Chartered Institute of Environmental Health

Cosmetic non-surgical interventions – Call for Evidence

Health Education North West London
Health Education England, NHS

Submission from the Chartered Institute of Environmental Health (CIEH)

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Section 1 - Position Statement of the Chartered Institute of Environmental Health (CIEH)

The CIEH has a longstanding concern about the safety of procedures involved in cosmetic treatments and the greatest concerns are in relation to those procedures which involve penetration of the skin by injection or incision for the purposes of inserting dyes and colouring materials, jewellery or other objects or substances.

We are aware that this consultation arises from the outcome of the review of cosmetic interventions led by Professor Sir Bruce Keogh (the Keogh Review, 2013) and we note that the subject of this review is concerned with the qualifications to be required for non-surgical cosmetic procedures and that HEE aims to provide recommendations on the minimum standards and competences for education and training.

We fully support this work and it is our intention to consider carefully your subsequent proposals and share these with our membership in order that the experience of our profession in educating and training practitioners in cosmetic procedures, as well as regulating their practices, may be fully taken into account.

To that end we are providing this response to the specific matters that you are currently considering. However we would also invite and encourage you to review our extensive submission to the Department of Health of the Regulation of Cosmetic Interventions, the Keogh Review.

A concern regarding communications with CIEH

You state that HEE is working within its Mandate and is expected to work with regulators, royal colleges and other stakeholders to conduct this review. We understand that your Call for Evidence has been sent to all members of your project contact list, as well as cosmetic procedure course providers, insurers and other relevant organisations. It would appear that you have not identified the CIEH in any of these categories. We must therefore express our surprise and concern that there has not been a direct approach made to the CIEH for its early advice on this matter. We consider this to be a serious omission on your part since the key regulatory role carried out by local authority environmental health practitioners and their professional colleagues was made clear in the course of the Keogh Review, not least by our own written submission and oral evidence.

Indeed we would make the strong assertion that were it not for the expertise and diligence of the environmental health profession in identifying, assessing, remedying and preventing the risks posed by many of the premises, practices and practitioners in this field then there would undoubtedly have been even greater levels of harm as a direct result.

Additional credit is due when account is taken that for far too long environmental health officers have been expected to exert effective control in this field in the absence of adequate standards, guidance and legal sanctions.

Section 2 - Introduction

Our submission to the Keogh Review was one of the most detailed we have made to any review on a specific health topic and was supported by extensive published literature and evidence from our front line regulators.

The CIEH viewed its participation in the Keogh Review as an opportunity to improve the safety of 'cosmetic interventions' generally and specifically in regard to young people. We are of the view that the increasing range of procedures collectively described as 'Aesthetic Body Modifications' and which includes both surgical and non-surgical cosmetic interventions, are largely inadequately or unregulated and all pose potential risks to the health of those who choose to participate in them, and in some cases to those who undertake them, as well as risks of permanent disfigurement and even disability if carried out incorrectly or in an unhygienic manner.

It is the policy of the CIEH that all such procedures should be appropriately regulated to protect the health of the public. The regulatory controls should include identifying who may lawfully administer the procedure, what training that person should have, the conditions in which the procedure should be carried out, the safeguards and restrictions that need to be in place and the information and advice that must be given to the participant. We are particularly concerned to see consistency of application of standards and controls so that people can be confident in the safety of procedures wherever they choose to receive them.

Clearly, our expectations can only be met if requirements for competent practice in any particular area are set and education and training is required to an accredited standard. To that end the availability and adequacy of the arrangements of provision of training was a key feature of our submission to the Keogh Review and we provide similar detail in this submission.

Section 3 - Inaccuracies in the report of the Keogh Review which may influence your findings and proposals if not corrected

We wish to take this opportunity to correct the inaccuracies contained in the report of the Keogh Review at paragraph 3.26, where it states:

> *3.26. . . . . These regulations are enforced by Local Authority bodies such as Trading Standards and Environmental Health. Local Authority Environmental Health Officers (EHOs) can inspect premises to ensure that they conform to health and safety requirements. EHOs do not have the training or expertise to determine whether staff are adequately trained and following best practice, and neither do EHOs possess the power of sanction.*

Local Authority Environmental Health Officers (EHOs) can inspect premises to ensure that they conform to health and safety requirements

It is not correct to create the impression that EHOs are only able to "inspect premises to confirm that they conform to health and safety requirements". Indeed when a business is carried on from a person's private residence, as tattooing and body piercing frequently is,

then it is the responsibility of the officers of the Health and Safety Executive to carry out the inspection and enforcement measures.

