

Council, 10 December 2009

Consultation on removing the health reference as a requirement for entry to the Register

Executive summary and recommendations

Introduction

A health reference completed by a doctor is required for entry to the Register. The attached consultation document proposes that the requirement for a health reference completed by a doctor for entry to the Register should be replaced with a self-declaration.

The text of the consultation document was agreed and recommended to Council by the Education and Training Committee (ETC) on 25 November subject to minor editing changes which are highlighted in bold in the attached document.

Decision

The Council is invited to

- agree to consult on removing the health reference as a requirement for registration; and
- agree the text of the consultation document (subject to minor editing changes prior to publication for consultation).

Background information

ETC paper 22 September 2009: http://www.hpc-uk.org/aboutus/committees/educationandtraining_archive/index.asp?id=481 (enclosure 6).

ETC paper 25 November 2009: http://www.hpc-uk.org/aboutus/committees/educationandtraining_archive/index.asp?id=484 (enclosure 11)

The consultation is planned to take place between 4 January and 30 March 2010.

The results of the consultation will be considered by the ETC, and the Council in June/July 2010.

Resource implications

- Editing and laying out of finalised document.
- Organising mail out to consultation list.
- Analysis of consultation responses.

These form part of the Policy and Standards workplan and budget for 2009/10.

Financial implications

- Laying out and publication of the consultation document
- Mail out to the consultation list

These form part of the Policy and Standards workplan and budget for 2009/10

Appendices

- Workplan

Date of paper

26 November 2009

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1. Introduction

At present a health reference completed by a doctor ('a registered medical practitioner') is required for entry to the Register. We are consulting on removing the requirement to provide a health reference for entry to the Register. We are suggesting that the health reference should be replaced with a self-declaration to confirm that the applicant does not have a health condition which would affect the safe and effective practice of their profession.

If the change was agreed, this would involve a change to the Health Professions Council (Registration and Fees) Rules 2003.¹

1.1 About us

We are the Health Professions Council (HPC). We are a regulator and our job is to protect the health and wellbeing of people who use the services of the professionals registered with us.

To protect the public, we set standards that professionals must meet. Our standards cover the professionals' education and training, behaviour, professional skills, and their health. We publish a Register of professionals who meet our standards.

Professionals on our Register are called 'registrants'. If registrants do not meet our standards, we can take action against them which may include removing them from the Register so that they can no longer practise.

1.2 About this document

In this document we seek the views of stakeholders on our proposal to change the health reference requirement for entry to the Register.

The consultation document outlines the requirements we currently have in place, the rules on which these requirements are made and the processes we currently follow. The consultation document then sets out our reasoning for consulting on changing the health reference requirement for entry to the Register; this includes reports from national organisations and feedback we have received from doctors and applicants.

Finally the document sets out the proposals we are consulting on and how you can respond to the consultation.

2. Health requirements

The health requirements are in place to help us to carry out our role of protecting the public. In this section we set out our current health requirements, including the requirement for a health reference for entry to the Register and the requirements for those renewing their registration.

2.1 The health reference

Our legislation requires us to make sure someone is of 'good health' and 'good character' for entry to the Register.² An applicant to the Register must complete

¹ Health Professions Council (Registration and Fees) Rules 2003:
<http://www.hpc-uk.org/publications/ruleslegislation/index.asp?id=204>

and sign the application form. In doing so they are required to self-declare whether they have any condition that would affect their ability to practise.

Along with a self-declaration, our statutory rules set out that a health reference completed by a doctor is also required for entry to the Register.³ The doctor must either have been the applicant's doctor for at least three years or have examined the applicant's medical records for this period. A doctor who could not provide a reference on either basis could also do so after physically examining the applicant. In all cases the doctor must not be related to the applicant.

The health reference is based on an individual's fitness to practise a profession. In the reference the doctor is asked to tell us whether the individual has any condition that would affect their ability to practise the profession safely and effectively. This is different to asking whether they are 'fit to work' which is a decision that is made at a local level between the registrant and an employer.

2.1.1 What happens when we receive a health reference?

If we receive an application with a completed health reference signed by a doctor, and no additional information has been included on the form, we are normally able to register the applicant, subject to character checks and payment of the registration fee.

Sometimes doctors provide additional information about an applicant's medical history on the reference form if they consider this to be relevant. We review the application to check whether the additional information raises any potential concerns about the individuals' fitness to practise. In most cases there is no concern because the applicant has insight and understanding into their condition and their condition is well managed.

