Recommendations for the scope of the Department of Health and Social Care review of licensing in England–the case for redefining the more invasive procedures as 'surgical'

Non-surgical procedures have been the subject of controversy, in part due to their invasiveness. Professor David Sines from the Joint Council for Cosmetic Practitioners (JCCP) introduces a new non-surgical licensing scheme for England

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'The JCCP is frequently in receipt of concerns regarding a range of aesthetic procedures that are constantly emerging for unregulated use in the UK', Professor Sines writes. Is everyone in your clinic adequately licensed to practise?

This article focuses on those cosmetic 'non-surgical' procedures that have been the subject of controversy and concern for many years due to their level of 'invasiveness' and association with the use of adjunctive 'surgical' techniques. The Joint Council for Cosmetic Practitioners (JCCP) has been working with colleagues and experts from across the aesthetics sector to inform the Department of Health and Social Care (DHSC) as part of a pre-consultative phase in the development and design of a new non-surgical licensing scheme for England as proposed in Clause 180 of the Health and Care Act, 2022. Clause 180 advises that:

1 The Secretary of State may, for the purposes of reducing the risk of harm to the health or safety of members of the public, make regulations —

(a) prohibiting an individual in England from carrying out specified cosmetic procedures in the course of business, unless the person has a personal licence;

(b) prohibiting a person from using or permitting the use of premises in England for the carrying out of specified cosmetic procedures in the course of business, unless the person has a premises licence.

PROF. DAVID SINES
Chair, Joint Council for Cosmetic Practitioners
E: david.sines@jccp.org.uk

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2 In this section—
'Cosmetic procedure' refers to a procedure —other than a surgical or dental one— that is or may be carried out for cosmetic purposes; and the reference to a procedure includes—

- the injection of a substance
- the application of a substance that is capable of penetrating into or through the epidermis
- the insertion of needles into the skin
- the placing of threads under the skin
- the application of light, electricity, cold or heat

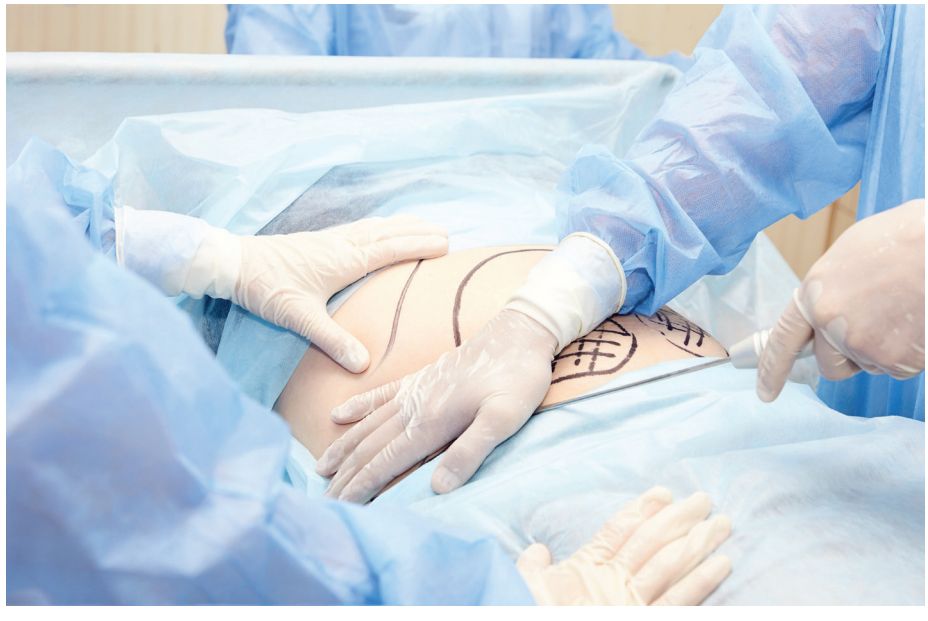
The JCCP is frequently in receipt of concerns regarding a range of aesthetic procedures that are constantly emerging for unregulated use in the UK. The cosmetic sector is dynamic, creative, and resourceful, but it is readily abused. The advent of new products and new procedures, or the varying use and application of old ones, can be a challenge to inflexible regulations that fail to keep pace with these developments. It is therefore essential to the ongoing success of the Government's proposed licensing scheme in England that regulations are developed to adapt to this evolving sector. This is to facilitate this entrepreneurial spirit within the confines of public safety.

Of notable concern is the transaction of what we regard to be 'surgical' procedures being undertaken by unregulated, unqualified and inappropriately trained practitioners (for example beauty therapists). Examples of such procedures include hair restoration surgery, the insertion of threads under the skin, lipofilling or liposuction (including 'Vaser' and fat transfer) and injectable augmentation of the breasts and buttocks. The JCCP and others have been concerned about the risks that these procedures can have upon members of the public when performed by inexperienced, untrained and unregulated practitioners. The JCCP has raised these matters formally with the Care Quality Commission (CQC), the Royal College of Surgeons and with the DHSC.

