

## Education and Training Committee - 14 November 2013

### Health and Character Review

#### Executive summary and recommendations

#### **Introduction**

The Health and Character process has been in operation since June 2005. In 2008 a review was undertaken of the Health and Character process, the types of cases and the decisions made by the Registration Panel. It was agreed by Council that further reviews of the Health and Character process and Registration Appeal cases should be undertaken periodically. To this end, the Fitness to Practise (FTP) department has conducted a review which covers the period 1 April 2011 to 31 March 2013. A report on this review can be found as an appendix to this paper.

Going forward, the FTP Department will produce a Health and Character Review on a biennial basis, covering a two year period from 1 June-31 May, to coincide with the registration renewal cycle of the professions regulated by the HCPC.

#### **Decision**

The Committee is requested to discuss this paper. No decision is required.

#### **Background information**

In May 2005, the Council approved the policy and procedure that the Health Professions Council (HPC) should adopt when considering the following matters:

- health and character declarations on application for admission or re-admission to the register
- health and character declarations on renewal of registration
- self-referral on health or character issues by registrants.

In July 2008 the requirement for registrants to notify the HPC of health issues was removed from the Standards of Conduct, Performance and Ethics. In January 2011, the requirement for applicants for admission to provide a health reference was removed. However, applicants seeking admission, re-admission or to renew their registration are still required to declare health issues which may affect their fitness to practise.

In January 2011, Health and Character Policy was updated to reflect the fact that self-referrals would be treated as Fitness to Practise matters rather than being dealt with through the Health and Character process.

**Resource implications**

None

**Financial implications**

None

**Appendices**

Appendix 1 – Health and Character Review – November 2013

**23 October 2013**

# Health and Character Review – November 2013

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## 1. Introduction

The Health and Character process has been in operation since June 2005. In 2008, a review of the Health and Character process and the types of cases received and the decisions made by the Registration Panel was undertaken. The appeals that have resulted from the Health and Character process and the cases that have been referred to the fitness to practise process were also examined.

It was agreed by Council that further reviews of the Health and Character process and Registration Appeal cases should be undertaken periodically. The Fitness to Practise (FTP) Department agreed to produce a review in 2012. However, due to the diversion of resources required for the rolling out of the new Case Management System and the preparation for the transfer of regulatory responsibility for Social Workers in England to the HCPC, it was agreed that the review could be postponed until September 2013.

This review will cover the period 1 April 2011-31 March 2013. During this time, the Fitness to Practise Department underwent significant change, which affected the way that the Department works. The most significant changes included:

- The updating of the Health and Character Policy in January 2011;
- The introduction of a new Case Management System in April 2012;
- The closing of the grand parenting period for Practitioner Psychologists on 2 July 2012;
- The transfer of regulatory responsibility for Social Workers in England as of 1 August 2012;
- The introduction of the Student Suitability Scheme as of 1 August 2012; and
- The introduction of case conferences for Registration Appeal cases.

Going forward, the FTP Department will produce a Health and Character Review on a biennial basis, covering a two year period from 1 June-31 May, to coincide with the registration renewal cycle of the professions regulated by the Health and Care Professions Council (HCPC). The current and next renewal periods are set out in Table 1.

| <b>Profession</b>   | <b>Current renewal period</b>       | <b>Next renewal period</b>          |
|---|-------------------------------------|-------------------------------------|
| <a href="#"><u>Operating department practitioners</u></a> | 01 December 2010 - 30 November 2012 | 01 December 2012 - 30 November 2014 |
| <a href="#"><u>Practitioner psychologists</u></a>         | 01 June 2011 - 31 May 2013          | 01 June 2013 - 31 May 2015          |
| <a href="#"><u>Orthoptists</u></a>                        | 01 September 2011 - 31 August 2013  | 01 September 2013 - 31 August 2015  |
| <a href="#"><u>Paramedics</u></a>                         | 01 September 2011 - 31 August 2013  | 01 September 2013 - 31 August 2015  |
| <a href="#"><u>Clinical scientists</u></a>                | 01 October 2011 - 30 September 2013 | 01 October 2013 - 30 September 2015 |
| <a href="#"><u>Prosthetists / orthotists</u></a>          | 01 October 2011 - 30 September 2013 | 01 October 2013 - 30 September 2015 |
| <a href="#"><u>Speech and language therapists</u></a>     | 01 October 2011 - 30 September 2013 | 01 October 2013 - 30 September 2015 |
| <a href="#"><u>Occupational therapists</u></a>            | 01 November 2011 - 31 October 2013  | 01 November 2013 - 31 October 2015  |
| <a href="#"><u>Biomedical scientists</u></a>              | 01 December 2011 - 30 November 2013 | 01 December 2013 - 30 November 2015 |
| <a href="#"><u>Radiographers</u></a>                      | 01 March 2012 - 28 February 2014    | 01 March 2014 - 28 February 2016    |
| <a href="#"><u>Physiotherapists</u></a>                   | 01 May 2012 - 30 April 2014         | 01 May 2014 - 30 April 2016         |
| <a href="#"><u>Arts therapists</u></a>                    | 01 June 2012 - 31 May 2014          | 01 June 2014 - 31 May 2016          |
| <a href="#"><u>Dietitians</u></a>                         | 01 July 2012 - 30 June 2014         | 01 July 2014 - 30 June 2016         |
| <a href="#"><u>Hearing aid dispensers</u></a>             | 01 August 2012 - 31 July 2014       | 01 August 2014 - 31 July 2016       |
| <a href="#"><u>Chiropodists / podiatrists</u></a>         | 01 August 2012 - 31 July 2014       | 01 August 2014 - 31 July 2016       |
| <a href="#"><u>Social workers in England</u></a>          | 01 December 2012 - 30 November 2014 | 01 December 2014 - 30 November 2016 |

Table 1: Registration Renewal Cycle by Profession

## 1.1. Background

In May 2005, the Council approved the policy and procedure that the Health Professions Council (HPC) should adopt when considering the following matters:

- health and character declarations on application for admission or re-admission to the register
- health and character declarations on renewal of registration
- self referral of health or character issues by registrants.

In July 2008 the requirement for registrants to notify the HPC of health issues was removed from the Standards of Conduct, Performance and Ethics. In January 2011, the requirement for applicants for admission to provide a health reference was removed. However, applicants seeking admission, re-admission or to renew their registration still need to declare health issues which may affect their fitness to practise.

In January 2011, Health and Character Policy was updated to reflect changes in the way that self-referrals from Registrants were treated. Where previously self-referrals were dealt with via the Health and Character process, since January 2011, they are now treated as Fitness to Practise matters if the information disclosed is sufficient to suggest that the registrant's fitness to practise is impaired. This allows the matter to be investigated further under Article 22(6) of the Health and Social Work Professions Order 2001 (the Order). The decision to proceed with a self-referral via Article 22(6) of the Order is a matter for the Chief Executive and Registrar.<sup>1</sup> The 2011 update also set out the types of declarations that could be signed off without the need for consideration by a Registration Panel.