You will be concerned to learn that the Health & Safety Executive does not currently consider skin piercing to be a national health and safety priority. The CIEH thinks that this is a regrettable position for the HSE to adopt and we asked the Keogh Review to consider whether, in the light of its findings, skin piercing and all procedures involving injection or incision of the skin should be identified as a 'national health and safety priority'.

In our submission to the Keogh Review we provided, in Section 1, a lengthy and detailed description of the legal background to regulating practitioners in this area (see Section 1 Available legal controls). However, there is no mention of the registration and bylaw controls exercised by local authorities, albeit that they are widely considered to be not fit for purpose, especially in dealing with novel practices and itinerant and peripatetic practitioners of which there are many.

Most importantly, there should be proper recognition of the roles and responsibilities of EHOs in exercising the local authority health protection powers, working alongside the Directors of Public Health and the staff of Public Health England. The powers are contained in the Public Health (Control of Disease) Act 1984 (as amended) together with the Health Protection (Local Authority Powers) Regulations 2010 and the Health Protection (Part 2A Orders) Regulations 2010. These powers are employed in preventing the transmission of infection and controlling outbreaks and they are proving to be very effective in dealing with cosmetic practices carried out in such a manner as to give rise to the risk of significant harm to health. The CIEH has strongly supported the development and implementation of these powers and we have provided an interactive toolkit to assist in training and in their use and this can be accessed from the CIEH website
http://www.cieh.org/WorkArea/showcontent.aspx?id=37814

EHOs do not have the training or expertise to determine whether staff are adequately trained and following best practice

It is again not correct to imply that at the heart of this problem is a lack of training and expertise on behalf of EHOs. EHOs are fully competent in infection control procedures and have leading roles in incident and outbreak management of communicable disease and contamination.

As the professional body for environmental health, we require all of our members to maintain records of continuing professional development. To assist those working in and with regulatory responsibilities for the beauty industry we regularly offer training through seminars and conferences and we arrange workshops at which leading practitioners give hands-on demonstrations of equipment and procedures and explain standards of good practice and new developments.

It is particularly inappropriate to criticise the environmental health profession for the lack of knowledge of best practice, when the CIEH has in fact been as active as any, and more than most, in seeking to fill that gap.

For many years there has been a continuing need for definitive guidance, for regulators and businesses as well as members of the public seeking to ensure their own safety. We have previously collaborated in the publication of comprehensive guidance on many of the issues which the Keogh Review considered. The guidance document *Body art, cosmetic therapies and other special treatments* was edited by David Denton at Barbour Index which now

trades as Barbour Environment Health and Safety (Approved IOSH Information Service Provider) www.barbour-ehs.com and was published by Chadwick House Group Ltd which was the trading arm of the CIEH at the time. We provided the Keogh Review with printed copies for reference purposes and extracts of relevant sections were also included as appendices to our submission. [*Body art, cosmetic therapies and other special treatments*. London: Chadwick House Group Ltd. ISBN 1-902423-80-1.]

In addition, we have provided to the Keogh Review Committee an unpublished update *Beauty therapy businesses offering medical treatments* which although drafted in 2004 still addresses many of the current concerns we have raised with the Keogh Review regarding which regulators have responsibilities; what legal authority people have to carry out such treatments (including the requirements for medical supervision); requirements for qualifications; what standards should be applied. This draft guidance also deals specifically with many of our concerns regarding the injection of botox, implants and fillers as well as the use of lasers and intense pulsed light (IPL). These documents will be relevant to the work of your current review.

Section 4 - Question 1: What standards do members of the public have a right to expect from practitioners who are deemed to be qualified to deliver non-surgical cosmetic interventions?

