

Education and Training Committee, 6 November 2019

Health and Character Declarations Policy review

Executive Summary and recommendations

### **Introduction**

This report is a biennial review of the Health and Character Declarations made by applicants for registration or readmission on to the register or by registrants on renewal of registration. The review relates to the period April 2017 to March 2019.

In March 2016 the Education and Training Committee approved changes to the Health and Character Declarations policy, which allowed for a greater number of declarations to be signed off administratively within the Fitness to Practise department. Under the new policy the criteria for cases that could be resolved via sign-off was extended to include common types of declarations that were previously approved by Registration Panels. The new policy went live in July 2016 and this report provides a full two year analysis of the impact of the new policy on the operational management and outcomes of declaration cases.

In September 2018 the Council approved the Threshold for Fitness to Practise allegations policy to replace the Standard of Acceptance policy. This report analyses the impact of the Threshold policy on the Health and Character policy and makes proposals for changes to the Health and Character policy based on this impact and other operational factors.

### **Decision**

The Committee is asked to review the proposals for changes to the Health and Character policy.

### **Resource implications**

There are no additional resource implications.

### **Financial implications**

There are no financial implications outside of what has already been planned in terms of increased activity for Investigating Committee Panels resulting from the implementation of the Threshold policy.

## **Appendices**

1. Health and Character Policy – with proposed changes highlighted with tracked changes.
2. Health and Character Policy – with proposed changes included.

### **Date of paper**

25 October 2019

## Review of Health and Character Declarations: April 2017 to March 2019

### 1. Introduction

- 1.1 This report is the biennial review of the Health and Character Declarations managed by the Fitness to Practise department in the two year period April 2017 – March 2019.
- 1.2 The report breaks down the number of declarations by: profession; application type (admission, renewal and readmission); declaration made (health, caution/conviction and character); and decision made.
- 1.3 The report also analyses the impact of the new Health and Character policy which went live in July 2016.
- 1.4 Finally, the report analyses the impact of the Threshold policy for Fitness to Practise Investigations on the Health and Character policy and makes proposals for changes to the policy based on this impact and other operational factors.

### 2. Analysis of the review period

- 2.1 Between 1 April 2017 and 31 March 2019, the Fitness to Practise department received 1213 new health and character declarations from the Registration department. This is a 15% decrease from the previous two year period, during which 1444 declarations were received.
- 2.2 This decrease in the number of declarations comes during a period where we saw an increase in the total number of professionals on the HCPC Register. The drop in the number of declarations being made is likely to be due to the improved guidance provided to applicants. It is also due to an operation decision in April 2017 to consider all declarations made by registrants on renewal through the fitness to practise process (this is further explained in paragraph 2.11).

#### Declarations made

- 2.3 Table 1 shows the number of declarations received by profession during the review period:

**Table 1**

<b>Profession</b>	<b>No. of Application Received</b>
Arts Therapist	12
Biomedical Scientist	25
Chiropodist / Podiatrist	21
Clinical Scientist	12
Dietitian	14
Hearing Aid Dispenser	28

Occupational Therapist	83
Operating Department Practitioner	61
Orthoptists	0
Paramedic	192
Physiotherapist	82
Practitioner Psychologist	50
Prosthetist / Orthotist	2
Radiographer	57
Social Worker in England	559
Speech and Language Therapist	15
<b>TOTAL</b>	<b>1213</b>

- 2.4 61% of declarations received related to two professions - Social Workers (46%) and Paramedics (15%). The representation of these two registrant groups as a larger proportion of cases received is consistent with previous years and is also reflected in the proportion of fitness to practise investigations we receive relating to these professions.
- 2.5 In previous years, the third largest registrant group has been Physiotherapists. However, this year Physiotherapists and Occupational Therapists represent 7% each.
- 2.6 The professions with the lowest numbers of declarations are Orthoptists and Prosthetists/Orthotists, which is also in line with previous years.
- 2.7 Table 2 shows the types of declarations (as set out below) made by each profession and the overall numbers.
- Health – relates to some form of medical (both physical and mental) declaration;
  - Character – relates to non-criminal character declarations, such as an employment or educational disciplinary matters or a misuse of title; and
  - Caution/conviction – relates to a criminal record.

