

Education and Training Committee, 8 September 2011

Draft policy statement on annotation of the Register

Executive summary and recommendations

Introduction

The Committee has considered the topic of annotation of the Register and post-registration qualifications on several occasions. We have powers to 'annotate' or mark post-registration qualifications on our Register to indicate that individuals have successfully completed the programme. We currently only annotate post-registration qualifications on our Register where they relate to entitlements to supply, use or prescribe medicines.

We consulted between 1 November 2010 and 1 February 2011 on our proposals related to post-registration qualifications. The aim of the consultation was to help us to develop a clearly articulated policy on annotation of the Register and post-registration qualifications. We asked stakeholders for their views on some draft criteria we would use to make decisions about whether to annotate the Register and whether we should consider annotating qualifications in neuropsychology and podiatric surgery.

The Committee considered the outcomes of the consultation at its meeting on 9 June 2011. This paper presents a draft policy statement setting out our approach to annotation of the Register, building on the Committee's previous discussion.

Decision

The Committee is invited to:

- discuss the attached paper and draft policy statement; and
- agree the principles that will underpin our approach to annotation of the Register.

Background information

The Committee has considered the topic of annotation of the Register and post-registration qualifications on several occasions. The most recent discussion was on 9 June 2011:

<http://www.hpc-uk.org/assets/documents/1000353C20110609ETC04-postregquals.pdf>

Resource implications

Depending upon the decisions by Committee and Council, there may be further resource implications for 2011-2012, when the policy on annotation of the Register is implemented. These would be incorporated within the relevant workplan for 2011-2012.

Financial implications

Depending upon the decisions by Committee and Council, there may be further financial implications for 2011-2012, when the policy on annotation of the Register is implemented. These would be incorporated within the relevant budgets for 2011-2012.

Appendices

- Appendix 1 – Draft policy statement on annotation of the HPC Register.
- Appendix 2 – CHRE Right-touch regulation decision tree

Date of paper

26 August 2010

Draft policy statement on annotation of the Register

1. Introduction

About this paper

- 1.1 We consulted between 1 November 2010 and 1 February 2011 on our proposals related to post-registration qualifications and annotation of the Register. The Education and Training Committee considered this paper at its meeting on 9 June.
- 1.2 The Committee's discussion covered both the general principles around annotation of the Register and the appropriateness of annotating specific qualifications. The Committee did not agree a consensus view about our approach and asked the Executive to provide further papers on this topic.
- 1.3 The Committee has already agreed a small number of high-level principles that underpin our approach to annotation of the Register (see paragraph 2.4). The focus of the Committee's discussion is therefore on agreeing its approach to annotation and finalising the principles used to support that approach.
- 1.4 A draft policy setting out our approach to annotation of the Register is attached to this paper (appendix 1). The Committee's discussions are solely around the principles set out there and the Committee is not asked to make any decisions on implementation of the policy at this stage.
- 1.5 This paper is divided into four sections:
 - Section 1 introduces the paper.
 - Section 2 sets out the Committee's previous discussion.
 - Section 3 considers the link between annotation and risk.
 - Section 4 introduces the policy statement in appendix 1.

References in this paper to 'we', 'us' and 'our' are references to the Health Professions Council.

Our proposals within the consultation

- 1.6 We divided our consultation on post-registration qualifications and annotation of the Register into two parts. We set out some draft criteria that we would use to make decisions about whether or not to annotate a post-registration qualification on the Register in the first half. The second part asked stakeholders for their views on potentially annotating qualifications in neuropsychology and podiatric surgery on the Register.

- 1.7 We proposed that we would only annotate a qualification on the Register where:
- there was a clear risk to the public if the Register is not annotated;
 - the risk could be mitigated through annotation of the Register and could not be mitigated through other systems;
 - the post-registration qualification was necessary in order to carry out a particular function or role safely and effectively;
 - there was a link between the qualification in question and a particular function or professional title which could be defined and protected by the HPC; and
 - only statutorily regulated individuals could access the post-registration qualification.

Aims, benefits and outcomes of the consultation

- 1.8 The consultation had two key aims. We wanted to seek the views of stakeholders on the criteria outlined above and on whether we should annotate either neuropsychology or podiatric surgery on the Register. By seeking stakeholders' views, we could ensure that the criteria we developed were appropriate and that any decision we made to annotate either qualification took account of the impact that annotation might have on practice and service delivery.
- 1.9 The consultation outcomes are likely to be the criteria that we would use to make decisions about whether we annotate a qualification on the Register. The criteria will help us to make consistent decisions but should not be prescriptive or fetter our ability to make decisions. We will incorporate the criteria within the public policy on annotation.
- 1.10 Setting criteria and developing a policy on annotation of the Register bring clear benefits. Both the criteria and the policy would set out our approach in this area so that stakeholders could have a clear understanding of which qualifications we might and might not annotate on the Register.

