schools be required to associate with universities in order to have their training courses validated in order to issue students with NQF level 7 awards? Will schools be forced to closed due to the increase in training fees and to the inability of issuing any accredited qualification? Moreover, the three main organizations belonging to the HPC PLG group have different views and understandings as regards qualifications levels.
- Linguistic requirements: appendix 2, page 5, art. 1b. 3 states also that psychotherapists and counsellors are expected to “be able to communicate in English to the standard level equivalent to level 7 of the International English Language Testing System, with no element below 6.5”.

Such a provision requires very meticulous comments because of the consequences it could entail.

First of all such a provision is affirmed as being in violation of the basic rights of national minorities and it is based on the assumption that English is the official language of the United Kingdom.

However nowhere is it stated that English is the official language and even if it should be declared so there would be no good reason to discriminate against speakers of other languages.

According to the Framework Convention on the Protection of National Minorities, promulgated by the Council of Europe that at present has 47 Member States and to which the United Kingdom belongs, national minorities must be respected. The present Convention was signed by the UK in 1995, ratified and entered in to force in 1998. Many articles have a clear recall to the present matter of the linguistic requirement as requested by the draft legislation on the regulation of counsellors and psychotherapists in the United Kingdom. For instance, art. 1 states that the protection of national minorities is a part of the general protection of human rights. Art. 4 para 2 states that State parties will enact so as to ensure complete equality in every sector of national life. More strongly art. 5 makes the obligation for States to allow national

minorities to safeguard and preserve their own languages. Art. 5 para 2 puts emphasis on the point that States will work towards a general policy of integration avoiding any assimilation purposes. Art. 6 affirms the necessity of adopting measures to promote respect and reciprocal knowledge whatever is the language spoken by members belonging to minorities. Finally art. 10 recognises the right of people who belong to minorities to use their own language freely and without any impediment either in public or in private and both orally and in writing. All the above makes it clear that the HPC regulation constitutes an apparent violation of the above principles being aimed at preventing speakers of any language other than English from providing services in their own languages. It would keep being a violation even in the case of the knowledge of English being simply required as a pre-condition to be allowed to work as either a psychotherapist or counsellor regardless of the importance of the language which is used to provide services to clients. It would surely constitute a violation of the establishment of any assimilation policies in member States as stated in the abovementioned convention. Such a provision is made worse by the fact that it regards only people coming from countries outside the EU as stated in the footnote n° 1 at page 5 of Appendix 2 of the Draft Regulation. In fact, according to such a provision a person from Russia would be not allowed to use their own language as well as someone from Turkey. Instead the above convention regards all the people living in the

Council of Europe's area and this International organization includes 47 members, of which 27 are also members of the EU. The linguistic requirement would also constitute a double violation with regards to people speaking the same language and belonging to different minorities. Imagine a Spaniard and an Argentinean both speaking Spanish. According to the proposed legislation the first one would be allowed to use their own language because being an EU citizen and having, as such, all the rights and duties of UK citizens; the second one in the view of regulators should not be allowed to do so. This is a double discrimination based both on Language spoken and on nationality grounds. As proven also the Argentinean would be protected as regards their language. Moreover another amount of provisions would risk being violated in the case of approval of this linguistic requirement. For instance it will constitute a violation of art. 1 of the ECHR, according to which the Convention's rights are recognized to all the people present in a State which is party to the Convention whatever their nationality. Art. 14 concerning the prohibition of discrimination based on the grounds of a language spoken will likely be a violation. There is also another relevant point: Who will be allowed to provide speakers of other languages with counselling and psychotherapy services? Analyzing the linguistic requirement issue from an operational perspective for instance the European Commission in a case concerning Greece has considered that by imposing an excellent knowledge of the Greek language on foreign teachers

Greece violates Article 53 of the Directive 2005/36/EC on the recognition of professional qualifications as well as Article 39 of the Treaty guaranteeing the free movement of workers<sup>22</sup>. The European Court of Justice also condemned Greece in 1995. It was a case which does fit with the case of psychotherapists and counsellors who are speakers of languages other than English. In Commission v. Greece C-123/94 the 1<sup>st</sup> of June 1995 the ECJ stated that

Maintaining in force provisions under which,

1 - the recruitment of foreign teachers requires authorisation by the Ministry for National Education and Religious Affairs, and that

2 - only persons possessing the qualifications required of teachers within public education may teach in a private school, the Minister being able to decide that the qualifications of Greek nationals who do not satisfy that condition are adequate,

DECISION: constitutes a discrimination that is contrary to Community law.

