

Education and Training Committee, 12 September 2013

Health and Character Policy

Executive summary and recommendations

Introduction

1. At its meeting on 4 July 2013 the Council was presented with a paper which outlined changes that the HCPC needed to make to guidance and policy documents following amendments made by the Government to the Rehabilitation of Offenders Act 1974.
2. The Rehabilitation of Offenders Act 1974 (the Act) seeks to aid the resettlement of ex-offenders by not requiring them to answer questions regarding their 'spent' convictions.
3. The Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (the Exceptions Order) creates exceptions to the Act and requires the disclosure of all convictions and cautions in relation to applications to engage in activities involving vulnerable persons or requiring a high degree of trust. The HCPC is one of the bodies identified in the Exceptions Order and, as such, applicants and registrants must disclose convictions and cautions, even if they are spent, to the HCPC.
4. Earlier this year, in *R (T) v Chief Constable of Greater Manchester and Others* [2013] EWCA Civ. 25, the Court of Appeal held that the Exceptions Order was incompatible with Article 8 of the European Convention on Human Rights (ECHR) in that it requires the blanket disclosure of all spent convictions and cautions, including historic and minor ones which may not be relevant, and this is disproportionate.
5. In consequence, the Government has introduced the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (Amendment) (England and Wales) Order 2013 to 'protect' certain cautions and convictions which are sufficiently old and minor to have no bearing on suitability decisions. As a result, a person will no longer need to disclose such cautions and convictions and they will not appear on Disclosure and Barring Service Certificates.
6. The changes do not affect 'listed offences' which must always be disclosed. There are more than 750 such offences and they include terrorism, human

trafficking, serious violent and sexual offences and other offences which are of specific relevance to the safeguarding of children and vulnerable adults. The changes also do not apply to any conviction for which a custodial sentence was imposed.

7. A caution will be protected from disclosure after a period of six years or, in the case of young offender, two years. A conviction will be protected from disclosure after a period of 11 years or, in the case of a young offender, five and half years. However, this only applies if (1) the conviction resulted in a non-custodial sentence and (2) the person has no other convictions, whether a young offender or an adult.

Impact upon HCPC

8. The changes to the Exceptions Order affect the guidance provided by the HCPC and the manner in which it manages disclosed information relation to cautions and convictions.
9. Proposed changes to the Registration forms and related guidance, as well as the Standard of Acceptance Policy were presented to Council at its meeting on 4 July. Furthermore, an amendment to the Health and Character Declarations Policy was proposed. Although the Council endorsed the proposed approach to handling the changes to the Exceptions Order, as the Health and Character Policy relates to registration issues it is for the Education and Training Committee to approve any changes to this policy
10. On page 4 of the Health and Character Declarations Policy, it is proposed that the third paragraph is amended by the addition of a footnote as follows:

All convictions, cautions and other potential character issues must be declared to the HCPC¹. However, based upon the prior recommendations made by Registration Assessment Panels, the Committee has identified certain categories of cases where the information declared (whether by self-referral or on admission, re-admission or renewal) will rarely have a bearing upon a person's registration.

¹ Other than a conviction or caution which is 'protected' under the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975

Decision

The Committee is asked to approve the proposed amendment to the Health and Character Declarations Policy.

Resource implications

None

Financial implications

None

Appendices

Appendix 1 – Amended Health and Character Declarations Policy

Date of paper

30 August 2013

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 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 will either 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.

In July 2008 the requirement for registrants to notify the HCPC 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.

When considering character declarations, Panels should take account of;

- the nature and seriousness of the offence or misconduct;
- when the incident occurred; and
- the applicant's/registrant's character and conduct since the incident.

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 appears 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.

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 by a Registration Assessment Panel in the same manner as a declaration made on seeking admission or readmission to the register.

The recommendation that the Panel is asked to make to the Committee is whether the matters declared are of such a serious nature that the registrant should not be allowed to renew their registration.

If an application for admission, re-admission or renewal of registration 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.

Self-referrals

Declarations made by registrants in accordance with paragraph 4 of the Standards of Conduct, Performance and Ethics are treated in the first instance as registration rather than fitness to practise issues.

However, if the information disclosed is sufficient to suggest that the registrant's fitness to practise is impaired, then it may be appropriate for the matter to be investigated further under Article 22(6) of the Order. That decision is a matter for the Chief Executive and Registrar¹.

All convictions, cautions and other potential character issues must be declared to the HCPC². However, based upon the prior recommendations made by Registration Assessment Panels, the Committee has identified certain categories of cases where the information declared (whether by self referral or on admission, re-admission or renewal) will rarely have a bearing upon a person's registration.

Except where the Director of Fitness to Practise³ considers otherwise, no further action needs to be taken in relation to:

- juvenile convictions which were received more than 5 years prior to an application for registration being made except where:
 - the offence is serious;
 - there are multiple offences; or
 - the offence would lead to the person concerned being 'barred' under one of the UK Vetting and Barring Schemes; or
- conviction solely for driving (or being in charge of) a motor vehicle having consumed alcohol in excess of the prescribed limit where:
 - there are no aggravating circumstances (including but not limited to failure to stop or only doing so following a police pursuit, failure to provide a specimen, obstructing police, etc.);
 - the offence did not occur in the course of professional duties, en route to or directly from such duties or when subject to any on-call or standby arrangements; and
 - the penalty imposed does not exceed disqualification from driving for 12 months (with or without a fine).
- conviction solely for a:
 - parking contravention;
 - fixed penalty motoring offence; or
 - fixed penalty offence under a public transport penalty fare scheme.

¹ under authority delegated by the Council

² other than a conviction or caution which is 'protected' under the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975

³ or a person authorised to act on behalf of the Director

| September ~~August~~ 2013