Principles established by the Keogh Review
We believe that the principles that you will apply have already been established by the Keogh Review which states in its report:

> *2.2 In England, the quality of healthcare is defined and assessed by its effectiveness, safety and patients' experience. For cosmetic procedures, this means the products used should be safe, the practitioners should have the appropriate skills and training, the premises must be suitable, and those undergoing procedures must be treated with respect.*

and

> *3.12. Some individual responses to the Review's Call for Evidence suggested that these nonmedical, non-dental and non-nursing practitioners were greatly valued by consumers for their perceived skill, accessibility and service. However, without specific, accredited training in physiology, anatomy, infection control, treatment of anaphylaxis, or an understanding of any existing medical conditions, practitioners are unlikely to be aware of all the possible risks and complications of the procedures, or able to recognise and treat complications.*

and

> *3.16. People undergoing non surgical treatments should be able to be confident that their practitioner has the required skill and expertise to undertake the procedure successfully and safely. The training and accreditation process should ensure that practitioners are able to identify and manage complications of treatment.*

and

> *Recommendation 14 - Those training to be non surgical practitioners should have a clear understanding of the requirement to operate from a safe premises, and the responsibilities involved. The training curriculum should include topics such as*

infection control, treatment room safety and adverse incident reporting. The code of conduct for those on the register should include an obligation to abide by certain clearly defined minimum standards for premises.

We believe that competences are more important than job titles, or even professional memberships, and we are aware that individual practitioners may carry out a range of treatments and may work across different areas in the sector. For this reason we support an approach which provides for incremental accumulation of knowledge and skills with a range of entry points, as set out in the report of the Keogh Review:

> *3.11. There question of "who should perform" non-surgical cosmetic procedures has provoked debate. Historically the argument over "who" has been adequately qualified has distracted from the question "what should adequate training and accreditation involve?" Once the requirements for training are identified and understood, it should be possible to identify, for each professional group, which parts of the curriculum have been covered with prior training and which are consequently required to complete training. This will mean that different professional groups will enter the training scheme at different points. Such a scheme could provide broad access, and may be able to provide professional training for those with no prior experience. The aim should be that, every practitioner, no matter what their starting point should attain the necessary skills and expertise to perform these varied procedures safely and to a high standard.*

Qualifications, training and competence

Core competencies

One of our greatest concerns as representatives of the environmental health profession is the control of communicable disease. We want to see infection control included in the core curriculum for any person undergoing training to provide any non-surgical cosmetic intervention. For those intending to carry out practices which involve the intentional or accidental puncturing of the skin or other membranes by injection or incision, then this should include an understanding of the Principles of Infection Control and a demonstration of these in their area of intended practice.

Determination of competence

A major concern to our members is how they can determine whether a practitioner is 'qualified' in terms of having been properly trained and competent to carry out a particular procedure. In a number of areas there are no recognised training courses or qualifications, in which case what, if anything, can the local authority officer do to determine safe practice? Furthermore, how can members of the public be assured that a particular business, and its practitioners, will carry out a procedure safely and effectively.

Lastly, but not least, there is currently no process by which practitioners who are untrained or incompetent can be identified and reported and prevented from continuing to practice except in circumstances where there is evidence that they are already placing public health in jeopardy. For a number of cosmetic practices the local authority actually has no option than to register a practitioner regardless of their lack of competence.

Standards of practice

The CIEH is mindful that in deciding on any recommendations HEE will need to take into account the government's Better Regulation framework. We are also aware of the endorsement by the Government of the 'Intervention Ladder' proposed by the Nuffield

Council on Bioethics [Nuffield Council on Bioethics (2007). *Public Health: ethical issues*. London: Cambridge Publishers Ltd. ISBN 978-1-904384-17-5]. The CIEH therefore recommends that in proposing new or additional measures to establish and maintain standards of practice the following three-stage approach to consumer protection should be adopted:

1. Initially there should be promotion of safe standards through identifying and sharing good practice advice e.g. through partnership working between local authorities and other regulatory agencies and the relevant trade bodies.

2. Where this fails to achieve an adequate level of public health protection, or the level of risk is considered unacceptable, consideration should be given to developing a more formal industry code of practice or, if the risks are particularly high, a government approved code of practice.

3. In the event that a formal or approved code of practice still fails to secure the necessary improvements in standards, then specific regulatory requirements setting out the required standards and supported if necessary by a formal licensing scheme should be considered for practitioners of the treatment in question.

Recognised qualifications
In some areas there are recognised qualifications.

HABIA
Habia, www.habia.org, is the government appointed sector skills body and industry authority for hair, beauty, nails, spa therapy and barbering. It sets the standards that form the basis of all qualifications in hair and beauty including NVQs, SVQs, Apprenticeships, and Foundation degrees. These are widely promoted, including by the British Council and delivered by a wide variety of training organisations.