In the HPC's case it would be expected to be exactly the same as shown below:

“Maintaining in force provisions under which

A - the registration of foreign counsellors and psychotherapists requires authorization by HPC based on the presentation of a language proficiency certificate and

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<sup>22</sup> European Commission, Infringement IP/09/1001 issued on 25 of June 2009.

B - only persons possessing the qualifications required by HPC may work as psychotherapists and counselors, with the HPC being able to decide that the qualifications of British citizens who do not satisfy that condition are adequate. (It is in fact possible that British citizens belonging to a national minority have a knowledge of English at a level that is lower than IELTS 7)

EXPECTABLE DECISION: constitutes a discrimination that is contrary to EU Law”.

Finally, imperative reasons of general interest cannot be invoked on the ground that a psychotherapist or a counsellor speaking only Chinese or Indian or whatever language will be likely to be working only with clients with whom the therapist shares the same language<sup>23</sup>.

- Other consequences as shown above regarding minorities and religious groups: the United Kingdom is under a likely risk of condemnation by the European authorities, European Court of Human Rights and European Court of Justice included for infringement of their convention-based and treaties-based obligations. So, provided the HPC had worked lawfully, the above points would be very risky for the UK government which would actually be under the likely risk of being condemned both by the ECtHR and the ECJ for infringement of its duties.

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<sup>23</sup> ECJ judgment Haim II C-424/97 of 4<sup>th</sup> of July 2000.

- Other concerns regarding HPC as such and its concentration of powers have been already shown and it is probably useful to recall them again here:
  1. HPC creation against EU policies and guidelines: all the powers in the hands of the HPC;
  2. PLG appointment: all the powers in the hands of HPC. In fact “Decisions about membership of the PLG will be made by the HPC President and chair of the PLG”<sup>24</sup>.
  3. Cases of Complaints: all the powers in the hands of a single officer from the beginning to its end<sup>25</sup>.
  4. Registers transfer: all the powers in the hands of a single HPC Executive member (proposed regulation draft, page 30) who will assess requests submitted by organisations holding registers, deciding which fulfills the imposed criteria to transfer.

As a consequence we can definitely say that the HPC way of working has not been a shared one, all the powers having been concentrated in the hands of very few people who have been given the authority to decide every step independently from state and professionals’ views. Only an illusion of being an inclusive process has been given through the involvement of psychotherapy

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<sup>24</sup> In HPC PLG Invitation to Nominate – Letter dated 11 August 2008 signed by Michael Gutrie, HPC Head of Policy and Standards.

<sup>25</sup> Art. 4.2 of the HPC “Protection of Title Service Standard” – a reference rules set to be followed in cases of prosecution. Enc.

and counselling professional practitioners in the PLG. In fact as shown above the choice of PLG members was handled by only two members of HPC, the HPC President and the PLG Chair who have also decided the way to be followed, as was made clear at the first meeting when the PLG members were provided with a pre-drafted workplan.

I further note that the British government has failed to respect its international obligations, namely the obligations deriving from the UK being a member of the European Union whose institutions have clearly defined the criteria and guidelines to follow when regulating liberal professions. As affirmed by the European Court of Justice in the aforementioned *Arduino* and *Wouters* cases the decision making powers must remain in the hands of the State. The opposite of that has occurred with the HPC creation and its regulating powers and its activities at every level. To this end, the fact that the State itself will pronounce on the final approval of the legislation, is not enough, because in fact it has not provided the HPC with clear instructions to follow and has not set up any mechanisms of control. It has indeed abdicated its own powers to the HPC.

I endorse the idea that the HPC itself, having been created *contra legem*, not following the EU policies and guidelines on the regulation of liberal professions, in order to avoid the worsening of the present serious condition, it should be immediately closed down. This will also imply some consequences for the

Government that should also think about how to deal with problems that will surely arise in respect of those professionals already regulated through the HPC and that surely will claim compensation for having been forced to register with the HPC. The Government will also have to work in order to find a different solution for the regulation of liberal professions in the UK. The same statement is also valid and endorsable for all of the other professions regulated in the same way by other regulators like the HPC, id est regulators set up delegating them all the State decision making powers as independent decision making organizations.