**Table 2**

<b>Professions</b>	<b>Health</b>	<b>Character</b>	<b>Caution/Conviction</b>
Arts Therapist	1	2	9
Biomedical Scientist	1	3	21
Chiropodist / Podiatrist	1	6	14
Clinical Scientist	0	3	9
Dietitian	0	3	11
Hearing Aid Dispenser	0	8	20
Occupational Therapist	17	25	41
Operating Department Practitioner	0	6	55
Orthoptists	0	0	0
Paramedic	3	49	140
Physiotherapist	4	27	51
Practitioner Psychologist	2	22	26
Prosthetist / Orthotist	1	1	0

Radiographer	4	15	38
Social Worker in England	14	109	436
Speech & Language Therapist	2	3	10
<b>TOTAL</b>	<b>50</b>	<b>282</b>	<b>881</b>

2.8 As with previous years, the vast majority of declarations (73%) are in relation to convictions and cautions.

2.9 Table 3 shows the number of declarations by application type.

**Table 3**

Admission	1068
Renewal	0
Readmission	145
<b>TOTAL</b>	<b>1213</b>

2.10 Applicants are required to make a health and character declaration at the point that they apply for admission or readmission to the register. As we would expect, the vast majority (88%) of declarations were from first time applicants.

2.11 Similarly, on completion of each two year renewal cycle registrants must declare that “there has been no change relating to your good character (this includes any conviction or caution, if any, that you are required to disclose) or any change to your health that may affect your ability to practise safely and effectively”. Declarations made as part of the renewal process were previously considered in the same way as an admission or readmission declaration. However the position changed in April 2017, when an operational decision was made to consider all declarations made by registrants on renewal pursuant to the fitness to practise process. This was to align the process with the self-referral process (i.e. when registrants make health and character declarations during their renewal cycle) to ensure consistency and that all declarations made by registrants are considered in the same way. In light of this, we recommend that a change be made to the Health and Character policy. Please see section 5.6 below.

Declarations outcomes

2.12 Table 4 shows the outcomes for all declarations considered during the review period.

**Table 4**

Signed off via Health and Character policy	904
Cases considered by Registrations Panel	328
Applicant/Registrant withdrawn application	20
<b>TOTAL</b>	<b>1252</b>

2.13 72% of declarations considered were signed off administratively whilst 26% were referred to a Registrations Panel to consider. This is broadly in line with the previous period.

2.14 Table 5 below shows the reasons for the administrative sign off.

**Table 5**

Driving Ban less than 12 months	77
Employer Disciplinary	24
Managed Health Condition	37
Offence considered by Education provider	499
Other Jurisdiction	82
Misuse of title concerns resolved	10
Matter previously declared	14
Protected caution / conviction	161
<b>TOTAL</b>	<b>904</b>

2.15 The main reason for cases being signed off administratively was due to the matter declared having already been considered by the education provider of a HCPC approved course, either prior to or during the applicant's course of study. The second largest criteria was due to the caution/conviction declared being protected.

2.16 Cases signed off under the category of 'other jurisdiction' include those matters that do not engage the applicant's suitability to be on the register. For example, civil court matters. 'Other motoring offence' included minor matters such as parking fines or minor speeding offences dealt with by a fixed penalty.

2.17 Table 6 below shows the outcomes of declarations referred to a Registration Panel for a decision.

**Table 6**

Registration Approved	296
Registration Rejected	32
<b>TOTAL</b>	<b>328</b>

2.18 Of the 328 applications considered, just under 10% were refused registration. This compares to 7% of applications in the 2015-2017 review period and 5% of applications in the 2013-2015 review period.

2.19 During the time period of review, 15 applicants appealed against the Registration Panel's decision. Table 7 breaks down the number of appeals made by profession and outcome.

**Table 7**

<b>Profession</b>	<b>Total No. of Appeals</b>	<b>Appeals Allowed</b>	<b>Appeals Refused</b>
Social Worker in England	6	3	3
Paramedic	4	4	0
Biomedical Scientist	2	0	2
Hearing Aid Dispenser	1	0	1

Radiographer	1	0	1
Physiotherapist	1	0	1
<b>TOTAL</b>	<b>15</b>	<b>7</b>	<b>8</b>

- 2.21 All of the appeals made related to character matters. Eight of the 15 appeals were refused. Seven related to criminal convictions and one related to the misuse of a protected title. The main themes in the refusal decisions were that the applicant failed to provide insight in relation to the declared matter and that public interest may be negatively affected if the applicant were permitted to register.
- 2.22 The main themes from the seven upheld appeals were that the panel had been able to test the applicant's verbal evidence live at a hearing and the applicant had demonstrated to the Appeal Panel that they had taken steps to address the concerns raised by the Registration Panel.