Background to this paper

- 1.11 Both the Council and the Committee have discussed annotation of the Register over a number of years. It is helpful to reflect on how the history of annotation of the Register has developed before moving to the principles underpinning annotation of the Register.
- Our predecessor, the Council for Professions Supplementary to Medicine (CPSM), previously annotated the Register. Each profession-specific board determined the annotations and registrants could apply to have designatory letters entered in the Register.
 - In 2002, the shadow HPC consulted on its future structure and functions, including whether there should be annotations on the Register.¹ It was

¹ Health Professions Council, The Future – Paper for consultation

decided that the designatory letters would not be reflected in the HPC Register, though qualifications would be annotated if appropriate.

- The Council previously agreed to establish a Professional Liaison Group (PLG) to look at the issue of post-registration qualifications. However, the Council delayed its work in light of the previous Government's review of the regulation of non-medical professions.
- The Council then agreed that a PLG was not necessary but that the Executive should hold a discussion meeting in February 2008 to explore the issue of post-registration qualifications and annotation of the Register.
- The Committee considered the outcomes of the discussion meeting in two papers in 2008. The Committee agreed that the Executive should develop a policy on post-registration qualifications, which would reflect on-going developments in regulation.²
- Discussion papers were then brought to the Committee in 2010 and a consultation was held on our approach between November 2010 and February 2011.

Our powers

- 1.12 Our powers to annotate the Register are set out in the Health Professions Order 2001 ('the Order') and in the Health Professions Council (Parts and Entries in the Register) Order of Council 2003.³ These are discretionary powers and it is for the Council and Committee to decide whether to exercise those powers.
- 1.13 Another example of our discretionary powers is our powers to set CPD requirements. We made a decision to exercise those powers following public consultation, but were not legally required to set CPD requirements. In the same way, we can choose to exercise our powers to annotate the Register in exceptional circumstances but are not legally required to exercise these powers.

Health Professions Council, Consultation Feedback – Key Decisions
www.hpc-uk.org/publications/consultations/index.asp?id=37

² This included the report 'Extending professional and occupational regulation: the report of the Working Group on Extending Professional Regulation' (July 2009) and work being undertaken by the Council for Healthcare Regulatory Excellence.

³ Those Orders can be found on our website here: www.hpc-uk.org/publications/ruleslegislation/. In particular Article 19 (6) of the Order says that we can set standards related to post-registration qualifications, whilst 2 (4) of the Parts Order allows us to annotate qualifications or additional competencies.

2. Previous discussion by the Committee

- 2.1 The Committee considered a paper setting out the responses we received to the consultation and identifying discussion points at its meeting on 9 June. This section summarises the Committee's discussion, and identifies points for agreement and further discussion.
- 2.2 The Committee was invited to discuss its overall approach and principles on the topic of annotating of the Register, rather than to determine whether specific qualifications should be annotated, or indeed, to consider the feasibility of annotating those qualifications, at this stage. Most of the Committee's discussion on this occasion was about the overall principle of annotating the Register. A summary of some of the key points from the discussion is provided below:
- We should annotate the Register only on an exceptional basis and we should not replicate the role of professional bodies by providing detailed information about a registrant's qualifications.
 - We should be clear about the purpose of annotation and what the annotation means.
 - As annotation only applies to individuals already within statutory regulation, it was important that any policy on annotation was both proportionate and cost-effective.
 - We must make decisions to annotate the Register based on risk, as we should only consider annotation when there is evidence that a specific annotation is necessary to improve public protection.
 - The assessment of risk should be based on evidence of harm or evidence that the existing standards do not adequately protect the public.
 - Annotating qualifications on the Register can provide additional information to members of the public. However, it would be impossible to publish or capture data on all of the roles undertaken by our registrants.
 - It is not clear that there is sufficient evidence that annotating the Register can improve public protection.
- 2.3 There were a variety of different perspectives on annotation of the Register, for example, some Committee members believed that we should only annotate the Register where we are legally required to do so, whilst others argued for a more proactive approach. Overall, the Committee considered that annotation should only take place in exceptional circumstances and that we needed to consider further the evidence and arguments that annotation would enhance public protection.
- 2.4 The Committee also agreed a few discrete points in relation to annotation of the Register. They agreed that:
- the Register should only be annotated in exceptional circumstances;
 - any policy developed on annotation of the Register should be proportionate and cost-effective; and
 - the policy should relate to annotation of the Register more broadly, rather than post-registration qualifications.