Clearly there is no reason why professions should be regulated in this way nor is there any reason as to why they should wish to regulate psychological professions through the HPC. The HPC has not yet created any necessity assessment through which to demonstrate that regulation was necessary in any way as requested in the White Paper 2007, in fact they have not yet produced any evidence to show they are capable of accommodating psychotherapists and counsellors in their system as required by the White Paper 2007 (page 85); finally they have not yet created any impact assessment through which to demonstrate what will be the likely consequences of such a regulation on the lives of present and future professionals; on the national economy -at a time of crisis; on the lives of present schools of psychotherapy and people involved in running them; the likely future of therapy services provided by religious groups and churches; and last but not least the impact of such a regulation on the lives and liberties of clients whose protection has been

recalled and invoked to justify this regulation several times. And it is not enough to declare, as the HPC have done, that “in making our final recommendations, we will prepare an impact assessment which will identify and assess all of the options considered by the Council, including likely costs, benefits and risks. This will include an equality and diversity assessment”. It is not sufficient at all. It should have been commissioned before the beginning of any operation to an independent organization in order to ascertain whether any regulation would have had any positive/negative effects of the lives of the nation and its inhabitants. It is senseless and meaningless that the regulator itself, the HPC, prepare an impact assessment, since they obviously will declare that everybody will benefit from the regulation.

As EU Commissioner Monti declared in the abovementioned speech “The overall goal [*of a regulation*] must be to improve welfare for all users of professional services” (page 6).

Then, *Cui prodest*? Who would really benefit from HPC regulation?

The Public? It has not been proven.

The Practitioners? It has not been proven.

The State? It has not been proven.

The HPC? It is highly probable being all the powers concerning the lives of hundreds of thousands of people in the hands of only twenty people who are appointed by government and who will be allowed to decide to change rules and to issue verdicts about practitioners at their own discretion without any equal and transparent and fair rule. That could also produce a violation of other ethical norms and so represent a case of conflict of interests: for instance State authorities could perhaps nominate as members people in ways that are unclear, such as appointing relatives or “friends” who may belong to lobbies closer to their political parties. It is also possible that regulator’s members themselves enact in ways that may be unclear because of all the powers they are allowed.

### **Any alternative solution?**

The only possible ways for counsellors and psychotherapists regulation:

- TO leave anything as it is now on the basis of the demonstrated satisfaction of psychological services users within the present system (HPC survey on psychological services July 2009)
- TO regulate the field in a different way creating a General Council for Psychotherapy – as auspicated by Lord Alderdice in the past – such a council could be charged

- a. to maintain a National Register of Psychotherapists
- b. to deal with cases of complaint in the function of appeal to the decisions of the professional bodies.

In this case:

- professional bodies and associations would continue existing
- simple title/s as such would not be protected

Only those who hold certain qualifications, are committed to CPD and hold professional insurance, and want to register will be allowed to register with the GCP and to become “GCP Registered Practitioners” or even “State Registered Psychotherapists”

Professionals who wish to register with the GCP will be able to continue being registered with their professional body.

This kind of approach would permit the respect of the present diversity of the therapeutic world to continue existing<sup>26</sup>.

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<sup>26</sup> On the “Frequently asked questions on the statutory regulation of psychotherapists and counsellors” question n° 3 asks: “Does statutory regulation stifle creativity and eliminate diversity?” the answer is the following: “Statutory regulation does not stifle creativity and eliminate diversity [...] We set broad, enabling standards [...] We do not prescribe the ways in which the standards can be met.”. Actually in my view the answer is not epistemologically completely correct. In fact some standards require specific behaviours by the therapist and concern the verbal and non verbal communication to use, the use of interpersonal skills to encourage the active participation of clients, as well as other specific requirements that suffocate creativity because therapists will be stuck in following those rules and will feel as to be forced to prefer the respect of a prescribed

Would allow therapists to be able to choose whether or not to become State-registered, guaranteeing freedom of choice.