### **3. Analysis of impact of the new Health and Character policy**

- 3.1 In March 2016 the Education and Training Committee approved changes to the Health and Character Declarations policy, which allowed for a greater number of declarations to be signed off administratively within the Fitness to Practise Department. Prior to the change, the majority of declarations were referred to a Registration Panel for consideration were approved for registration. The changes to the policy broadened the scope of the criteria of the types of cases that could be resolved by administrative sign-off to include common types of declaration frequently approved by panels. The aim was to ensure that panels continued to consider those matters where a declaration had a clear bearing on an applicant's ability to practise safely and effectively, whilst ensuring that other declarations could be processed more efficiently, thereby reducing delays for those applicants whose declarations were likely to be approved. The new policy went live on 1 July 2016.
- 3.2 The timing of the last biennial review meant that the new Health and Character Declaration policy was implemented 15 months into the April 2015 – March 2017 cycle. There was therefore only 8 months' worth of data for cases considered under the new policy. However, with this biennial review, we have a full 2 years of data of cases considered under the new policy. Below, comparison is drawn to a full 2 years of data of cases considered under the old policy (April 2013 – March 2015).
- 3.3 As was the aim of the new policy, there is a noticeable increase in the number of declaration cases being signed off administratively rather than being referred to a Registration Panel. 72% of cases were signed off in the current review period compared to 45% before.
- 3.4 The majority of cases signed off in the period April 2017 – March 2019 related to those cases where the matter had already been considered by the education provider. Under this criteria, which was introduced in the new policy, 499 cases were able to be concluded administratively which previously

would have had to be referred to a panel. This equated to 55% of all cases signed off.

- 3.5 Education providers are required to have a process for considering conduct or character matters involving a student which is declared either when applying for or which occurs during a HCPC approved programme of study. Those internal processes are in turn assessed by the HCPC's Education Department against the Standards of Education and Training, and approved by the Education and Training Committee via the approval process and annual monitoring programme. That such matters will have already been assessed through a robust education provider process embedded in the HCPC Standards gives assurance that they are not being signed off without due consideration. However, the HCPC does still have the discretion to refer serious matters to the Registration Panel, even if already considered by an education provider, should it be appropriate to do so.
- 3.6 The revisions to the policy have had a significant impact on the number of cases being referred to and rejected by a Registration Panel. 328 cases were considered by a panel in this review period, compared to 927 before.
- 3.7 The proportion of cases where registration was rejected by a panel has increased since the new policy was introduced. Prior to the changes, 5% of cases considered by a panel were rejected. Between April 2017 – March 2019, the proportion of rejected cases has doubled to 10%. This is due to the constituent caseload being referred to a panel being made up of the more serious matters that engage questions of an applicant's suitability to be on the register.
- 3.8 The reasons for panels rejecting an application have not changed since the new policy was introduced, with declarations relating to multiple or serious convictions or cautions still being the main factor for this decision.
- 3.9 One of the key aims of broadening the scope of the type of cases that could be signed off under the policy was to reduce delays in the handling of cases for those applicants whose registration was likely to be approved. During the period April 2017 – March 2019, the average time for cases signed off administratively was 14 working days whereas the average time for cases considered by a panel was 40 working days.

#### 4. **Conclusion of impact of new Health and Character policy**

- 4.1 The management of the Health and Character Declaration process continues to work well. The last two year period has shown no significant changes to the type or category of declarations made either on admission or readmission, or in relation to the representation of the different professions.
- 4.2 However, as the analysis set out above demonstrates, the new policy has had a significant impact on the operation of this area of work. The large reduction in the number of cases referred to a Registration Panel for consideration has allowed us to resolve at an earlier stage those cases where registration was

likely to be granted by a panel, providing a more efficient and streamlined process for those applicants in particular. In turn, the panel is able to focus on those serious cases where the question of an applicant's ability to practise safely or effectively is more clearly at play. In this respect the assumptions underpinning the changes to the policy have been borne out in reality.

- 4.3 The shift towards a greater number of cases being signed off administratively highlights potential concerns around the quality of those decisions. All sign-off recommendations are made by a team of four Case Officers who are trained on the Health and Character policy and process. The team's recommendations must be approved at manager level, this is by the relevant Case Team Manager or Operational Manager, or by a Case Progression Specialist or the Department Lead - Case Reception & Triage in their absence. The decisions are also subject to internal and external scrutiny to make sure that the decisions are appropriate, consistent, adhere to the policy and are clearly reasoned.