The Committee asked the Executive to provide the following:

- an investigation into the evidence base for annotating the register;
- draft criteria by which the Council would consider annotation; and
- a draft public statement on annotation.

- 2.5 The draft public statement, including draft criteria for making decisions about annotation, is attached to this paper.
- 2.6 The Committee's discussion covered both the principles of annotation and whether we should annotate specific qualifications on the Register. This paper focuses on the principles that support our approach to annotation and does not cover specific qualifications that we could annotate on the Register. The paper focuses on principles because once the principles have been agreed, it will be possible to apply those principles to consider whether we annotate particular qualifications in a consistent way.
- 2.7 The Committee did not discuss in detail the evidence base it was looking for around annotation of the Register. As a result, it was not possible to provide the investigation into the evidence base. However, Section 3 of this document sets out in more detail the Executive's proposals in relation to evidence gathering and the Committee is invited to discuss these points.
- 2.8 In the consultation, we asked stakeholders whether we should only annotate the Register in situations where we could link the annotation to a title or function that we could protect. We can make decisions about which qualifications to annotate but can only recommend to government that they should protect a particular title or function linked to that qualification.
- 2.9 Stakeholders expressed a number of different views about whether we should only annotate the Register in situations where we could link the annotation to a title or function that we could protect. The Committee did not reach a decision on our approach on this issue at the last meeting. As a result, the draft policy statement does not set out our policy in this area.

3. Evidence base for annotation of the Register

- 3.1 The Committee's discussions at the previous meeting are set out in section 2. One of the points discussed was the link between risk of harm and annotation of the Register. Annotating the Register has potential benefits:
- It allows us to set standards above the threshold level for specific areas of practice.
 - We can approve the education programmes linked to the annotation, thereby providing external quality assurance of training.
 - Annotation allows members of the public to make an informed choice.
 - Where annotation is linked to a protected title or function, only those who have completed the appropriate training can practice in a particular area.
 - We can consider cases about a registrant's fitness to practise in specialised areas of practice with reference to standards we set.
- 3.2 Members of the Committee argued that we should assess risk based on evidence of harm, or evidence that the standards did not adequately protect the public, rather than on hypothetical risk.
- 3.3 The evidence base for annotation is therefore the evidence that existing systems do not sufficiently manage the risks posed by a particular area of practice **and** that the risks could be managed through annotation. We could use a variety of evidence to assess risk. Some of these are set out below, although the list is not exhaustive and not all evidence will be available for every area:
- outcomes of fitness to practise cases;
 - evidence that improperly qualified individuals are practising in a particular area;
 - evidence that existing governance systems are not sufficiently managing the risk;
 - evidence of adverse outcomes;
 - litigation data and insurance claims;
 - evidence from professional bodies; and
 - information from the consultation responses.
- 3.4 There is no one formula for making decisions about regulation based on the risks posed by practice in a particular area. Nor is there one kind of evidence that would clearly show that the existing systems do not manage risks effectively. Decisions made about risk should be reasonable, appropriate and informed by best practice and evidence. However, decisions about risk can be subjective and it can sometimes be difficult to make decisions about the levels of risk posed.
- 3.5 One methodology that we could use to assess risk and consider annotation more broadly is set out in appendix 2. This methodology is taken from the Council for Healthcare Regulatory Excellence report 'Right touch

regulation'.⁴ CHRE define right touch regulation as the '...minimum regulatory force required to achieve the right result'.⁵ The methodology proposed by CHRE is therefore designed to ensure that any regulatory intervention is proportionate and necessary.

- 3.6 This paper does not set in detail out the evidence base for annotation of either podiatric surgery or neuropsychology, as the Committee is only making decisions about the principles of annotation at this stage. However, we do have some evidence that could show that existing systems do not manage the risks associated with podiatric surgery practice. For example, concerns were expressed in a BBC London news item about a lack of statutory approval of the podiatric surgery training and an absence of standards set by the regulator.⁶
- 3.7 In these situations, there is an expectation that we, as the regulator, would set the standards and approve the education programmes related to that particular scope of practice. There may therefore be a reputational risk if we do not take action to improve public protection in certain areas.