The CIEH and its members have worked closely with HABIA in developing guidance including a Code of Practice for Nail Services which is part of the suite of guidance available from the HABIA website http://www.habia.org/healthandsafety/index.php?page=751

'Treatments You Can Trust'
In the case of cosmetic injectable treatments the organisation 'Treatments You Can Trust' (TYCT) http://independenthealthcare.org.uk/treatments-you-can-trusthas established a register of regulated cosmetic injectable providers and offers them a Quality Assurance Mark. It is managed by the Independent Healthcare Advisory Services (IHAS), the trade body for the independent healthcare sector, and supported by the Department of Health and many of the key professional associations. The CIEH has chosen not to provide any endorsements for this approach and we note that the Keogh Review did not consider this or similar self-regulatory arrangements to be appropriate.

Industry Codes
As well as formal qualifications and independent organisations able to 'quality assure' businesses, there are also industry codes of practice which can determine the standards of competent practitioners.

'Beauty Resource', www.beautyresource.org.uk, is an online UK based directory that aims to connect visitors with the beauty professionals most suited to their needs. It lists a number of umbrella professional bodies, including:

- The British Association of Beauty Therapy and Cosmetology (BABTAC)
  The British Association of Beauty Therapy and Cosmetology (BABTAC) is the leading trade association for beauty therapists and ensures that members work to a strict code of conduct, and are trained, qualified and insured.
- The Guild of Professional Beauty Therapists
  The Beauty Guild was launched back in 1994 and is now the UK's biggest professional trade body. All members work to a strict code of ethics.
- British Institute and Association of Electrolysis (BIAE)
  The BIAE is the main professional body for electrolysis in the UK. The organisation is not-for-profit and was founded from the amalgamation of the two specialist electrolysis bodies, the Institute of Electrolysis and the British Association of Electrolysists Ltd.

Tattooists and Skin Piercers

The issue of the need for national standards for tattooists and body piercers has been an on-going concern and in 2005 a consultation was carried out by HABIA on proposals for national occupational standards. HABIA is a Government recognised standards setting body, responsible for identifying and addressing skill issues and setting National Occupational Standards by working with different industries. By agreement with Skills for Health, the standards setting body for Health Services, it has taken the lead in researching and developing National Occupational Standards for body piercing and tattooing. The process was steered by industry representatives working with specialist standards setting consultants and advisors from the Health Protection Agency (now Public Health England) and the Health and Safety Executive.

In the event, proposals for national occupational standards were not proceeded with.

In the absence of occupational standards for practitioners, the approach that has been recently taken is to try to establish acceptable national standards of practice. To this end the CIEH, Public Health England and the Health and Safety Executive have been collaborating with the Tattooing and Piercing Industry Union to produce a Tattooing and Body Piercing National Guidance Toolkit http://www.cieh.org/WorkArea/showcontent.aspx?id=47704
This has been prepared by a panel of health protection officers and practitioner representatives. It comprises a consensus of expert evidence-based advice which it is intended can be relied upon by both local authority officers and business operators in determining acceptable standards of practice to ensure the health and safety of both clients and operators. It is hoped that the guidance toolkit could achieve the status of an Industry Code that would help to set the standard of practice nationally.

The current arrangements for 'training' depend entirely on an informal system of 'apprenticeships' whereby those wishing to become practitioners work alongside, and with close supervision, by experienced practitioners.

A description of this arrangement can be read on the website of The British Tattoo Artists Federation www.tattoo.co.uk which states:

> *"How do you become a tattoo artist?*
> *A very common question, not an easy one to answer. From time to time some tattoo artists will take on an apprentice, this can last for 2 to 3 years. You would be expected to purchase your own equipment and sterilising units. The cost of this would be in the*

region of £4,000 to £5,000. No wages would be paid during this period, you will be working with a professional tattoo artist for 5 or 6 days a week. You will be taught the necessary skills gradually and will begin to put on your own tattoos after about 6 months. It takes around 5 years for a tattoo artist to become fully competent, and able to carry out the various styles of tattooing available today. There are no correspondence courses on tattooing that we know off, if there were we would not recommend them, as tattooing must be taught with "Hands on" experience, tattooing real people on living skin. It is illegal to tattoo without being registered with the local Environment Health Department, this comes under the Local Government (Miscellaneous Provisions) Act 1982, Chapter 24. If you do not comply, equipment can be confiscated, you are liable to a massive fine (on a daily basis) until you prove you have stopped tattooing."