As a result of our stakeholder engagement and consultation with practitioners and professional regulators, we have produced a list of procedures that we consider should be re-classified as 'surgical intervention procedures'. The following list is indicative of those procedures that we consider should attributed with a 'surgical' definition such as (but not limited to):

- Procedures aimed at augmenting any part of the body, but with particular reference to the breast, buttocks and genitals, typically using autologous fat or dermal fillers
- Body modification and the various uses of blades for incision and dermal micro-coring
- Threads that relate to the use of all materials (Polydioxanone (PDO), polylactic acid (PLA)) and all types including smooth, barbed, screw or cogs that can anchor to the skin to enable traction and lift. Threads are now recognised as a surgical procedure for registration with the CQC when applied by registered healthcare professionals, or those under their supervision, but not when performed by non-regulated healthcare practitioners
- Liposuction or filling, including fat grafting or transfer
- Hair restoration surgery

An overriding principle that has been adopted in the production of the JCCP's advisory work on licensing is one of inclusivity that recognises that all practitioners who are able to evidence that they possess requisite knowledge, skills and competence to practise specific procedures safely. They should be required to meet all of the conditions set down by the DHSC in accordance with their proposed practitioner licence standards or requirements. The JCCP also emphasises that any procedure performed by a registered healthcare professional must fall within each designated Professional Statutory Regulatory Body's recognised 'scope of practice', to whom the practitioner



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What constitutes a 'surgical' and 'non-surgical' procedure? What regulations are associated with these? Professor Sines explains

accounts. Our work has also reported on the risks inherent in the application of certain procedures, the potential limitations inherent in a local authority licensing scheme, the potential overlap with other regulatory frameworks, and various regulatory gaps that are currently open to exploitation to permit potentially harmful activity to members of the public. To that end, we recognise that there may be a number of procedures that will be included in the new scheme of licensing that will also be the subject of other regulatory frameworks, most notably through CQC registration, with the aim of providing additional public protection safeguards. The procedures outlined above are currently performed by a wide range of individuals, regulated and unregulated, presenting different risk profiles. However, an alignment in thinking across stakeholders and regulators and the formulation of a definition or other agreement that classifies a procedure as 'surgical' could then inform the future implementation of proportionate practice restrictions for the assurance of public safety.

It is crucial to the effective design and implementation of a licensing scheme that risks, inadvertent consequences and 'loopholes' are identified and mitigated and that gaps in regulation which might compromise public safety are closed. Where a procedure is undertaken, for example by an unregulated healthcare professional for 'medical' purposes, this activity currently 'falls through' such a regulatory gap. To address this challenge, the JCCP has recommended that clinical oversight should become a legally enforceable activity. Under these circumstances, any unregulated person performing a non-surgical injectable procedure for medical purposes would, in working under the supervision of a regulated healthcare professional, require registration with the CQC.

For some procedures, uncertainty will remain in terms of medical intent and therefore CQC inclusion, but nevertheless these represent a significant risk to public safety, most notably those procedures that border on being classified as 'surgical' in nature. The JCCP believes that a licensing scheme is unlikely to be able to fully encompass such procedures. Worthy of specific note is the use of dermal fillers for buttock and breast augmentation. The British Association of Aesthetic Plastic Surgeons has recently lifted a moratorium with regard to buttock augmentation, but only where it is provided under ultrasound guidance, a technique beyond the scope of those doctors who are not members of a General Medical Council-approved specialist register.

The JCCP has also been explicit about the need to ensure that all practitioners who perform either surgical or nonsurgical cosmetic procedures should be suitably and adequately indemnified and insured in order to provide safeguards to members of the public. We consider that the validity of medical indemnity insurance could be better informed following the reclassification of the more invasive cosmetic procedures as being 'surgical' in nature.

It would therefore seem proportionate to restrict such areas of 'surgical' cosmetic practice to suitably qualified and trained regulated healthcare professionals only.

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Summary

Regulated professionals are often restricted in their practice, either through the

requirements of CQC registration, or through limitations imposed by their statutory professional regulator. These restrictions do not apply to unregulated practitioners and can give rise to unsafe practice. For regulated professionals, these restrictions relate to both surgical procedures and those medically diagnosed procedures that are subject to CQC registration/regulation for the treatment of 'disease, disorder or injury'. They relate to both CQC requirements, and the limitations imposed by professional regulators with regard to professional competence and scope of practice, alongside the additional obligations for regulated healthcare professionals to engage in regular supervision and professional development. The JCCP is intent on continuing its work with regulators, including the CQC, the MHRA and professional regulators, to better define and impose limits on who can 'legally' be permitted to perform both medical and surgical procedures. Many of the procedures of concern have been reflected in this paper, but it should be noted that the list presented above is not yet exhaustive.

The JCCP has made formal representation to the DHSC (and others) to take into consideration the issues raised in this paper with the aim of considering whether the more invasive and high-risk procedures identified above could be formally 'designated' as surgical procedures (as opposed to non-surgical procedures). It is our opinion that should such a determination be made, by then the CQC would be able to impose greater scrutiny and regulation with the aim of defining (and restricting) who could legally perform the procedures identified above. This could correct the anomaly that currently permits unregulated practitioners to perform such procedures without restriction. Such a determination would also provide greater clarity and guidance to DHSC colleagues as they consider which procedures should be included in the scope of a new aesthetics license and whether any of those procedures should be restricted to designated regulated healthcare professionals only. The JCCP has received significant support for these proposals from a range of stakeholders and regulators alike.

The DHSC has now set out its proposals for the inclusion of specific cosmetic procedures in its public consultation paper that was published at the of August. This article has be designed to complement some of the key messages set out in the Government's consultation paper. JAN

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