⁴ Council for Regulatory Excellence, 'Right touch regulation' (2010)
http://www.chre.org.uk/_img/pics/library/100809_RTR_FINAL.pdf

⁵ Ibid, page 4

⁶ http://news.bbc.co.uk/local/london/hi/tv_and_radio/newsid_8400000/8400189.stm, 7 December 2009

4. Policy statement on annotation of the Register

- 4.1 Stakeholders contact us infrequently with well-argued requests for us to annotate the Register. It is therefore necessary to have a clear, reasoned position on annotation of the Register which can be shared with stakeholders.
- 4.2 A draft policy statement setting out our approach to annotation of the Register is set out in appendix 1. This sets out the principles that we will use to make a decision about whether or not we annotate the Register. Those principles relate only to exceptional situations where we are exercising our powers to annotate the Register and we could not use them in situations where we are legally required to annotate the Register.
- 4.3 As seen in section 2, the Committee expressed a variety of perspectives about our approach to annotation of the Register. We have drafted the position statement based on the Committee's discussions. The position statement is for the Committee to discuss and recommend to the Council.
- 4.4 The Committee could make the recommendation to Council that we should generally only annotate the Register where we are legally required to do so. Even if it did make that recommendation, it is still helpful to have the policy statement setting out our approach. In addition, it would be important that the Committee did not fetter its discretion in case it made a recommendation to annotate a particular qualification in the future.

Discussion points

- 4.5 The Committee is invited to discuss and make recommendations on the following points:
- the evidence for annotation of the Register (section 3); and
 - the draft policy statement (appendix 1).
- 4.6 The Committee is invited to give reasons for its decisions.

Next steps

- 4.7 The Committee is invited to establish the overall policy and principles that will underpin our approach to annotation. The next steps depend upon the outcome of the Committee's decision.
- 1) The Committee decides it will only annotate the Register where we are legally required to do so
- The policy statement will be revised to reflect this decision and set out the Committee's rationale.
 - The Executive will prepare a paper setting out our responses to the views expressed in the consultation based on this approach.

- 2) The Committee decides that it exercise its power to annotate the Register on an exceptional basis.
- The policy statement will be revised to reflect this decision and set out the Committee's rationale.
 - The Executive will prepare a paper setting out our responses to the views expressed in the consultation based on this approach.
 - The Executive will prepare papers setting out the cost, feasibility and timescales for implementing these decisions. This will include detailed information about specific qualifications which could be annotated on the Register.

Appendix 1

Draft policy statement on annotation of the Register

Introduction

- 1.1 We are the Health Professions Council (the HPC). This policy statement sets out our broad approach to annotation of our Register. This statement is not designed to limit our discretion to annotate the Register. Instead, we will have regard to the principles set out in this statement when making decisions about whether or not we annotate our Register.
- 1.2 We have written this policy statement drawing on information we gathered following a public consultation.
- 1.3 Sometimes, we are required by law to annotate our Register. This policy statement applies only to those situations where we are exercising our own powers to annotate our Register and does not apply to situations where we are legally required to do so.

About annotation of the Register

- 1.4 We have powers to annotate our Register.¹ Currently we annotate our Register to indicate where a registrant (someone on our Register) has undertaken additional training around medicines and has obtained entitlements to supply, administer or prescribe these medicines. We are required to do this by legislation called 'The Prescriptions Only Medicines (Human Use) Order 1997'. We therefore only currently annotate the Register where there is a legal requirement to do so.
- 1.5 In each of these cases, individuals can only practice in a particular area if they have the annotation on our Register. For example, a physiotherapist can only act as a supplementary prescriber if they have completed the appropriate training and have their entry on our Register annotated.
- 1.6 We annotate qualifications on the Register. The term 'qualifications' does not only mean those formal qualifications delivered by higher education institutions, but instead means any type of learning which has an assessment process at the end. The assessment process means that the provider can check that the registrant has the necessary skills and we can be confident that the individual has successfully attained a package of skills and knowledge meaning that we can annotate their entry in the Register.

¹ These powers are set out in the Health Professions Order 2001 ('the Order') and in the Health Professions Council (Parts and Entries in the Register) Order of Council 2003 www.hpc-uk.org/publications/ruleslegislation/.

Why annotate the Register?

- 1.7 Our powers to annotate the Register allow us to indicate where a registrant has completed a qualification in a specialised area of practice. Most of the time, it is not necessary for us to annotate a qualification on the Register. However, sometimes we might annotate a qualification on the Register where there is clear evidence that existing systems do not sufficiently manage the risks and where annotation would manage those risks.
- 1.8 Annotation allows us to set standards linked to the area of practice that we annotate on the Register. It also allows us to approve education programmes so that we can be confident that the education programme meets the appropriate standards. Setting standards and approving education programmes allows us to manage the risks associated with practice in a particular area where those risks are not sufficiently managed through existing systems (such as employer or service provider requirements).
- 1.9 The purpose of the annotation is to provide information to employers and members of the public to show that the individual has completed the particular qualification and therefore meets the standards necessary to practise in that area.