Similar information can be found on the popular website for jobs and careers MyJobSearch.com http://www.myjobsearch.com/careers/tattoo-artist.html which states:

"A tattoo artist trains by becoming an apprentice. This usually takes between 2 and 3 years. The only way to do this is by approaching a working tattoo artist and applying for the position. You will be expected to buy your own equipment and sterilising kit and will not be paid for the apprenticeship. Expect to work around 6 hours a day for 6 days a week. Over time, greater responsibility will be awarded, until you can tattoo unsupervised.

Once enough work experience has been amassed, a licence to practise must be obtained from the local council. The catch is that you must be working and have experience to obtain one and you have to obtain one to work. That is why the apprenticeship is necessary. Working without a licence incurs a heavy penalty. Once the apprenticeship period is over you work on simple designs, moving to more complex work as your experience progresses. Most professionals in the industry state that a tattoo artist is only fully qualified after around 5 years full-time working experience."

Professional training can also be obtained in 'educational' settings from experienced tattoo artists, which may include tattooing on 'practice skin'. Examples can be found at http://ukofficialtattooacademy.co.uk/tattooist_school_courses.html. However, although this might be a useful introduction, it attracts some criticism in that it can create a false sense of ability and cannot be seen as a substitute for the 'apprenticeship' arrangements which seek to ensure competence by training 'on the job', under the guidance of an experienced person whose own reputation and business are at stake.

However, critics of the 'apprenticeship' arrangements would point to the lack of any accreditation, standards for supervision and requirements to demonstrate knowledge and skills in areas such as infection control and wound management.

The dilemma for local authorities is that they are expected to register individuals who admit to having neither knowledge and skills nor experience in that they are intending to train under the 'apprenticeship' arrangements. **The local authority is therefore registering a person whom they know to be not competent and they are unable to apply any conditions which would ensure proper supervision, the undertaking of training and the eventual demonstration of competence.**

These concerns have been frequently expressed to the CIEH by its members. An example is the following:

Text removed from published version of submission to respect confidentiality

Similar difficulties arise in relation to applications for registration from people from other countries, where they purport to be experienced practitioners, but are unable to produce any previous history where, for example, there are registration or licensing requirements in their home country.

Tattooing and Piercing Industry Union

The tattooing and body piercing businesses are fully aware of these dilemmas and are concerned to safeguard the reputation of their industry. To that end they have formed a trade body, the Tattooing and Piercing Industry Union www.tpiu.org.uk to represent and advance the interests of their members.

Section 5 - Question 2: Are there non-surgical cosmetic interventions which are missing from the above list which should be considered as part of this review?

Yes, and we believe that you have unnecessarily limited the terms of your Call for Evidence and that if not corrected this will leave significant areas of practitioner activity continuing to be inadequately regulated.

Adopting a generic approach

In your consultation document you state that:

> *In the Keogh Review, cosmetic procedures are described as "operations or other procedures that revise or change the appearance, colour, texture, structure or position of bodily features, which most would consider otherwise within the broad range of 'normal' for that person."*

We favour this definition of cosmetic procedures and we believe that it encompasses the vast majority of practices which are of concern. Exceptions, or additions, would include those practices whose primary purpose is to inflict or test an individual's ability to withstand pain, or provide public spectacle, such as full body suspensions with the insertion of hooks or other skin attachment devices.

However, we do not understand why both the Keogh Review and your Call for Evidence is being limited to specific categories of procedures.

You state that:

> *For the purposes of this review we are looking at minimally invasive treatments, defined in the Cosmetic Surgical Practice Working Party (CSPWP)'s Professional Standards for Cosmetic Practice (2013)2 as Level 2 or lower risk, usually non-permanent/reversible3 day case, local anaesthetic if any.*

You further state:

> *This will include injections with any product, whether medicinal or otherwise, and any other form of non-surgical intervention, such as those listed below, although it is*

recognised that any recommendations made as a result of this review must be applicable to new technologies in an industry which is constantly evolving.

Botulinum toxin (Botox)

Dermal fillers

Chemical peels

Vein wave/Intense Pulsed Light (IPL)

Laser treatment for hair treatment

Skin lightening.

We believe that limiting your review in the manner you appear to be doing, by identifying only these specific practices, is a significant error since it risks not including other practices which pose similar or greater risks of infection, disfigurement an disablement. We recommend that instead you adopt a generic approach.

Tattooing and Body Piercing

We have particular concerns about the failure of the Keogh Review and your own review to specifically include tattooing and body piercing.

Tattooing and body piercing are extremely common and increasingly popular and available. Tattooing is the injection of inks and dyes with the intention of permanently changing the colour of the skin or tissue. So called 'semi-permanent make-up' can equally be included in this description.