When the HCPC receives a declaration as set out above, the information is considered by a Registration Panel who acts on behalf of the Education and Training Committee in a similar way to Registration Assessors. There are nine days per month set aside for Registration Panels to meet. These days are also used for panels of the Investigating Committee to consider fitness to practise referrals.

## 1.2. Structure of the report

This report has been structured to provide detailed information about the 3 types of declaration made to HCPC:

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<sup>1</sup> under authority delegated by the Council

- Declarations on admission/re-admission to the register;
- Declarations on renewal of registration; and
- Self referrals.

Each area is then divided into the types of issues declared (i.e. health, character and convictions/cautions). Any significant patterns or trends are highlighted and there is brief discussion about appeal and fitness to practice referrals where relevant.

The report then discusses, in detail, the outcome of appeals that have resulted from Registration Panel decisions concerning declarations on admission, readmission and renewal. Although there is some repetition of information from earlier sections of the report, it ties together the detailed information regarding the appeals received.

Following this, referrals to the fitness to practise process from the open self-referral cases (received pre-January 2011) are examined. Again, there is some repetition from the self referral section of the report, but this is necessary to provide an overall analysis of the information.

Finally, conclusions and recommendations are made about the health and character process and guidance that will be produced.

## **2. Declarations on Admission/Re-admission to the Register**

When an individual applies to the register, they are required to declare any health or character issues, including any previous convictions or cautions and any disciplinary action that may have been taken against them. These cases also include circumstances where information was sent to the HCPC about the applicant before they applied, or while their registration had lapsed. These individuals are entered on the watch list which notifies the Registration Advisor when an application is entered on the registration system.

A Registration Panel will consider each case on its merits in line with the Council's Health and Character policy. The decision that the panel is asked to make, is whether the applicant's registration should be allowed. Should the panel decide not to allow the application, there is a right of appeal to Council. Where an appeal is received, it is dealt with through the Registration Appeal process which is administered by the Fitness to Practise Department.

Between April 2011 and March 2013, 1327 cases with declarations were logged. Of that number, 1276 were declarations made on application for admission or readmission to the Register, 51 were declarations made on renewal and 9 cases were logged in error.

Table 2 below shows not only an increase in the number of declaration cases received by the HCPC compared to the last review (560) but also, proportionately, a reduction in the number of cases considered by a Registration Panel. For example, 64% of the 1267 declarations received on admission/readmission were considered by a Registration Panel, compared to

88% of declarations received on admission/readmission going before a Registration Panel in the last review.

This can in part be explained by updates to the Health and Character Policy, which set out the types of matters declared which can be approved administratively, without the need to be put before a Registration Panel.

In May 2012, the HCPC Guidance on Health and Character, which provides guidance on our processes when assessing the health and character of people who apply to, or who are on, our Register was revised and updated, following the removal of the requirement to provide a health reference for entry to the Health and Care Professions Council (then the Health Professions Council) Register in October 2011. The impact of this change can be seen in the low number of health declarations received on application for admission/readmission for the period 1 April 2011-31 March 2013 (eight) compared with 59 health declarations received for the period last reviewed.

Of the cases logged between April 2011-March 2013, 814 declarations on admission/readmission were considered by a Registration Panel. (831 if you include renewals)

This number does not include cases that are on-going. The number and types of cases received are shown in the table below.

#### 2011 - 2013

|                                    | Health | Character                | Conviction/Caution        | Other                      | Totals |
|------------------------------------|--------|--------------------------|---------------------------|----------------------------|--------|
| Cases Received                     | 8      | 220 (1 created in error) | 1044 (3 created in error) | 3 (all incorrectly logged) | 1276   |
| Cases considered by panel          | 0      | 131                      | 683                       | 0                          | 814    |
| Cases admitted to the Register     | 0      | 101                      | 667                       | 0                          | 768    |
| Cases not admitted to the Register | 0      | 30                       | 16                        | 0                          | 46     |

**Table 2– Total declarations made on admission or readmission to the register between April 2011-March 2012 and April 2012-March 2013.**

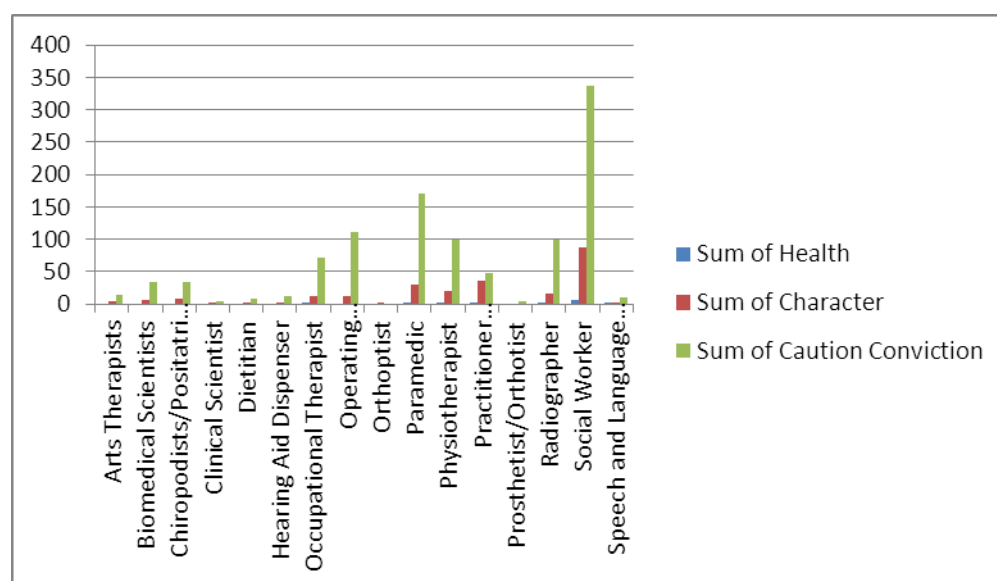
**\*NB: 4 cases were incorrectly logged as Character and Caution/Conviction Declarations, a further 3 cases were logged in error- one was a grand parenting case, two should have been logged as Registration Appeal cases. All incorrectly logged cases have since been logged correctly.**

The average time for a declaration on admission or readmission to reach a registration panel is 26 days. This includes the 14 days notice of the date of the panel, which is given to the applicant should they wish to provide any further submissions.



Social Workers made the highest number of declarations on application for admission/readmission and renewal for a single profession. This can be explained by the fact that the Health and Care Professions Council took over regulatory responsibility for Social Workers in England on 1 August 2012. Between 1 September 2012 and 30 November 2012, Social Workers in England were required to renew their registration.

The professions with the lowest number of declarations made were Orthoptists, Prosthetists and Orthotists and Clinical Scientists, which is consistent with the figures from the last review and broadly equivalent to the percentage of the Register represented by these professions. Graph 1 shows the break down by profession.