Broad principles on annotation of the Register

2.1 This section sets out the principles we will use when making decisions about whether or not we annotate our Register. We will only consider annotating the Register in exceptional circumstances and where we consider that:

- there is a clear risk to the public if the Register is not annotated;
- the risk could be mitigated through annotation of the Register and could not be mitigated through other systems;
- annotation is a proportionate and cost-effective response to the risks posed;
- the qualification annotated on the Register is necessary in order to carry out a particular role or function safely and effectively; and
- generally there is a link between the qualification and a particular title or function which could be protected by the HPC, subject to government agreement.

2.2 Our rationale for setting out these broad principles is set out below.

Proportionality and cost-effectiveness

2.3 Annotation, as a mark on our Register, only applies to existing registrants. We already regulate those individuals and therefore they must meet our standards.

2.4 Although we do not set standards specifically for their particular area of practice, the standards that we set would still apply to registrants practising in those areas. In the vast majority of situations therefore, the regulator does not need to take additional action because existing systems, such as the regulatory structure, already manage those risks.

2.5 In a small number of cases, it may be possible to improve public protection in a specific area by annotating a qualification. Annotating a qualification allows us to set standards and approve education programmes linked to that qualification. However, it is important that the actions taken are always proportionate, recognising that the individuals are statutorily regulated.

2.6 We will therefore only annotate the Register when doing so is a proportionate and cost-effective response.

Annotation only in exceptional circumstances

2.7 We believe that we should only annotate the Register **in exceptional circumstances**, where there is a clear rationale for annotation and where annotation would improve public protection.

2.8 We believe that the role of the regulator is to set standards for practice and identify discrete areas where additional standards may be necessary. It is not our role to provide a list of all post-registration qualifications or training which a registrant may have completed. Instead, professional bodies can provide lists of members who have undertaken additional qualification or

specialised in particular areas of practice as part of their role in promoting the profession.

- 2.9 We will therefore only annotate the Register **in exceptional circumstances**.

Annotation and risk

- 2.10 We propose that we would only annotate a qualification on the Register where there was a clear risk to the public if we did not annotate and if we could mitigate the risk through annotation and not through other processes.
- 2.11 We recognise that decisions about risk can be subjective and that it can sometimes be difficult to make decisions about the levels of risk posed. There is no one formula for making decisions about regulation based on the risks posed by practice in a particular area. Decisions made about risk should be reasonable, appropriate and informed by best practice but there is no absolute way of defining these decisions.
- 2.12 However, assessments of risk can draw on a number of factors. The assessment should reflect the nature of the intervention being carried out. For example, does the intervention include an invasive procedure or have the potential for significant harm (either mental or physical). Assessments of risk should reflect not only the nature of the intervention but the environment in which it takes place and the qualification and experience of the individual carrying out the intervention. It is also important to take account of the broader context within which practice takes place. This includes looking at the other systems (such as clinical governance arrangements) that manage risks linked to practice.
- 2.13 So, any assessment of risk should reflect the following:
- the nature of the intervention;
 - the environment within which the intervention is carried out; and
 - existing mechanisms for managing the risks posed by the intervention.

The link between annotation and an area of practice

- 2.14 Annotations show where a registrant has completed specific qualification and where the registrant is therefore able to practise in a particular area. Therefore, there needs to be a clear link between the qualification and either a particular function or role. It should only be possible to undertake that function or role after completing the qualification that we annotate on the Register.
- 2.15 Some qualifications, whilst necessary for a particular role and required by an employer, are not necessarily relevant to public safety. In those cases, there is a distinction to be drawn between our requirements as a regulator setting national standards for practice in a profession and the requirements made by an employer for a particular role.
- 2.16 Normally, we would only exercise our powers to annotate the Register where there is a defined title or function that could be protected by law, so that only those who meet the necessary standards are able to practise in a

particular area. When a title or function is protected by law, only individuals on our Register can use that title or carry out that function, otherwise they may be committing a criminal offence.

- 2.17 However, protection of a title or function requires a change in the law and such decisions are a matter for government and not for us. We can make decisions about which qualifications to annotate but can only recommend to government that a particular title or function associated with that qualification is protected by law.

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Annex 1: Right-touch regulation decision tree