Body piercing takes many forms from the simple creation of apertures to the insertion of body jewellery and microdermal implants - not unlike the procedures employed in body sculpting. It can be carried out on almost any part of the body and if incorrectly or inappropriately carried out can result in disfigurement and even disablement.

The submission made by the CIEH to the Keogh Review emphasised the need for inclusion of these procedures. Indeed we drew comfort from statements made by the Health Minister which appeared to indicate that his concern was with any practice that involved penetration of the skin. That is our key point on this issue – **that it is the penetration of the skin itself through injection or incision that gives rise to the risk and this is compounded by whatever is injected, inserted or removed as a result of the procedure being undertaken.**

We believe that you have authority to widen the scope of your review since the report of the Keogh Review stated:

1.13. The Review Committee has taken a broad view of cosmetic interventions. It has considered the issues relating to those procedures that are carried out for aesthetic and functional reasons. <u>While not every procedure will be named in this report, the principles set out are intended to apply across the sector.</u>

We also believe that if you doubt that you have sufficient authority, then you seek clarification from the Keogh Review Committee, since it our view that they have created a public expectation that all cosmetic interventions will be addressed as a result of their work and recommendations. We would particularly draw to your attention the following statements:

3.1. Any cosmetic procedure carries risks for an individual's health and wellbeing19. Known clinical risks include, for example, risks from general anaesthesia, infection of

surgical wounds and injection sites. Similarly, there are risks that the procedure will not fulfil the patient's expectations20. No surgery can ever be risk free, but the risk can be considerably reduced with a skilled and experienced practitioner. People need to be able to identify and choose a practitioner with the appropriate qualifications and be able to ascertain in advance their skills and experience in performing a given procedure.

3.33. The Review Committee finds that the current regulation of non-surgical providers is insufficient to adequately protect public health and safety. Given the known risks, it is not appropriate that the public has no more consumer rights when receiving a dermal filler injection than when buying a toothbrush. The Review Committee is alarmed by the casual use of some cosmetic interventions by unqualified individuals, and by reports of people buying injectable products over the internet and self-administering.

It is certainly the case that there are no recognised qualifications for tattooists and body piercers, nor is there any way for the public to reliably determine a practitioner's skills and experience. It is also the case that D-I-Y packs and even secondhand equipment for tattooing and body piercing is offered for sale over the internet.

Other procedures for inclusion
The CIEH also want the HEE to consider the following specific procedures:

- Tattoo removal - there are increasing reports of concerns arising from the removal of unwanted tattoos, some of which involve injection as well as other methods with associated risks

- Derma Rolling - although not always described as such, the CIEH considers that this should be considered as a skin piercing procedure

  The CIEH is also in receipt of advice the equipment commonly available is not capable of being effectively cleaned and sterilised after use

- Ear stapling usually offered as a purported aid to weight loss or stopping smoking

- Removal of Millia using needles

- Mesotherapy

Section 6 - Enforcement of future requirements for accredited qualifications

It is the policy of the CIEH that all surgical and non-surgical cosmetic procedures should be appropriately regulated to protect the health of the public. The regulatory controls should include identifying who may lawfully administer the procedure, what training that person should have, the conditions in which the procedure should be carried out, the safeguards and restrictions that need to be in place and the information and advice that must be given to the participant. We are particularly concerned to see consistency of application of standards and controls so that people can be confident in the safety of procedures wherever they choose to receive them.

In our submission to the Keogh Review we provided a lengthy and detailed description of the legal background to regulating practitioners in this area (see Section 1 of CIEH submission to Keogh Review - Available legal controls). It will be apparent to even a relatively uninformed reader that the system of registration and bylaw controls, exercised by local authorities, are widely considered to be not fit for purpose and certainly cannot in any way ensure the qualifications, training and competence of practitioners.

The current parlous state of affairs is succinctly summarised in the report of the Keogh Review as follows:

> *Absence of any standards or accredited training for non-surgical cosmetic procedures*
> *3.10. The current regulatory framework places no restrictions on who may perform nonsurgical cosmetic procedures. No qualifications are required to carry out these procedures and, in the absence of accredited training courses, anyone can set up a training course purporting to offer a qualification. The committee was alarmed that a number of self-accredited training organisations have sprung up.*

And they propose an appropriate course of action:

> *2.1. Having reviewed the evidence, the Committee believes the government needs to establish a regulatory framework that encompasses the whole sector, employing a clear, consistent and proportionate approach that is able to adapt to new developments.*

The latter point, that the regulatory framework should be able to adapt to new developments, is important because it can be anticipated that new and novel practices and treatments will be developed - this is a key feature of the commercial approach of this industry - and so we must have generic requirements which will accommodate these without the need for amendments to specific legal requirements or additional legislation.