Would allow the public to freely make a clear choice, between a private psychotherapist/counsellor and a State-registered one. If it is demonstrated that State registered practitioners do produce better results with clients then surely in due course the public will prefer them and then all of the practitioners will choose to become registered with the State organization for psychotherapists and counsellors regulation, the GCP.

In the case of complaints it could be provided that in case of professionals not registered it is the professional body that assesses the case first, giving another authority, perhaps a special chamber of the GCP or another independent body, the role of appeal chamber (this would also respect provisions according to art. 6 ECHR). In the case of registered practitioners, it is the GCP itself that will decide on the single case giving the opportunity to the appeal, also in this case respecting the ECHR provisions on equal trial.

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requirement to fulfill at the detriment of either the creativity or the subtle nature of their theoretical approach/modality. Therapists are in fact required to respect strict behavioural rules and this will surely create a strange bureaucratic mechanism for which a therapist will enact only to respect rules than to achieve results with clients being also at risk of being struck off the register if found guilty of having enacted against the prescribed rules. For instance what would likely occur if a client is dissatisfied with the therapist's services complaining with HPC that the session was conducted by the therapist being standing instead of sitting? Or perhaps because the therapist has drunk a glass of water during the session? Will the above actions be considered as a kind of misconduct against the client that could lead to a suspension, a fine, or even for the therapist to be struck off the register for a breach of Art. 1 lett. B number 3 sub 5 of the Act?. Because of the above reasons the prescribed requirements indeed constitute a compromising of therapists' creativity and respect of their modality's prescriptions.

## CONCLUSIONS

Whilst the negative and I would say even disastrous consequences of the proposed regulation are absolutely clear and straightforward, we cannot affirm the same as regards any positive effects that could derive from its approval.

Despite it being clear that the UK will be subject to the international judgment once the EU authorities are informed of how this affair has been dealt with, it is unclear how the British Government would try to justify such infringements which has lasted for eight years. All of this is very difficult to imagine if you also consider that, having the EU policies that have been outlined in the abovementioned judgments in 2002, they should have been known by the Government when providing the HPC with those powers which have also been fostered over the last period of time, particularly since 2007 and also through the approval of the first HPC Constitution Order 2009.

Obviously the Government would try to justify it declaring that they had delegated the decision making power to the HPC in order for them to work very closely with those working in the health field. The problem however is exactly this full delegation of powers made by the Government in favour of HPC. The HPC have been delegated all the powers typical of every State; the State by doing so has in fact given up any responsibility concerning its main duties in respect of its citizens, particularly in such

a delicate field as the health sector. The HPC have worked as an independent and self-governed body having been handed the whole process of regulation completely on behalf of the State. The State has abdicated its powers, which is contrary to what is outlined by the EU authorities.

Whilst someone could focus their attention on the risks of an approval of the proposed regulation, for all the above mentioned consequences, I prefer to put the accent on the fact that the central problem with the whole issue is the HPC itself and the kind of regulation chosen by the Government delegating all of its own decision making powers to the HPC. **It is not allowed by EU policies and guidelines concerning the regulation of liberal professions to set up any completely self-governed regulator like the HPC.** Finally the whole process has been conducted with unfair methods as demonstrated by the facts concerning the PLG composition whose members were chosen by only two HPC members. The choice of registers to transfer, whose decision is in the hands of only one HPC member and generally the HPC competency to regulate the lives of 200,000 people into the hands of only 20 people who have been appointed by the government.

The HPC has been delegated all of the decision-making powers regarding the regulation of health professions which are originally powers held by States and, as such they are not allowed to delegate these powers to any independent and autonomous entities such as the HPC.

In summary, I feel that all the aforementioned factors are sufficiently clear and they would suggest the need for the British Government to take a few steps back.

Finally, I confirm and declare that the contents of this report are true and accurate to the best of my knowledge and belief. I believe that the facts I have stated in this report are true and that the opinion I have expressed is correct. I understand that my duty in writing this report is to help the NCP and all those concerned with the HPC regulation on the matters within my expertise. I understand that this duty overrides any obligation to the person from whom I have received instructions and confirm that I have complied with this duty in writing my report.

Yours faithfully,

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