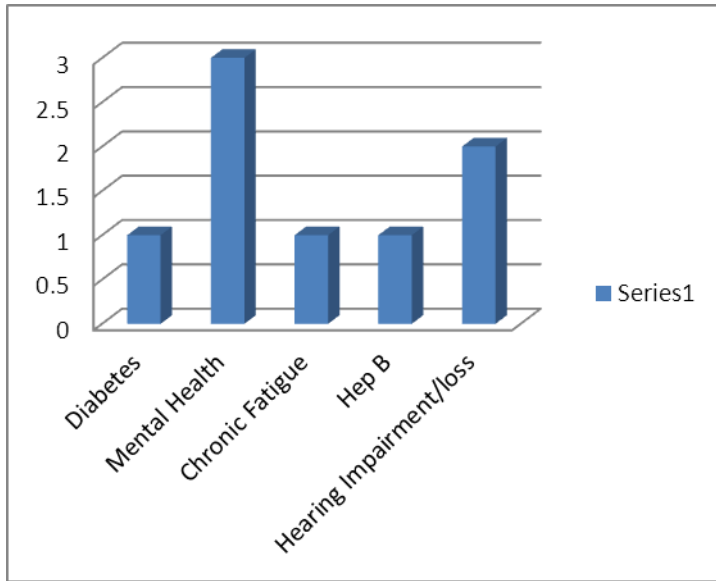
**Graph 1 - Declarations made on admission or readmission to the register by profession**

## 2.1. Health

In January 2011, the requirement for applicants for admission to the Register to provide a health reference was removed. However, applicants seeking admission, re-admission or to renew their registration still need to declare health issues which may affect their fitness to practise.

The HCPC has provided guidance to employers and registrants in a document entitled “Managing your fitness to practise”.

The nature and frequency of the issues declared can be seen in Graph 2. The issues have been categorised to provide an overview of the nature of the conditions declared.

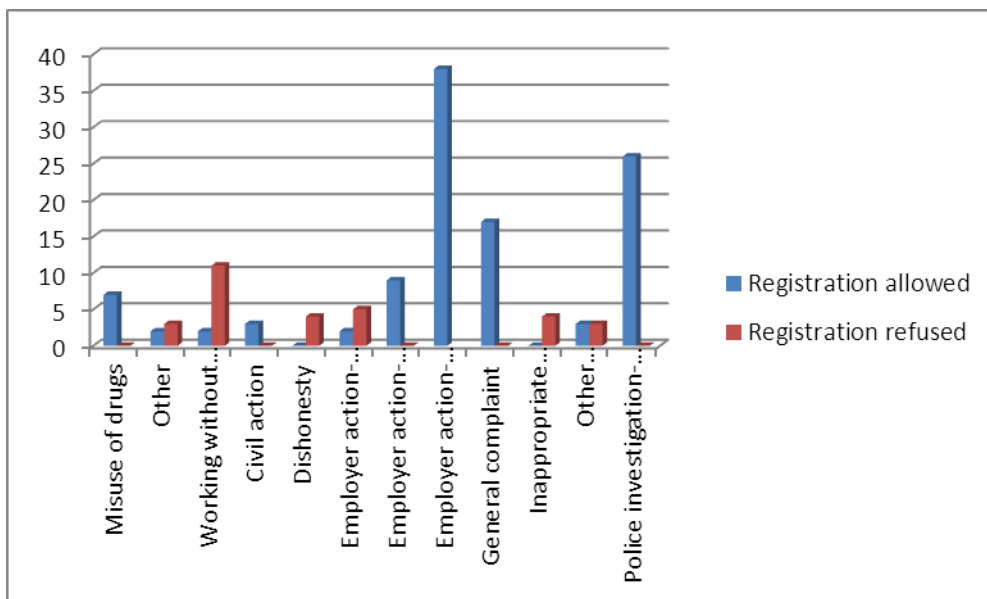


**Graph 2 – Health declarations made on admission or readmission to the register**

Only 8 health declarations were received on application for admission or readmission to the Register for the period covered by this review. None of the health declarations made between April 2011-March 2013 were considered by Registration Panels. All of the health declarations made in this period were closed administratively and registration was allowed. This was on the basis that the applicants were managing their fitness to practise.

## 2.2. Character

Only 220 of the 1276 declarations on admission and readmission related to general character issues. Graph 3 shows the types of cases, and the panel decisions.



**Graph 3 – Character declaration decisions made on admission or readmission to the register**

Of the 220 character declarations that were received, 139 were considered by Registration panels, thirty of which were refused registration. Eleven of the cases where the panel decided not to allow registration related to practising whilst unregistered. A further three cases related to practising whilst unregistered in addition to other character matters. Three cases related to removal from the registers of other regulatory bodies. The remaining cases related to competency concerns leading to dismissal from employment, inappropriate relationships with Service Users and matters involving dishonesty.

Since the last review, we have undertaken more focused training for panel members on the role of Registration Panels and the test to be applied when considering declarations made. The introduction of case conferences to consider matters where Registration Panels have refused registration and an appeal has been received has allowed us to more closely scrutinise the decisions made by Registration Panels and to feed learning points into panel refresher training.

Registration appeals were received in relation to twenty seven Character declarations where registration was refused. Of those appeals, twenty were allowed, six were dismissed and one was remitted back to the Education and Training Committee.

Two character declarations were referred to Fitness to Practise. These related to declarations that were made to the General Social Care Council (GSCC) but which had not concluded at the time of transfer to the HCPC as at 1 August 2012.