However, in a small number of cases the information raises potential concerns that there may be a health condition which affects the applicant's ability to practise safely and effectively. For example, the applicant has an alcohol dependency problem with a history of relapse and may have insufficient insight and understanding in order to manage their condition properly.

When we receive an application with information which raises potential concerns the application is referred to a registration panel. A registration panel looks at all the available information about an applicant's fitness to practise. The panel meets in private and includes at least one person from the profession the applicant wants to be registered in and at least one member of the public.

The number of occasions where information included on a health reference form has raised potential concern is very small. To date, we have refused registration to two applicants where the health reference highlighted a poorly managed alcohol dependency problem. One applicant subsequently appealed, providing additional information, and a registration appeals panel decided to grant registration. The second applicant did not appeal.

² Article 5(2)(b), Health Professions Order 2001:

<http://www.hpc-uk.org/publications/ruleslegislation/index.asp?id=199>

³ Rule 4(2)(b), Health Professions Council (Registration and Fees) Rules 2003

2.2 Self-referrals and declarations

Each of the professions we regulate renews its registration every two years. As part of the renewal all registrants are required to self-declare that they do not have any unmanaged health conditions that may affect their fitness to practise. Anyone providing a false declaration may be subject to fitness to practise proceedings. We also receive **(mid-cycle)** self-referrals from registrants during the two year registration cycle.

We do not have a list of health conditions which would, or would not, affect registration. It is important that we do not make blanket judgements and look at each case individually. A health condition is only a concern where it impairs fitness to practise; it is not the health condition itself that is the problem.

The requirements are supported by the standards of conduct, performance and ethics which all registrants adhere to.⁴ Standard 12 states: 'You must limit your work or stop practising if your performance or judgement is affected by your health'. By self-referring during their registration cycle and self-declaring at the point of renewal, registrants are demonstrating insight and understanding and that they are managing any condition they may have.

The types of declarations we tend to receive are long-term or permanent health conditions or physical injuries. These have included anxiety, depression, epilepsy, and back injuries. We look at each referral on a case by case basis to make sure that the registrant is demonstrating insight and understanding. In most circumstances the registrant can demonstrate they have insight and understanding, that they are managing their condition appropriately, and that their fitness to practise is not impaired.

We receive a small number of self-declarations where the information we receive might suggest a lack of insight and understanding and pose a potential risk to the public. In these cases, the matter is referred to a registration panel.

2.3 The Health Committee

When we receive a fitness to practise allegation the Investigating Committee looks at the allegation and decides whether there is a case to answer. If they decide there is a case to answer they must then decide whether the case relates to conduct and competence, or health. Some cases involve conduct, competence and health issues. If the Investigating Committee decides that health is the primary factor, the case will be taken to the Health Committee.

The Health Committee deals with cases where the physical or mental health of a registrant may be impaired. In every case referred for hearing, we seek the permission of the registrant to undergo an examination from a relevant doctor so that the panel is able to make an informed decision.

The cases considered by the Health Committee are typically those where a registrant has continued to practise whilst unfit to do so and this has directly led to harm or the risk of harm to service users – i.e. it is not the health or disability of

⁴ Standards of conduct, performance and ethics:
<http://www.hpc-uk.org/publications/standards/index.asp?id=38>

the registrant itself that requires us to take action, but the impairment it has contributed to.

The number of cases where a health is the primary factor is very small **and are mainly a result of employer referral**. In 2007/08 the Health Committee considered six substantive cases. Five of these hearings resulted in a suspension and one case was not well founded. Of the five suspensions, one involved alcohol and the other four involved mental health issues. The case not found involved mental health issues. In 2008/09 the Health Committee considered three substantive cases. In one case the registrant concerned was suspended, in another a conditions of practice order was imposed and in the final case the panel did not find the allegation was proven.

2.4 Education

We approve and monitor the education programmes that lead to eligibility to apply to join our Register. We set requirements around health for the education programmes we approve. The health requirements vary depending on the type of programme and the profession involved. For example, given the invasive procedures paramedics may undertake, vaccinations may be necessary. This may not be the case for other professions such as dramatherapists where the nature of the interaction with service users is very different.

Our process is about ensuring programmes deliver the standards of proficiency but education providers have responsibilities under the Disability Discrimination Act 1995 to consider reasonable adjustments which would allow someone to meet the standards of proficiency.