We also support the recommendation for clearly defined minimum standards:

> *Recommendation 14*
> *Those training to be non surgical practitioners should have a clear understanding of the requirement to operate from a safe premises, and the responsibilities involved. The training curriculum should include topics such as infection control, treatment room safety and adverse incident reporting. The code of conduct for those on the register should include an obligation to abide by certain clearly defined minimum standards for premises.*

and the CIEH would be able to advise on the content of minimum standards, especially in the area of the prevention of infection and contamination. The Code of Conduct should contain specific requirements relating to obtaining informed consent and the protection of minors, including compliance with statutory requirements such as the Tattooing of Minors Act 1969.

The Keogh Review identifies the adoption of accredited training standards as a key element for establishing not only universal good practice, but also public assurance:

> *The changes needed to improve the sector for the public:*
> *3.14. There is a clear need for accredited training standards to be set for cosmetic procedures so that patients can be assured that the person carrying out an intervention has the appropriate training. The Review Committee wants to see an end to the possibility of an unscrupulous practitioner being able to mislead the public as*

to their skills and experience, and of training providers offering poor quality training courses for practitioners.

It also recommends registration of appropriately trained practitioners:

3.15. To achieve the above objective, the Review Committee recommends the creation of approved training schemes, accredited qualifications, and associated registers for both surgical and non-surgical cosmetic procedures. The register will make it easier for the public to identify a practitioner with the appropriate training.

This will require the establishment of 'professional regulators':

3.17. The committee believes that anyone prescribing fillers, or performing other potentially harmful non surgical cosmetic procedures, should be accountable to a professional regulator. It believes that this recommendation is reasonable and proportionate, and aligned with the principles of Better Regulation, given the failure of self regulation and the potential for harm.

Summary of Keogh Review requirements

So to summarise, if the recommendations of the Keogh Review Committee are fully implemented we can expect a regulatory framework that encompasses the whole sector comprising approved training schemes working to accredited training standards to deliver accredited qualifications, together with associated registers for both surgical and non-surgical cosmetic procedures which will include a code of conduct with an obligation to abide by clearly defined minimum standards. In addition there will be professional regulators for anyone performing potentially harmful non surgical cosmetic procedures.

It is the considered opinion of the CIEH, based on our extensive and expert knowledge of the application of existing legislation in this area, that nothing less than a new system of regulation and/or licensing will be required to ensure that standards for practice which meet the principles set out in the Keogh Review, are implemented and maintained.

Inadequacy of existing legislation

As we have explained in detail in our earlier submissions to the Keogh Review, under the current arrangements local authorities are not able to 'reject' applications for registration of premises or practitioners. This is because Section 15(3) of the Local Government (Miscellaneous Provisions) Act 1982 states:

*Subject to section 16(8)(b) below, on application for registration under this section a local authority **shall** register the applicant and the premises where he desires to carry on his business and **shall** issue to the applicant a certificate of registration.*

The legal advice that local authorities have received is that they are not able to make registration conditional upon any matters relating to standards of premises or competence of practitioners. The advice has been that the local authority would be obliged to agree the registration and then to prosecute for failing to comply with the Byelaws. The local authority could then make an application to the Court to cancel the registration as per section 16(4) of the Local Government (Miscellaneous Provisions) Act 1982.

Increasing availability and access to treatments

It is also the case that a substantial amount of non surgical cosmetic practice never comes to the attention of the local authority, as the Keogh Review observed:

3.27. A recent survey undertaken by the Royal College of Nursing found that 36% of nurses performed non surgical procedures, either from their homes, or within their

clients' homes. Other venues used include temporary "pop-up" shops, hairdressing salons and hotel rooms. The nature of the locations used to perform treatments and the fact that many practitioners are peripatetic leaves the local authorities largely unaware of the extent of practice in their areas. There are no national guidelines for the licensing of non surgical "outlets" by the local authorities, and the efficacy of those licenses issued is limited.