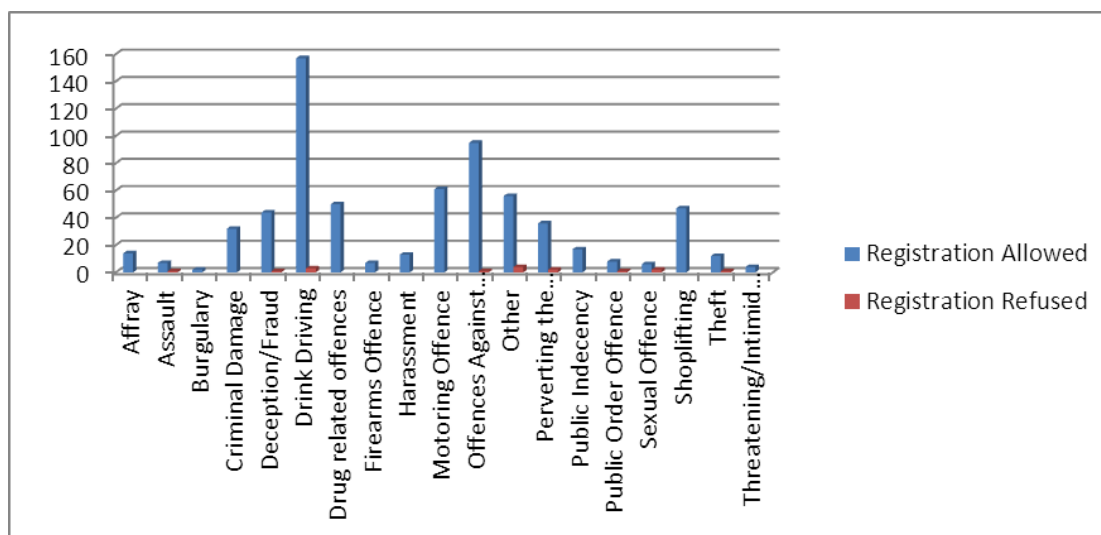
### 2.3. Convictions/cautions

Of the 1276 declarations on application for admission or readmission, 1041 related to a conviction or caution. This is the most common type of issue declared on entry to the register. 684 conviction/caution declarations received in the period 1 April 2011-31 March 2013 were considered by a Registration Panel. Of those cases, only 16 (2%) were considered serious enough to be refused entry to the Register. This was mostly where the offences were serious in nature, there had been multiple offences (only the most recent or most serious is detailed in the graph below) or it was a sexual offence. This is indicative of the impact of the development of the Health and Character Policy in 2008, which not only set out the types of convictions that could be signed off administratively but also more clearly set out the role of Registration Panels and the Council's position in relation to matters that would prevent an application for admission/readmission or renewal from being approved. The changes to the Health and Character Policy were supplemented by the publication of the HCPC's Guidance on Health and Character, which was revised and updated in May 2012.

The HCPC has also provided more focused training to its panel members on the purpose of Registration Panels and the test that the Registration Panel must apply when making a recommendation to allow or refuse registration.

The introduction of case conferences in 2012 (to review recommendations to refuse registration where an appeal against that decision is received) has allowed us to better evaluate the decisions made by Registration Panels and to feed any general learning into panel training. Further information about the case conference process is provided in the Registration Appeals section of this report.

Graph 4 shows the nature of the cases considered and the decisions of the panels.



**Graph 4 – Conviction/caution declaration decisions on admission or readmission to the register 2011-2013 graph.**

Of the applicants whose registration was refused, 10 appealed the decision. Of that number, 7 appeals were allowed and 3 were dismissed. Of the appeals that were allowed, 3 were for drink driving, 1 was for three previous offences and being subject to a parenting order. The 2 appeals that were dismissed were for multiple fraud and theft convictions and a sexual offence.

### 3. Declarations on Renewal of Registration

Every two years, registrants are required to renew their registration. This involves making a declaration that:

- they continue to meet the HCPC's standards of proficiency for the safe and effective practice of their profession; and
- there have been no changes to their health or relating to their good character which they have not advised HCPC about and which would affect their safe and effective practice of their profession.

Where a declaration is made on renewal, the case is considered by a Registration Panel in the same way as a declaration on admission/readmission to the register. The decision that the panel is asked to make is whether the registrant should be allowed to renew their registration. If

the panel does not allow renewal of registration, there is a right of appeal to the Council against that decision.

A total of 51 declarations have been made on renewal since April 2011 (which includes one case which was logged incorrectly). This is less than the number of declarations received on renewal in the last review. However, it should be noted that the period covered by this review is not a full renewal cycle. Therefore some of the professions were not required to renew their registration between April 2011-March 2013. This may account for the lower number of declarations received on renewal. Further, the reduction in the number of declarations made on renewal may be indicative of registrants increasingly self-referring matters to the HCPC prior to renewal of their registration.

Of the 51 declarations made on renewal, 44 were received in 2012-13. This may be explained by the transfer of regulatory responsibility for Social Workers in England to the HCPC as of 1 August 2012. Social Workers went into a renewal cycle between 1 September 2012 and 30 November 2012. Thirty eight declarations on renewal were made by Social Workers. This is set out in Graph 5.

The majority of cases received relate to character and conviction or caution declarations. This represents a change from the last review, where the majority of declarations made on renewal were health related. This may be as a result of changes made to the Health and Character Policy in January 2011. A breakdown of the types of cases received is given in the table below.

| <b>2011-12</b>                            | <b>Health</b> | <b>Character</b> | <b>Conviction/caution</b> | <b>Totals</b>            |
|---|---------------|------------------|---------------------------|--------------------------|
| <b>Cases received</b>                     | 4             | 1                | 2                         | 7 (1 logged incorrectly) |
| <b>Cases considered by panel</b>          | 0             | 1                | 1                         | 2                        |
| <b>Cases admitted to the register</b>     | 0             | 1                | 1                         | 2                        |
| <b>Cases not admitted to the register</b> | 0             | 0                | 0                         | 0                        |
| <b>Referred to FTP</b>                    | 0             | 0                | 0                         | 0                        |

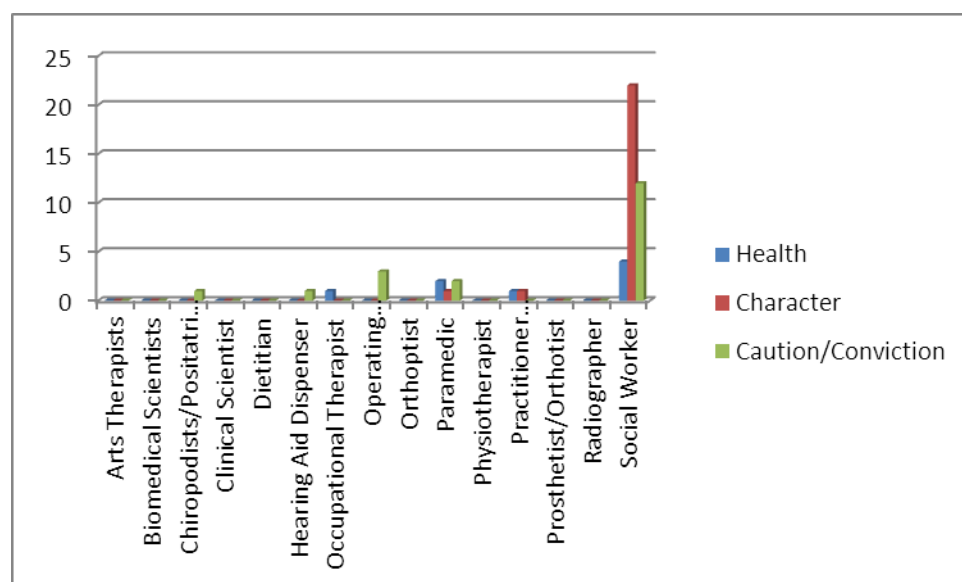
| <b>2012-13</b>          | <b>Health</b> | <b>Character</b> | <b>Conviction/caution</b>                                 | <b>Totals</b> |
|-------------------------|---------------|------------------|---|---------------|
| <b>Cases received</b>   | 4             | 23               | 17 (including 2 logged incorrectly and 1 logged in error) | 44            |
| <b>Cases considered</b> | 0             | 7                | 8   | 15            |

|   |   |   |   |    |
|---|---|---|---|----|
| <b>by panel</b>                           |   |   |   |    |
| <b>Cases admitted to the register</b>     | 0 | 4 | 8 | 13 |
| <b>Cases not admitted to the register</b> | 0 | 0 | 0 | 0  |
| <b>Referred to FTP</b>                    | 0 | 3 | 0 | 3  |

**Table 3 – Total declarations made on renewal of registration between April 2011-March 2013.**

It takes an average of 50 days for a declaration on renewal to reach a panel. This includes the 14 days provided to the registrant to make further representations to the panel.