The standards relating to health we set for education programmes say: *'The admissions procedures must apply selection and entry criteria, including compliance with any health requirements.'* We also provide guidance for this standard which explains that it is the responsibility of the education and training provider to make sure they have taken all reasonable steps to keep to any health requirements, including making all reasonable adjustments in line with equality and diversity laws.

Education providers told us this was a useful standard because it alerted them to ask the question of whether reasonable adjustments need to be made. They said the guidance was also helpful because it reminded them that each application must be treated on a case by case basis.

The health requirement is also an additional check which is made before someone completes an education programme and is eligible to apply to join our Register.

3. Removing the health reference as a requirement for entry to the Register

In this section we provide background information which has shaped our reasons for consulting on removing the health reference requirement for entry to the Register.

3.1 Disability Rights Commission report

In 2006-07 the Disability Rights Commission (DRC) conducted an investigation examining the barriers faced by disabled people entering the professions of nursing, teaching and social work. They concluded that much of the legislation and guidance that regulated entry to these professions did not comply with the Disability Discrimination Act 1995.

In 2007 the DRC published a report called 'Maintaining Standards: Promoting Equality'.⁵ The report concluded that health standards have a negative impact upon disabled people's access to regulated professions; lead to discrimination; and deter and exclude disabled people from entry to these professions. The DRC's main recommendation was that all health requirements should be revoked; they argued that there was no evidence that the health requirements provide protection for the public.

Although the DRC report focussed on nursing, teaching and social work, the conclusions are also appropriate to the HPC. In light of the report it was appropriate for us to look to see if any of our requirements acted as a barrier or were discriminatory.

Our requirements are based on a registrant or applicant's fitness to practise. We make no blanket assumptions about long-term health conditions and look at every case on its own merit. When most people advise us of a disability or long-term health condition, we find we do not need to do anything because they are managing their condition.

Insight and understanding is crucial to decisions made in both applications to join the Register and in fitness to practise cases. An applicant or registrant who has insight and understanding into their condition will adapt their practice where necessary to minimise any risk to a service user. On the other hand, there may be applicants or registrants with the same condition, but who fail to follow advice and practise in a way which could harm service users or themselves.

If a health condition is well managed, we would not need to be involved at all. Employers may, of course, make their own judgements, which are separate to decisions taken by us. For example, someone may have a condition which is well managed that prevents them from undertaking certain work. However, this is an employment decision rather than a registration decision and we would never refuse to register someone **who meets the standards of proficiency** solely because they had a condition that prevented them undertaking certain work. **For example, someone who has a back condition which means they can no longer carry out manual handling. They move into a role where this is not required. We would not need to become involved because they have managed their own fitness to practise.**

Our legislation and guidance for our health requirements clearly explains that they are applied on a case by case basis. We do not make blanket assumptions about any health conditions and how they may affect an individual's ability to practise a profession. It is important that each individual circumstance is taken

⁵ DRC report, 'Maintaining Standards: Promoting Equality':
<http://www.maintainingstandards.org/>

into account so we can protect the public by making sure all registrants are fit to practise. As such, we do not believe our requirements are discriminatory.

3.2 Council for Healthcare Regulatory Excellence report

In response to the DRC report, the Department of Health (DoH) commissioned the Council for Healthcare Regulatory Excellence (CHRE) to provide advice on health regulators' requirements regarding registrants' health.⁶

The DoH sought recommendations and advice from CHRE regarding whether it would be detrimental to registrants, applicants or the public if health requirements were removed. They also wanted to know whether the same requirements should apply to all health regulators or whether different approaches were required for different professions.

The CHRE made five recommendations.

1. The language of 'good health' should be overhauled and replaced with a single requirement of fitness to practise on initial entry to the register.
2. Consideration should be given to changing the regulatory bodies' legislative frameworks so that they have a single fitness to practise committee.
3. Regulatory bodies should consider the most proportionate means of ascertaining the information they need to determine whether those seeking entry to their registers are fit to practise.
4. Regulatory bodies should consider how they can best explain to registrants and potential registrants that health is only considered in relation to their capability to practise safely and effectively, and will not be used to unfairly discriminate against them or place them at disadvantage.
5. Regulatory bodies should make sure appropriate guidance is given to those who look to and interpret the regulatory body requirements and standards for practice, particularly in education and training institutions.

