

Department of Health and Social Care

Licensing of non-surgical cosmetic procedures

A response by the Association of Personal Injury Lawyers

October 2023



Introduction

APIL welcomes the opportunity to respond to the Department of Health and Social Care (DHSC) consultation on the licensing of non-surgical cosmetic procedures. APIL campaigns to promote public safety and the prevention of needless harm. We believe any steps to prevent harm to the public should be welcomed.

APIL has responded to the questions within our remit.

General comments

APIL agrees with the main elements of the licensing scheme set out on page 10 of the consultation document.

We agree with the proposal that the scheme includes 2 interlinked components: a practitioner licence and a premises licence. We suggest that the practitioner licence and premises licence should confirm the specific procedures permitted to be performed by the practitioner/ at the premises.

Concerning enforcement, we have some reservations. It is essential that local authorities have the necessary capacity and funding to enforce the regulations and, thus ensure that the criteria of the scheme are actually being complied with by practitioners. To ensure transparency and openness there should be a national accredited register for practitioners to inform and help consumers select the practitioner, check if they are registered and what they are registered to do.

There is also a risk that non-qualified practitioners and/or non-licensed practitioners continue to provide these procedures in home-based locations offering more accessible prices at the expense of safety. We believe that the penalties for individuals carrying out these procedures without a licence must be severe to encourage compliance. We also suggest that the premises should be inspected before being granted a licence and that the scheme includes a requirement for regular inspections.

As recognised in the paper, current regulatory controls are fragmented and there are no mandatory training and infection control standards. We recommend that the licensing scheme requires a mandatory national minimum training standard, which could be in line with the National Occupational Standards (NOS) in beauty aesthetics and the completion of a regulated qualification on infection prevention and control.

APIL welcomes that one of the licensing scheme's pillars is indemnity cover. We strongly advocate for indemnity cover as it is not uncommon for injured people to be unable to bring a claim because the business that incorrectly carried out the procedure causing harm does not

have insurance to meet the claim. It is vital that the mandatory insurance requirements within the scheme provide adequate cover should someone be injured.

We recommend that the mandatory insurance requirements make clear that insurance cover must be obtained for loss and damage arising from the course of business activities, and specifically arising out of negligent treatment. Businesses must have both public liability and treatment risk insurance, and it must be made clear to those performing special procedures that public liability insurance does not usually cover treatment risk. Treatment risk insurance would provide cover if a procedure was improperly carried out and the person contracted an infection. In all those scenarios, a person could be seriously injured, and need to bring a claim for compensation to help put their lives back, as closely as possible, to the position they were in prior to the incident. Where treatments are to be carried out by healthcare professionals, we believe there should also be a requirement for insurance to cover a medical negligence claim.

Question 1: To better protect individuals who choose to undergo high-risk non-surgical cosmetic procedures, we propose introducing regulations to ensure that these procedures may only be undertaken by qualified and regulated healthcare professionals.

To what extent do you agree or disagree that we should set out in regulations that high-risk procedures should be restricted to qualified and regulated healthcare professionals only?

- **strongly agree**
- **agree**
- **neither agree nor disagree**
- **disagree**
- **strongly disagree**
- **don't know**

Please explain your answer.

APIL strongly agrees that high-risk procedures should be restricted to qualified and regulated healthcare professionals only. Non-surgical cosmetic procedures are increasingly popular and more easily accessible than ever. There must be appropriate regulations in place to ensure that individuals accessing these services are not at risk.

There is a general lack of awareness amongst the public of the risks of certain non-surgical procedures. As mentioned above, there is currently a total absence of mandatory education and training for those providing non-surgical cosmetic procedures which leads to a wide variety in the quality of intervention, resulting in patient safety issues. Members report cases of individuals suffering horrific and long-lasting injuries as a result of procedures being carried out incorrectly or with the wrong equipment.

A qualified healthcare professional will also be better prepared to recognise and manage complications. Using non-prescription fillers as an example, even if non-medically qualified professionals acquire training to perform the treatment, they do not necessarily recognise a complication such as vascular occlusion. Even if they did, they would need a medical

prescriber for the dissolving agent hyalase. A qualified healthcare professional will have the necessary training to carry out the procedure and also tackle complications.

Question 2: To what extent do you agree or disagree with the proposal to amend CQC's regulations to bring the restricted high-risk procedures into CQC's scope of registration?