Graph 5 details which professions have declared an issue on their renewal form. Social Workers have declared more issues on renewal than any other profession.



**Graph 5 - Declarations made on renewal of registration by profession**

### 3.1. Health

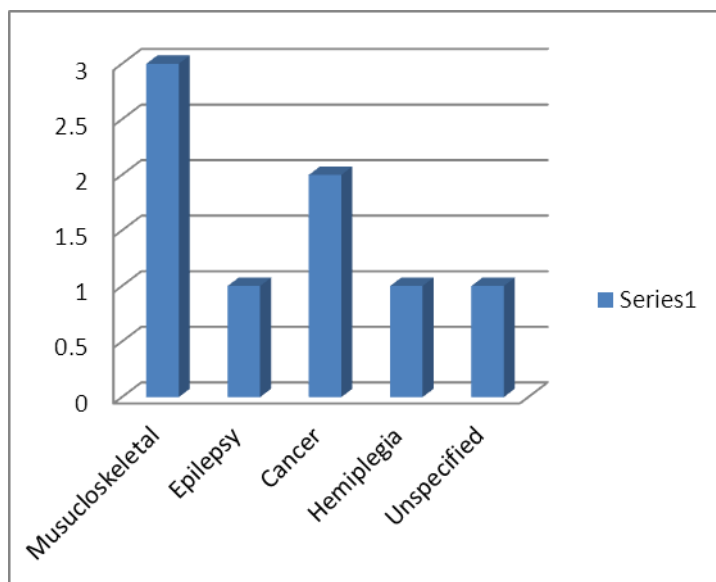
Only eight health declarations were made on application for renewal between April 2011-March 2013. This represents a significant change from the last review where 131 of the 144 declarations made on renewal related to health matters.

The declaration only asks for information relating to health where it “would affect your safe and effective practice of your profession”. However, most of the health issues declared do not affect registrants’ safe practice.

None of the eight health cases on renewal were considered by a registration panel. All of the cases were closed administratively on the basis that the Registrants had provided sufficient information or evidence to demonstrate that they were managing their fitness to practise and were therefore complying with Standard 12 of the HCPC's Standards of Conduct, Performance and Ethics, which requires Registrants to limit their work or stop practising if their performance or judgement is affected by their health.

The Standards of Conduct, Performance and Ethics were updated in July 2008, removing the requirement for registrants to notify the HCPC of health issues was removed from the Standards of Conduct, Performance and Ethics. Health issues affecting an individual's fitness to practise still need to be declared on application or re-admission to the register and on renewal.

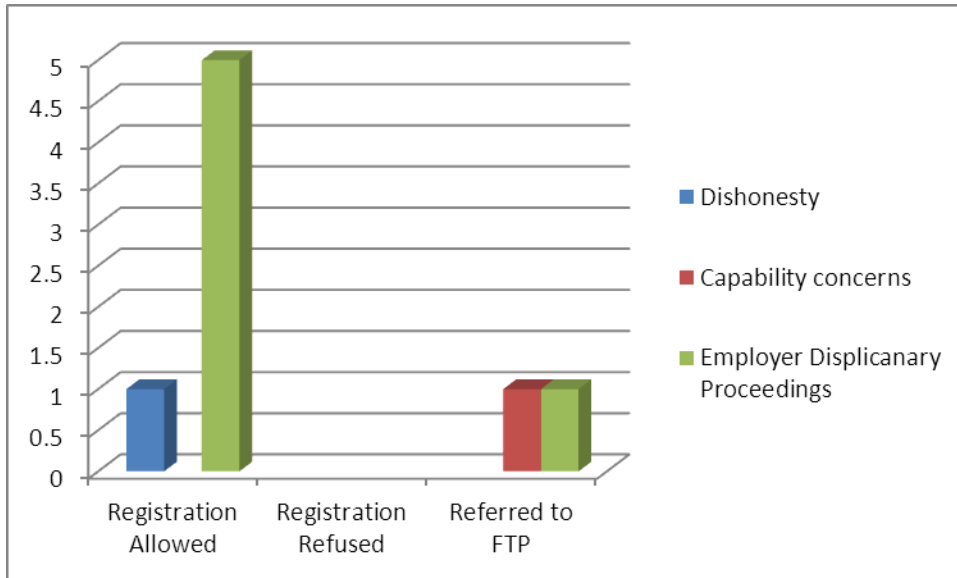
Graph 6 shows the categories of health condition declared on renewal. In most cases, registrants are seeking general advice or providing a general update. In other cases specific issues are declared.



**Graph 6 – Health declarations made on renewal or registration**

### 3.2. Character

Twenty four of the cases received on renewal related to general character issues. Of those, only eight were considered by a panel. Renewal was granted in all eight cases considered by a Registration panel. However, in three of the character cases (two of which were GSCC transfer cases), the matters were referred for further investigation under our Fitness to Practise procedures. The other matters were not of concern to the HCPC. The issues considered by the panel are outlined in Graph 7.