We agree with the CHRE recommendations; in particular that the legislation should be changed to remove references to 'good health'. The term 'good health' has difficulties. We do not only register people who are 'healthy' or in what a lay person would call 'good health'. A registrant may well have a disability or long term health condition which would mean that they would not consider themselves to be in 'good health'. However, as long as the registrant or applicant has insight and understanding, and manages their condition or disability appropriately, this will not prevent them from registering.

We feel that it is appropriate for us to review the recommendation to consider whether our current requirement of a health reference is the best way to determine whether those seeking entry to our Register are fit to practise. This consultation is partially a result of the CHRE's recommendation.

The CHRE said about health references and the practise of the regulators that they had '...heard no convincing argument as to why practitioners might pose additional risks to public protection at initial registration justifying the requirement of a full reference, compared with accepting a self-declaration for renewing registration.'

⁶ CHRE report, 'Health Conditions: Report to the four UK Health Departments': http://www.chre.org.uk/_img/pics/library/090630_Health_Conditions_FINAL.pdf

We agree that any requirements we make must be proportionate. We feel that in terms of proportionality we should consider changing our current requirement from a health reference completed by a doctor to a self-declaration. This would be in line with someone demonstrating insight and understanding of any health condition they may have.

3.3 Feedback from doctors and applicants

The health reference has occasionally caused confusion for applicants and doctors about what was required. For this reason we produced a guidance document for applicants and doctors called 'Information about the health reference'.⁷

Despite the guidance on the health reference, the health reference is often the subject of complaints from both applicants and doctors. Some doctors told us they were unwilling to sign the declaration because they had no history with the applicant, or the applicant was not registered with a doctor. Other doctors have refused to sign the declaration because they felt they were being asked to confirm that the applicant could carry out all roles available in a profession. They expressed concern that they did not know all aspects of the professions and could not therefore sign to say the applicant was fit to practise.

Many doctors think they need to assess an applicants' suitability and ability to be employed (occupational health checks) rather than 'fitness to practise'. This means that decisions might potentially be made on blanket judgements about employability rather than looking at each individual's situation and fitness to practise.

We have also received anecdotal evidence that applicants have been charged for completing the reference. We have also been advised that some applicants lost the offer of positions because of the time it took to become registered as a result of the completed reference being delayed.

The feedback we have received from doctors and applicants suggests that the requirement for a health reference completed by a doctor for those applying to join the Register is not proportionate or necessary. Registrants are autonomous professionals who are able to manage their own fitness to practise which would include self-declaring any health condition which may affect their fitness to practise. It is important that applicants know that they will be autonomous professionals when they join the Register and take account of their own fitness to practise, a self-declaration to join the Register encourages this.

3.4 Health requirements of other regulators

All of the other health regulators require an applicant to make a declaration on health at the point of application to their registers. The requirements they make vary between those who require a signed declaration from a doctor and those who accept a self-declaration. The difference in approach between the health regulators is due to the wording of the applicable legislation.

⁷ Information about the health reference:
<http://www.hpc-uk.org/publications/index.asp?id=109>

Outside of the health professions most other regulators also require some form of health reference. The Civil Aviation Authority (CVA) and the Maritime and Coastguard Agency (MCA) both require doctors to complete a health reference. But the approach of both the CVA and MCA is possible because they are based on the fitness to carry out a particular role rather than the broader fitness to practise of those on our Register.

Health requirements should be necessary, proportionate and appropriate to what the regulators need to know to carry out their role of protecting the public. These may differ between regulators.

4. Our proposal

Any requirements we make must be proportionate to the level of risk posed. It is also essential that any health reference we require is fit for purpose. To identify this there needs to be an evidence base to focus on those who may cause problems. However, there is little evidence available due to the small number of health issues that arise at the point of entry to the Register. The number of applicants refused registration on the grounds of health suggests the public would not be at greater risk of harm if the health reference signed by a doctor was changed to a self-declaration.

The purpose of the health reference is misunderstood even with the guidance we have provided. It may also be seen as a potential barrier by people trying to join the Register. The number of cases which result from information disclosed in the health reference is extremely low. For these reasons we agree with CHRE that the health reference should be replaced with a self-declaration.

Registration is on an individual basis and we do not prescribe the types of roles that registrants can undertake. Any requirements we make must apply on a case by case basis, allowing those applying to join the Register to demonstrate they have insight and understanding of their individual circumstances and that any condition they may have is appropriately managed. This approach is supported by the standards of conduct, performance and ethics, and the fitness to practise processes we have in place.