## **5. Analysis of the impact of the Threshold policy for Fitness to Practise Investigations on the Health and Character policy**

- 5.1 In September 2018 Council approved the Threshold policy for Fitness to Practise Investigations to replace the Standard of Acceptance. The policy was a key element of the Fitness to Practise Improvement Project and sets out the HCPC's approach to investigating fitness to practise concerns and the decision making process at the triage and initial investigation stages. It is designed to ensure that we take a proportionate, risk-based approach to carrying out investigations, and make decisions that are correct, consistent, evidence-based and transparent. The Threshold policy and associated guidance went live in January 2019.
- 5.2 One of the main changes brought about by the Threshold policy and associated guidance was the way that cautions and convictions for criminal offences were to be dealt with. In particular, under the Standard of Acceptance, it had been permissible to close some cautions and convictions administratively, without reference to an Investigating Committee Panel. However, it was recognised that, in providing that a caution or conviction for a criminal offence constitutes grounds for a finding of impairment of a registrant's fitness to practise, the Health and Social Work Professions Order 2001 makes no distinction between different offences or levels of seriousness in that regard. Accordingly, under the Threshold policy, any caution or conviction for a criminal offence is deemed to meet threshold and should be considered by an Investigating Committee Panel in relation to the registrant's fitness to practise. The only exception to this are protected cautions and convictions, which the HCPC cannot look into.
- 5.3 The current Health and Character policy provides that some cautions and convictions can be signed off administratively without consideration of a Registration Panel depending on the offence and the level of seriousness. This is at odds with the Threshold policy's position on cautions and convictions as stated above. As such, in order to align both policies and to

ensure that applicant's health and character declarations are considered in a consistent manner to registrant's health and character declarations, it is proposed that the Health and Character policy be amended to remove any discretion to administratively sign off cases where there has been a declaration of a caution or conviction (apart from cautions or convictions that are protected or those that have been considered by the Education Provider).

- 5.4 It is anticipated that the number of declarations considered by a Registration Panel will increase slightly with this change (for example, the 77 drink driving convictions that were signed off administratively during the April 2017 – March 2019 period will need to be considered by a Registration Panel) however it ensures the HCPC's position on cautions and convictions is consistent. Further, that there is parity between the HCPC's policies and also parity between how the HCPC deals with declarations made by applicants and registrants.
- 5.5 For transparency reasons, it is further proposed to include in the Health and Character policy the full list of matters, declaration of which could properly lead to an administrative disposal, but which could equally be referred at the discretion of the Head of Fitness to Practise (or any other person authorised on his behalf) for consideration by a Registration Panel. These matters include for example: managed health conditions; private family or personal or civil disputes; minor motoring offences such a parking fines; misuse of title concerns; and matters already considered by the HCPC unless new information has been provided.
- 5.6 Finally, for transparency reasons and to reflect the operational process, it is proposed that the Health and Character policy be revised to set out that any health and character declarations made by registrants (either at renewal or as a self-referral) are considered through the fitness to practise process under Article 22(6) of the Health and Social Work Professions Order 2001.

Sarita Wilson  
25 October 2019

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## Health and Character Declarations Policy

### Introduction

The Health and Social Work Professions Order 2001 (the **Order**) provides that registration decisions, including decisions on whether a person meets the prescribed requirements as to good health and good character, are the responsibility of the Education and Training Committee (the **Committee**).

This document sets out the Committee's policy on dealing with health declarations and character declarations made:

- by applicants seeking admission or re-admission to the Register;
- by registrants seeking to renew their registration; and
- at other times by registrants ("self-referrals").

The Health and Care Professions Council Standards of Conduct, Performance and Ethics set out the HCPC's expectations of registrants. It is also expected that anyone who wishes to be admitted to the HCPC Register will meet those standards. They are the basis on which the HCPC assesses potential fitness to practise concerns about a registrant and they are also the standards that will be used by the Committee to help decide whether to admit a prospective registrant to the Register.

### Registration Assessment Panels

Health and character declarations made to the Committee by a person seeking admission or re-admission to the Register or on renewal of their registration will, other than in the circumstances set out below, be referred to a Registration Assessment Panel. The Panel will be comprised of three members, at least one of whom will be a registrant from the same profession as the person concerned and one of whom will be a lay member. If detailed health issues need to be considered, the Panel may include a doctor or receive advice from a medical assessor.

The function of the Registration Assessment Panel is to provide a recommendation to the Committee on the course of action that should be taken in each case.

When considering health declarations, Panels should take account of whether the applicant/registrant has:

- sought medical or other support as appropriate;
- made reasonable adjustments to their working arrangements or agreed them with their employer; and
- restricted their scope of practice to those areas where they are capable of meeting the Standards of Proficiency.