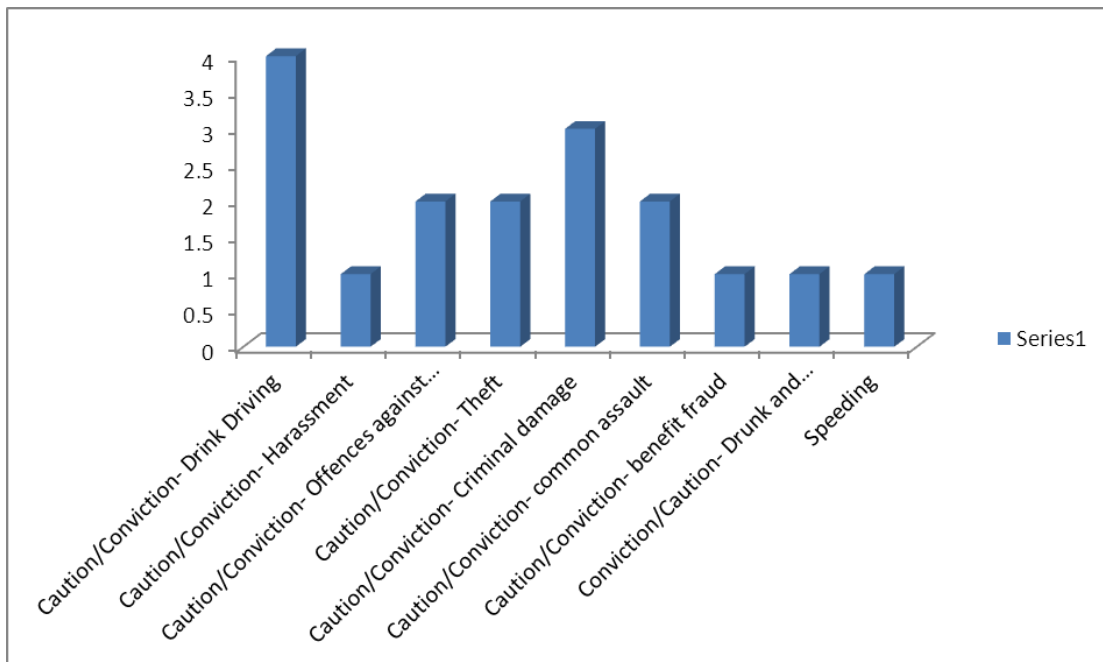


**Graph 7- Character declarations made on renewal of registration**

### 3.3. Convictions/cautions

Nineteen declarations on renewal related to convictions or cautions, nine of which were considered by a panel. All of the conviction/caution declarations made at renewal, which were considered by Registration Panels between April 2011-March 2013, were allowed and the applications for renewal were approved.

The general types of conviction declared are detailed in Graph 8.



**Graph 8 – Conviction/caution declaration decisions made on renewal or registration**



The low number of convictions declared on renewal is due to changes to the self referral process and registrants are not waiting until renewal to declare these matters to the HCPC. Also, the HCPC is informed of convictions and cautions under the Notifiable Occupations Scheme and such cases are dealt with through the fitness to practise process.

#### **4. Self Referrals**

When an individual is on the Register, HCPC encourages self declaration of any issues that may affect their fitness to practise. Standard 4 of the current standards of conduct, performance and ethics states that:

*“You must provide any important information about conduct, competence or health.”*

As of January 2011, when a self referral is received, the case will generally be treated as a FTP matter via Article 22(6) of the Order. This provision allows the Council to investigate a matter where an allegation is not made in the normal way. This power has been delegated to the Executive and legal advice is sought in each case. However, in some circumstances, these cases may be considered by a Registration Panel under the Council’s Health and Character policy.

As at 1 April 2011, there were 31 open self-referral cases being dealt with under the Health and Character Policy, which were received prior to 1 January 2011. The decision for the panel is whether the matter declared is sufficiently serious to be considered through the fitness to practise process. When a Registration Panel refers a matter to the fitness to practise process, it is dealt with as an allegation under Article 22(6) of the Order 2001.

When a self referral is received, further information is often sought by the Case Manager from the registrant, employer or police, in order to provide as much information as possible to the panel. Article 25(1) of the Order 2001 (the power to demand information) cannot be used for the purposes of investigating self referral cases that are managed under the Health and Character Policy. However, once the case is referred to fitness to practise, these powers can be invoked, where the matter meets the Standard of Acceptance for Allegations.

Between April 2011 and March 2013, 31 self referrals were concluded. The number and types of cases are shown in Table 4.

|                                  | <b>Health</b> | <b>Character</b> | <b>Conviction/caution</b> | <b>Totals</b> |
|----------------------------------|---------------|------------------|---------------------------|---------------|
| <b>Cases received</b>            | 0             | 0                | 0                         | 0             |
| <b>Cases considered by panel</b> | 1             | 30               | 0                         | 31            |
| <b>Cases not referred to FTP</b> | 0             | 16               | 0                         | 16            |
| <b>Cases referred to FTP</b>     | 1             | 14               | 0                         | 15            |

**Table 4 – Total self referrals considered by Registration Panels between April 2011-March 2013**

The average length of time taken for the self referral cases (that were on going prior to January 2011) to reach a Registration Panel from the time of receipt is 373 days. It is often the case that an employer is still investigating the matter when the self referral is made and the HCPC will wait until the investigation is complete before proceeding with its case. It should be noted that these self referrals involved protracted employer investigations, often as a result of grievances that were raised by registrants against their employers in the course of disciplinary proceedings.

## **5. Registration Appeals**

Since July 2012 a change has been made to the appeal process to allow each case where an appeal has been made against a decision by a Registration Panel to recommend refusal of registration to be considered by a case conference prior to scheduling for hearing. That case conference will determine if the recommendation made to refuse registration was a reasonable one or whether it was manifestly unreasonable in which case registration should be allowed without proceeding to an appeal hearing.

A total of 40 appeals have been received against decisions made by Registration Panels under the health and character policy to refuse entry or renewal to the register. Appeals can only be made against decisions regarding entry or renewal to the register, not against decisions in self referral cases to refer the matter to fitness to practise.

The total number of cases where registration or renewal of registration was refused during the period is 46 out of a total of 831 cases considered by panels. This is 5% of cases that were considered by a panel. Of those 46 applicants who were refused admission to the register 40 appealed the decision to the Council. 36 health and character appeals were heard during the period. 9 appellants were represented, 19 attended themselves and the remaining 8 were heard on the documents alone.

72% of the appeals were allowed and the individuals were permitted to enter the register. 9 appeals were dismissed. 1 appeal was remitted back to the Education and Training Committee and 1 appellant was allowed registration following a case conference (without the need for the matter to be heard by an

appeal panel). 2 appellants withdrew their appeals prior to an Appeal Panel considering the case and one withdrew their appeal after the appeal was adjourned.

The following types of appeal cases were considered:

|                 | Health | Character | Conviction/caution | Character + conviction | Total     |
|-----------------|--------|-----------|--------------------|------------------------|-----------|
| Allowed         | 0      | 20        | 5                  | 1                      | 26        |
| Dismissed       | 0      | 6         | 1                  | 2                      | 9         |
| Remitted to ETC | 0      | 1         | 0                  | 0                      | 1         |
|                 |        |           |                    |                        | <b>36</b> |

**Table 5- Break down of Registration Appeal numbers**

In most case where appeals were allowed, the appellant attended the hearing and gave oral evidence to the panel. This enables the panel to ask questions and often, information is provided which was not available to the Registration Panel when the original decision was made.

There do not appear to be any cases that were refused by the Registration Panel where the matter was not of a serious nature. Although most drink driving cases do not concern the panels, the case that was refused related to an incident where a significant ban and community service order was given by the court, which is out of the ordinary for such an offence. The applicant had an alcohol level of 101 microgrammes in 100 millilitres of breath, the legal limit being 35 microgrammes per 100 millilitres of breath. These factors were considered by the Registration Panel when making the decision not to allow registration.