The number of self-declarations we currently receive shows that registrants are autonomous professionals who demonstrate insight and understanding of any condition they may have and how it may affect their fitness to practise.

If someone made a false declaration on an application form with intent to deceive or conceal something from the HPC the applicant could be subject to fitness to practise; this would also apply if the applicant made a false declaration relating to their health.

4.1 The proposal

We propose that a formal health requirement at the point of registration is necessary and all those applying to join the Register should be able to demonstrate insight and understanding of any condition they may have.

We propose that this should be a self-declaration such as that completed by those renewing their registration. This is in keeping with an individual managing their own fitness to practise. To do this we would have to replace Rule 4(2)(b) of

the Registration and Fees Rules with a requirement for all those seeking entry to the Register to make a self-declaration relating to any health conditions that may affect their fitness to practise. Subject to rules passing, we would also have to amend the relevant sections of our health and character guidance.

4.2 Terms of the self-declaration

The self-declaration already on the application form should be added to and would need to be completed to join the Register. The declaration should be similar to the declaration made by those renewing their registration.

We propose the declaration will be made in the following terms:

'I confirm that I do not have a health condition which would affect my safe and effective practice of my profession'.

The guidance notes which support the application forms for registration include guidance about each of the declarations applicants are asked to agree to and sign. If the health reference was replaced with a self-declaration, these guidance notes would be updated to provide guidance for applicants about completing this declaration.

5. Consultation

5.1 Consultation questions

We have asked some consultation questions below which you may wish to address. However, if there are any other comments you would like to make we will be happy to take these on board.

- 1. Do you agree that we need a requirement relating to health at entry to the Register? If not, why not?**
2. Do you agree we should remove the health reference as a requirement for entry to the Register and replace it with a self-declaration? If not, why not?
3. Do you agree with the terms of the proposed self-declaration? If not, why not?

5.2 How to respond

We welcome all responses to the consultation and we will consider our proposal in light of the responses we receive.

You can download further copies of this document from our website or you can contact us if you would like us to send you a copy.

Please contact us to request a copy of this document in an alternative format, or in Welsh.

We are consulting for at least 12 weeks in accordance with guidance set out in the Government Code of Practice on Consultation.⁸

The deadline for responses to this consultation is **30 March 2010**.

⁸ HM Government Code of Practice on Consultation:
<http://www.berr.gov.uk/files/file47158.pdf>

Please send your response in writing to:

HPC consultation on removing the health reference as a requirement for entry to the Register
Policy and Standards Department
Health Professions Council
Park House
184 Kennington Park Road
London
SE11 4BU

You may also email responses to consultation@hpc-uk.org or send a fax to +44 (0)20 7820 9684.

Please note that we do not normally accept responses by telephone or in person. We normally ask that consultation responses are made in writing to ensure that we can accurately record what the respondent would like to say. However, if you are unable to respond in writing please contact us on +44 (0)20 7840 9815 to discuss any reasonable adjustments which would help you to respond.

We will publish a summary of the responses we receive to the consultation and the decisions we have taken as a result on our website.

If you would prefer your response not to be made public, please indicate this when you respond.

5.3 About consultations

We are striving to improve our consultation process to ensure the best policy outcomes. You can find more information on our consultation process and contact details to tell us how we can improve our consultations on our website: www.hpc-uk.org/aboutus/consultations/about/.

Appendix

Workplan

10 December 2009 – Council – Consultation paper on removing the health reference.

4 January 2010 – 30 March 2010 – Consultation on removing the health reference.

8 June 2010 – Consultation response to ETC.

7 July 2010 – Consultation response to Council.

If it was agreed to replace or remove the health reference requirement, the next stages would apply:

June 2010 – ETC – Consultation paper on amending the ‘Guidance on health and character’.

July 2010 – Council – Consultation paper on amending the ‘Guidance on health and character’.

August 2010 – November 2010 – Consultation on the ‘Guidance on health and character’.

September 2010 – Council - Change to guidance notes (on health) subject to rules passing.

October 2010 – Laying of rules (28 days).

December 2010 – ETC – ‘Guidance on health and character’ consultation response.

January 2011 – Remove health reference.

February 2011 – Implementation.

March 2011 – Council – ‘Guidance on health and character’ consultation response.