- **strongly agree**
- **agree**
- **neither agree nor disagree**
- **disagree**
- **strongly disagree**
- **don't know**

Please explain your answer.

APIL strongly agrees with this.

We believe there should be more awareness and education of the public about non-surgical cosmetic procedures. It is not enough to bring high-risk procedures into CQC's scope of registration if the public is not aware of the risks of the procedure and does not know that they should search for the CQC mark, for example.

There needs to be more openness and transparency in the industry. The way information is presented to consumers is not clear at the moment and due to social media and the increasing popularity of these procedures, most people do not realise that they can cause life-changing injuries. There should be a public campaign to raise awareness of the risks of the procedures and the importance of carrying out these procedures with regulated healthcare practitioners in CQC-regulated premises. We also believe there should be guidance on what should be included in the consent form signed by consumers.

Question 3: The 3-tier system uses green, amber and red to categorise procedures depending on the risks (including level of complexity and degree of invasiveness) and potential complications associated with the procedure.

To what extent do you agree or disagree with using the 3-tier system to classify the different categories for cosmetic procedures based on the risk they present to the public?

- **strongly agree**
- **agree**
- **neither agree nor disagree**
- **disagree**
- **strongly disagree**
- **don't know**

Please explain your answer.

APIL is concerned that the 3-tier system to classify the different categories for cosmetic procedures may create a false sense of security about the procedures included in the green and amber categories. As mentioned above, transparency and public awareness will be key to making this scheme work. Consumers must be effectively informed that all the procedures present a degree of risk regardless of the category they are listed in.

Our members have provided some examples of life-changing injuries caused by procedures included in the green and amber categories:

Green

1. Chemical peels resulting in severe and permanent scarring and pigmentation all over the face which is difficult to treat and carries a knock-on effect on mental health.
2. Plexr laser treatment – resulting in severe scabbing and ultimately pigmented and textured scarring over the face, affecting the individual's psychological condition and requiring future treatment but with some permanent injury.

Amber

1. Hyalase Injections – multiple cases where the use of this prescription treatment to dissolve filler has been overused, resulting in loss of tissue/cavities to the face requiring multiple fat grafting treatments and again psychological effects.
2. Local anaesthetic cream – where reactions have gone unnoticed and continued use resulted in severe reactions now requiring plastic surgery to the face, neck and chest.
3. Adverse reaction to Vitamin B12 injections used for cosmetic reasons, resulting in adverse skin reactions and permanent scarring.
4. Hyaluronic injections to the hands to improve the look of ageing skin – in this case, this was performed in a clinic by juniors overseen by a qualified doctor – resulting in tendonitis affecting grip strength and hand movement.
5. Aqualyx fat loss injections resulting in necrosis of tissue, inflammation, abscesses that required surgical removal and permanent scarring. Revision plastic surgery is expected.
6. Diathermy wart removal with a machine allegedly not maintained sufficiently – resulting in painful burns to the legs and genitals and scarring.
7. NdYAG laser – blistering to the face and development of visible thread veins and a red-mottled appearance, with ongoing sensitivity. Treatment options are currently being explored.

Treatments such as laser red vein therapy and plasma skin rejuvenation do not penetrate the skin but can have potentially very dangerous effects if not administered correctly. Laser therapy can lead to burns so severe that the individual will require a skin graft, for example.

We recommend that the legislation should be flexible, regularly updated and reviewed to ensure that it is kept in line with changes in trends, and the emergence of new treatments. It should be clear, however, that simply because a treatment is not on the list, it does not mean that it will not be included in the definition within the legislation.

Question 4: Our intention is that licensed procedures should be restricted to those above the age of 18 unless approved by a doctor and carried out by a healthcare professional. To what extent do you think that these procedures should be age-restricted?

- **all of the procedures should be age-restricted**
- **some of the procedures should be age-restricted**
- **none of the procedures should be age-restricted**

Please explain your answer.

APIL believes that all procedures should be age-restricted, save for very specific exceptions. There should be a provision for reasonable exceptions in circumstances where undergoing a procedure will have a positive impact on a patient's mental health. For instance, certain acne treatments could have a beneficial impact on an under-18.

We agree with the proposal in the consultation paper that procedures that have recognised medical and therapeutic benefits and are performed to treat an identified medical issue should be allowed for those under-18s if they are prescribed by a GMC registered doctor and are carried out by a specified healthcare professional, as set out in the consultation paper.