Table 6 gives details of the cases where an appeal was received and brief details of the decisions made.

| <b>Type of case</b> | <b>Category</b>    | <b>Type of issue</b>                   | <b>Appeal decision</b> |
|---------------------|--------------------|--|------------------------|
| readmission         | Character          | Practising while unregistered          | allowed                |
| readmission         | Character          | Practising while unregistered          | allowed                |
| readmission         | Character          | Practising while unregistered          | Dismissed              |
| readmission         | Character          | Dismissal for professional malpractice | allowed                |
| admission           | Character          | Struck off by another Regulator        | Dismissed              |
| admission           | Character          | Disciplined by another Regulator       | allowed                |
| admission           | Conviction/caution | 3 previous convictions                 | allowed                |
| admission           | Conviction/caution | Drink-driving conviction               | allowed                |

|             |                                  |  |  |
|-------------|----------------------------------|--|--|
| readmission | Character                        | Practising while unregistered  | allowed  |
| readmission | Character                        | Practising while unregistered  | allowed  |
| admission   | Conviction/caution               | 3 previous convictions   | allowed  |
| readmission | Character                        | Practising while unregistered  | Dismissed  |
| readmission | Character                        | Practising while unregistered  | allowed  |
| admission   | Character                        | Disciplined by employer for record keeping                                     | allowed  |
| admission   | Character                        | Dismissed by employer and disciplined by another Regulator                     | allowed  |
| admission   | Character                        | Disciplined by employer for boundary issues                                    | allowed  |
| readmission | Conviction/caution/<br>character | Subject to a conditions order by another regulation and a police investigation | Dismissed  |
| readmission | Character                        | Practising while unregistered  | allowed  |
| readmission | Character                        | Dismissal for inappropriate downloads and then reinstated                      | allowed  |
| admission   | Conviction/caution               | Previous convictions for theft and driving offences                            | allowed  |
| admission   | Conviction/caution               | Drink-driving conviction and caution for assault                               | allowed  |
| admission   | Character                        | Disciplined by University for plagiarism                                       | allowed  |
| admission   | Character                        | Dismissed by employer for honesty issues but reinstated on appeal              | allowed  |
| admission   | Character                        | Subject to a complaint about the loss of assessment papers for a child         | allowed  |
| readmission | Character                        | Competence issues and had allowed registration to lapse                        | Referred to the Education and Training Committee |

|             |                              |  |                          |
|-------------|------------------------------|--|--------------------------|
|             |                              |  | for a test of competence |
| readmission | Conviction/caution/character | Conviction for sexual offence and practised while unregistered                     | Dismissed                |
| admission   | Character                    | Competence issues concerning reports for court proceedings                         | Dismissed                |
| admission   | Conviction/caution/character | 3 previous convictions and subject to a parenting order                            | allowed                  |
| readmission | Character                    | Practising while unregistered  | allowed                  |
| readmission | Character                    | Practising while unregistered  | allowed                  |
| readmission | Character                    | Practising while unregistered  | Dismissed                |
| admission   | Character                    | Practising while unregistered with a previous Regulator and subject to a complaint | Dismissed                |
| readmission | Conviction/caution           | 2 drink-driving convictions and 2 other driving convictions                        | Dismissed                |
| admission   | Character                    | Disciplined by a previous Regulator  | allowed                  |
| admission   | Conviction/caution           | 2 drink-driving convictions  | allowed                  |
| admission   | Character                    | Disciplined by employer for alcohol and substance misuse outside work              | allowed                  |

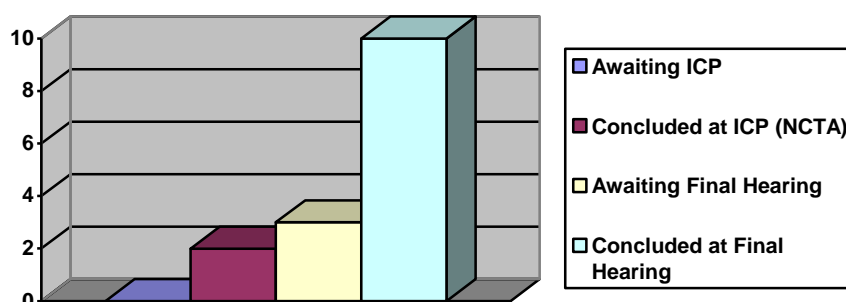
**Table 6- Summary of Registration Appeal Cases**

## **6. Fitness to Practise Referrals**

A total of 15 of the 31 self-referral cases considered by Registration panels were referred to the fitness to practise process. This represents 48% of the self-referral cases that were considered. Fourteen self-referral cases related to character issues, the bulk of which were about serious competency concerns identified following employer investigations. Only one case related to a health matter, which was originally referred to the Conduct and Competence committee but was transferred to the Health Committee at Final Hearing stage.

When a matter is referred to fitness to practise by a Registration Panel, it is dealt with as an allegation under Article 22(6) of the Order. Legal advice is sought to ensure that the facts disclose a matter which, if reported in accordance with the HCPC's Standard of Acceptance, would be pursued as an allegation. Four cases were withdrawn having received legal advice as they were not cases which reasonably should have been referred.

Of the cases referred to FTP, none are awaiting consideration by an Investigating Panel. In total, 12 cases have been considered by an Investigating Panel. Of those, there was no case to answer (NCTA) in relation to 2 cases, 3 cases are awaiting a final hearing and 10 cases have been considered at a final hearing.



**Graph 9 – Number of cases in fitness to practise stages**

When a case is referred to the FTP process, Article 25(1) powers are available to Case Managers in order to investigate the matter further. In some instances there is no further information that could reasonably be obtained, however, further investigation is required in some cases.

### 6.1. No case to answer

There were three no case to answer decisions made by Investigating Panels. Although a no case to answer decision is sometimes made by the Investigating Committee, it is appropriate for the Registration Panel to refer matters that it considers to be of a serious nature. There may also be instances where further information would assist the Registration Panel but no powers are available to request the information. The proper action to take is to refer these matters to FTP for the appropriate investigations to be undertaken.

### 6.2. Final hearing decisions

Final FTP hearings have been held in ten cases. The decisions are summarised in the table below. The HCPC proved all of these cases at final hearing and a sanction was imposed.

| Category  | Type of Issue                        | Outcome    | Comments |
|-----------|--------------------------------------|------------|----------|
| Character | Damaged ambulance to avoid attending | Strike-off |          |

|           |  |                  |   |
|-----------|--|------------------|---|
|           | an emergency call and bullied and intimidated colleagues   |                  |   |
| Character | Dishonesty in using position to undertake blood and urine sample analysis for family members without clinical need   | Caution          |   |
| Character | Numerous competency concerns following an employer disciplinary investigation  | Suspension Order |   |
| Character | Conditional discharge for breach of non-molestation order  | Caution          | Two self-referrals were received but only this one was referred to final hearing at ICP |
| Character | Wide ranging and serious competency concerns in relation to clinical practice following an employer's disciplinary proceedings   | Strike-Off       |   |
| Health    | Record keeping and case management issues identified following employer investigation. The panel was satisfied that the short comings identified were as a result of the Registrant's depression | Suspension       | Initially referred to Conduct and Competence Committee but transferred to health        |
| Character | Several competency concerns identified in  | Suspension       |   |

|           |  |            |  |
|-----------|--|------------|--|
|           | relation to clinical practice in addition to falsifying patient records          |            |  |
| Character | Multiple failings in relation to patient assessments and clinical record keeping | Suspension |  |
| Character | Refusal to attend an emergency call  | Strike-Off |  |