When considering character declarations, Panels should take account of:

- the nature and seriousness of the offence or misconduct;
- when the incident occurred;
- the applicant's/registrant's character and conduct since the incident including any insight or remediation;
- the likelihood of repetition;
- the relevance of the matter to the practise of the relevant profession; and
- the wider public interest, including confidence in the profession concerned and the regulatory process.

Registration Assessment Panels will be convened on a regular basis to ensure that cases are dealt with expeditiously for all of the HCPC professions.

### **Admission and Re-admission**

Applicants seeking registration by the HCPC must satisfy the Committee as to their good health and character.

Rule 5 of The Health and Care Professions Council (Registration and Fees) Rules Order of Council 2003 provides that:

*"5. – (1) For the purpose of satisfying itself as to the good character of the applicant, the Committee shall have regard to-*

- (a) the character reference provided under rule 4(2) or (3);*
- (b) any conviction or caution which the applicant has received in the United Kingdom for a criminal offence or a conviction received elsewhere for an offence, which if committed in England and Wales, would constitute a criminal offence;*
- (c) any determination by a body responsible for regulating or licensing a health or social care profession to the effect that the applicant's fitness to practise is impaired; and*
- (d) any other matters which, in the opinion of the Committee, appear to be relevant to the issue,*

*and for this purpose the Committee may seek information additional to that provided with the application for registration from any person or source as it considers appropriate.*

*(2) For the purpose of being satisfied as to the physical or mental health of the applicant, the Committee shall have regard to:*

- (a) the declaration provided by the applicant under rule 4(2)(b), and*
- (b) such other matters as appear to it to be relevant,*

*and for this purpose the Committee may seek information additional to that provided with the application for registration from the applicant and from any other person or*

*source as it considers appropriate and may require the applicant to be examined or further examined by a doctor nominated by the Committee.”*

If an applicant declares a health or character issue, further inquiries should be made (in line with Rule 5(2) above) and the applicant must be advised that the information provided, and any further representations that they may wish to make, will be considered by a Registration Assessment Panel. The applicant must be given not less than 14 days in which to make any such representations.

The task of the Registration Assessment Panel in such cases is to make a recommendation to the Committee on whether the matters declared are of such a serious nature that the person concerned should not be admitted or readmitted to the register.

If an application for admission or re-admission is refused by the Committee, the person concerned has a right of appeal to the Council against that decision and will be informed of that right at the time they are informed of the Committee’s decision.

## **Renewal**

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 the HCPC about and which would affect their safe and effective practice of their profession.

Where a registrant is unable to make that declaration, the case will be considered through the fitness to practise process under Article 22(6) of the Order.

## **Self-referrals**

Health and character declarations made by registrants in accordance with the Standards of Conduct, Performance and Ethics are considered through the fitness to practise process under Article 22(6) of the Order.

All convictions, cautions and other potential character issues or health issues must be declared to the HCPC<sup>1</sup>. However, based upon the prior recommendations made by Registration Assessment Panels, the Committee has identified certain categories of cases where the information declared (whether on admission, re-admission or renewal) will rarely have a bearing upon a person's registration.

Except where the Head of Fitness to Practise<sup>2</sup> considers otherwise, no further action needs to be taken in relation to:

- a caution or conviction<sup>3</sup> received by a person before or while undertaking a programme of study approved by the HCPC, or any other character matter, which:
  - was considered by the education provider as part of its admission procedures and the person was admitted to the programme; or
  - was considered by the education provider under its student fitness to practise process and the person was not excluded from the programme;
- managed health conditions;
- private family or personal disputes or civil matters;
- minor motoring offences such as parking fines; other fixed penalty offences; or public transport penalty fares;
- misuse of title concerns depending on the duration of misuse, frequency and seriousness of the misuse;
- matters already considered by the HCPC unless new information has been provided;
- disciplinary action taken by an employer which is unconnected to the practice of a relevant profession and does not relate to conduct involving
  - violence;
  - dishonesty;
  - inappropriate sexual behaviour;
  - substance abuse or the possession or supply of drugs; or
  - conduct of a racially motivated, homophobic or similar nature.

In order to ensure that applicants and registrants are treated equitably no further action needs to be taken in relation to a caution or conviction which is protected under the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, the Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Order 2013 or the Rehabilitation of Offenders (Exceptions) Order (Northern Ireland) 1979.

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<sup>1</sup> other than a conviction or caution which is 'protected' under the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, the Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Order 2013 or the Rehabilitation of Offenders (Exceptions) Order (Northern Ireland) 1979.

<sup>2</sup> or a person authorised to act on behalf of the Head of Fitness to Practise.

<sup>3</sup> the Head of Fitness to Practise's discretion does not apply to protected cautions and convictions.