Availability and access to these treatments is also increasing including by co-location with other more familiar establishments such as hairdressers, fitness and tanning centres as well as via internet purchasing and self administration. For some cosmetic procedures there is increasing use of temporary and even mobile premises (such as caravans), peripatetic provision (such as tattooing fairs) and in domestic premises. This is all the more problematic when the offer of a cosmetic procedure is linked to a social activity such as house-parties, or at a venue associated with the consumption of alcohol, both of which can encourage participation without proper consideration in advance of the opportunity of the desire or health status of the participant.

The Local Government Miscellaneous Provisions Act 1982 requires the local authority to register the person and their premises. Where tattooists are working at premises other than their fixed premises it would be expected that they would need to replicate, in other premises they visit, the conditions for that fixed premises. In reality this is unlikely if not practically possible since, unless they are working at the fixed premises of another registered practitioner, the full range of equipment and fittings which they employ in order to achieve the expected standards may not be available.

There is then the issue of who is responsible for non-registered practitioners, when they are able to be identified. The local authority officers have no automatic right of entry into individuals' homes and would need sufficient evidence to justify an application for a warrant. The Health and Safety Executive would normally deal with peripatetic workers under Section 3 of the Health and Safety At Work, etc Act, but historically it would seem that they have had limited interest or ability to do so. The experience of local authority officers is that effective coordinated action would only be likely in the event that a disease outbreak had occurred, and even then would be fraught with practical difficulties.

If it is accepted that local authorities are expected to ensure that safe standards apply wherever practitioners are working and that the key measure of control is the existing requirement for registration and the associated bylaw conditions: then a number dilemmas arise.

- Can local authorities require mobile practitioners working occasionally or temporarily in their area to register with them?

- How should local authorities deal with large scale events where numerous practitioners attend, for example, a specialist fair, convention or competition? Who would be responsible for provision and maintenance of shared facilities for washing, cleaning and sterilisation?

- What about those practitioners who are working entirely from mobile premises (converted vehicles and caravans) and those who work entirely peripatetically, in other people's business premises or in clients' business premises or their own homes. Obviously there would need to be a suitable place for storage and carrying out

sterilisation of equipment etc. Could their own domestic premises be classed as the premises for the purposes of registration? What if it is unsuitable?

- What are the arrangements for ensuring a consistent approach to the transfer of enforcement between local authorities and the Health and Safety Executive, to ensure that mobile practitioners are subject to similar levels of risk-based inspection protocols as practitioners working from fixed premises? Especially important given that the potential risks are greater.

There are other concerns relating to mobile practitioners including the safe disposal of sharps and other clinical waste where requirements are unlikely to be adhered to. There is also the possibility that services will be provided to minors.

All of these circumstances regularly arise and our members frequently seek advice on how to respond.

Section 7 - Concerns in relation to surgical cosmetic procedures carried out by persons not medically trained

The report of the Keogh Review identified a range of surgical procedures which it rightly required should only be carried out by people who have undergone medical training and are appropriately regulated in their practice.

However, the CIEH also drew the attention of the Keogh Review to a number of practices which because of the nature, extent, severity and associated risks involved should raise a public expectation for there to be in place similar safeguards.

These include:

- deliberate incision into the skin and other membranes for the purpose of the dividing or removal of tissue, eg tongue splitting
- the cutting of skin or the application of heated instruments to cause deep burning in order to create 'decorative' scar tissue eg scarification and branding

Failure to properly identify these practices creates the impression that they are acceptable and not in need of any particular control measures. However, the CIEH does not believe that these practices can or should be controlled by a regulatory system intended to deal with non surgical practices.

We therefore request HEE to recognise that such procedures should only be carried out by people who have been medically trained, or are working under the direct supervision of someone who is medically trained. If HEE is in agreement with the CIEH position then we would invite HEE to refer these concerns back to the Keogh Review Committee for their further consideration.

Section 8 - About the CIEH

As a **Chartered professional body**, we set standards and accredit courses and qualifications for the education of our professional members and other environmental health practitioners.

As a **knowledge centre**, we provide information, evidence and policy advice to local and national government, environmental and public health practitioners, industry and other stakeholders. We publish books and magazines, run educational events and commission research.

As an **awarding body**, we provide qualifications, events, and trainer and candidate support materials on topics relevant to health, wellbeing and safety to develop workplace skills and best practice in volunteers, employees, business managers and business owners.

As a **campaigning organisation**, we work to push environmental health further up the public agenda and to promote improvements in environmental and public health policy.

We are a **registered charity** with over 10,500 members across England, Wales and Northern Ireland.