**Table 7 – Summary of Fitness to practise cases**

## 7. Summary and conclusions

### 7.1. Length of time

The average length of time for a case to be considered by a panel is summarised below. This includes the 14 days notice of the panel date that the health and character policy requires we provide applicants/registrants.

|                              | <b>Days to panel</b> |
|------------------------------|----------------------|
| <b>Admission/Readmission</b> | 26                   |
| <b>Renewal</b>               | 50                   |
| <b>Self referral</b>         | 373                  |

**Table 7 – Length of time to panel**

The length of time for self referrals to reach a panel is significantly longer than for other types of cases. The self referral cases that were considered by Registration Panels in the period under review are those that had been received prior to January 2011, after which time self referrals were treated as fitness to practise cases from receipt. In these cases employer or police investigations were generally still in progress, or further information was required from the registrant or a 3<sup>rd</sup> party prior to the matter being ready for consideration by a Registration panel.

It is noted that the average length of time for a declaration made on renewal of registration to be considered by a Registration Panel has increased since the last review. However, this may in part be as a result of the high number of declarations made by Social Workers on renewal. In those cases, we were required to ascertain whether the matters declared had previously been considered by the GSCC.



## 7.2. Nature of the cases

In this report, the cases have been categorised to provide an overview of the types of cases that have been received. In some cases there is only one case of a particular type that has been received. For example, Conviction/caution – Motoring offence includes cases of driving without insurance, driving without tax, careless driving, failure to stop at the scene of an accident, failure to provide a specimen, vehicle licence misuse and dangerous driving among others. Within each category, the specifics of the cases varies in terms of when the incident occurred, what the circumstances were and what the outcome was.

## 7.3 Standards

The HCPC's Standards are developed with the input of key stakeholders, including professional bodies, education providers and the Department of Health in England and its counterparts in Northern Ireland, Scotland, and Wales. We also consult on the Standards we publish.

The Standards of Conduct, Performance and Ethics (SCPE) are currently being reviewed to ensure they are up to date and reflect public expectations of health and care professionals and the role that our registrants play in delivering health and social care. The HCPC is currently undertaking research in relation to the Standards, after which will follow a period of consultation. The revised SCPE are due to be published in 2016.

The HCPC's Standards of Proficiency are kept under regular review to ensure they are up to date and reflect the core competencies that are required to be met for each of the professions we regulate in order to ensure that individuals admitted to our Register are able to practise safely and effectively. Since the last report, the Standards of Proficiency for the following professions have been created and/or updated:

- Hearing Aid Dispensers
- Practitioner Psychologists
- Social Workers in England
- Occupational Therapists
- Dietitians
- Arts Therapists
- Physiotherapists
- Radiographers
- Chiropodists/Podiatrists
- Prosthetists/Orthotists

Standards for Prescribing were published in August 2013. The Department of Health announced on 12 July 2012 that medicines legislation would be changed to allow appropriately trained chiropodists / podiatrists and physiotherapists to act as independent prescribers. We developed these

standards in response to that announcement. These standards apply to chiropodists / podiatrists and physiotherapists who are trained either as supplementary prescribers or as supplementary and independent prescribers. They also apply to radiographers who have completed training to become a supplementary prescriber.

The standards for prescribing have two purposes. They set out our expectations of education providers delivering training in prescribing. They also set out the knowledge, understanding and skills we expect a prescriber to demonstrate when they complete their training.

The Standards of Education and Training were published in April 2009. The Standards of Education and Training (SETs) are the standards against which we assess education and training programmes. A programme which meets the SETs allows a student who successfully completes that programme to meet the standards of proficiency. They are then eligible to apply to the Health and Care Professions Council (HCPC) for registration.

#### 7.4 Guidance

In 2008, the HCPC produced a publication called Guidance on Health and Character. This document includes:

- Information about the process adopted when a declaration is made
- How the declaration is considered
- What information the panel is likely to take into account
- Which issues HPC considers do not need to be considered by a panel- juvenile conviction and drink driving convictions with the exceptions outlined above (this is not intended to be an exhaustive list).

It was revised and updated in May 2012, following the removal of the requirement to provide a health reference for entry to the Health and Care Professions Council (then the Health Professions Council) Register in October 2011.

At the time the guidance was produced, all of the professions we regulate were exempt from the requirements of the Rehabilitation of Offenders Act 1974. This means that when applicants and registrants applied to join the Register or applied for readmission or renewal, they were required to declare any convictions or cautions they had, regardless of whether they were spent.

A recent Court of Appeal judgement has resulted in amendments being made by Court to the Rehabilitation of Offenders Act 1974. Consequently, registrants are no longer required to declare all convictions or cautions that they have received. Some convictions or cautions are 'protected', which means that applicants and registrants do not need to declare them. However, they still need to declare serious offences (called 'listed offences') and any conviction for which they received a custodial sentence.

Registrants and applicants do not need to declare a caution if it was received more than six years ago (or if a young offender, more than two years ago) and it was not for a listed offence.

Registrants and applicants do not need to declare a conviction if:

- it resulted in a non-custodial sentence and was not for a listed offence; and
- they have no other convictions (whether as an adult or young person); and
- they received the conviction more than eleven years ago (or if a young offender, more than five and a half years ago).

The Health and Character Policy and Guidance has been updated and approved by the Education and Training Committee to reflect this change.

In January 2010, we produced guidance on Conduct and Ethics for Students. This guidance is based on our standards of conduct, performance and ethics, as these standards apply to both registrants and those applying to be registered. This guidance aims to make students more familiar with our standards prior to registration with us.

## 7.5 Health Declarations

### **Registrants**

The HCPC's Standards of Conduct, Performance and Ethics were amended on 1 July 2008. The new standards removed the requirement for registrants to inform the HCPC of health issues. If a registrant is managing their fitness to practise, they do not need to inform the HCPC. Some minor changes were made to the Standards on 1 August 2012, when we became the Health and Care Profession Council, upon taking over regulatory responsibility for Social Workers in England.

### **Applicants**

In October 2011, the requirement for applicants for admission or readmission to the Register to provide a health reference was removed. This was following the outcome of an investigation into fitness standards in education, social work and nursing, which was published by the Disability Rights Commission in September 2007. It recommended that regulatory bodies remove all requirements for good health or physical and mental fitness that are within their remits.

(Note: Employer action – investigation - These are sometimes cases where they are a service provider rather than an employee as such, or they may have resigned prior to dismissal.)

(Note: Not all cases are considered by a panel as it may be an issue that was previously declared either under CPSM or HPC before June 2005, or the GSCC prior to 1 August 2012, or it may not be something that HCPC is

concerned with e.g. civil proceedings such as bankruptcy or divorce settlements)

**Contact details**

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