

Agenda Item 12

Enclosure 9

**Health and Care Professions Council
24 May 2018**

Health Allegations policy statement

For discussion and approval

From John Barwick, Executive Director

Council, 24 May 2018

Statement of Approach to the Investigation of Health Matters

Executive summary and recommendations

Introduction

In their 2016/17 Performance Review assessment against Standard 5, the Professional Standards Authority (PSA) highlighted that we had not always identified and sufficiently investigated where there may be an underlying health issue which could result in an allegation that a registrant's health may impair their fitness to practise.

Since 2010, the PSA has recommended that regulators should routinely arrange health assessments of registrants who have been convicted of drug/alcohol related offences, to establish whether they may have an underlying health condition. The PSA restated their recommendation in the 2016/17 Performance Review.

Our position has been that it is disproportionate to require all such registrants to undergo a health assessment, in the absence of any aggravating circumstances or other information to indicate that they may have an underlying health problem. Instead, we have adopted a case-by-case approach to gathering information necessary to inform a decision about whether a registrant's fitness to practise may be impaired on health grounds.

Between 2010 and 2013 the then Fitness to Practise Committee considered a number of papers on this issue, each time being content to confirm the HCPC's existing practice of adopting a case-by-case approach. In 2014, we commissioned research from King's College London to look at the published evidence on this topic to inform our position and approach going forward. The outcome of that research suggested there was inconclusive evidence about the value of health assessments in identifying health issues in those cases where a health matter was not otherwise apparent from the information obtained during the investigation. In May 2016 Council were invited to consider the issue in light of the King's research, and agreed we should maintain our case-by-case approach to investigating health matters. A copy of that Council paper, which provides further background on the issue, can be found at:

<http://www.hcpc-uk.org/assets/documents/1000500DEnc03-Healthassessmentsfordrugandalcoholoffences.pdf>

We have not seen any new, compelling research evidence to suggest we should change our approach to investigating health matters at this time. However, we do accept that the HCPC has not previously documented its position in relation to this issue.

The need for a clear statement on our approach to the investigation of health concerns has been identified as a key activity in the FTP Improvement Plan, presented to Council on 7 December 2017.

We have now developed a position statement that sets out our approach to assessing information that indicates a registrant's fitness to practise may be impaired by their physical or mental health. The statement is similar in vein to the HCPC's Approach to Fitness to Practise policy and runs in parallel to both that policy and our Standard of Acceptance policy. The statement aims to strike a balance between our duty to protect the public and the rights of registrants. It makes clear that the HCPC will take a proportionate approach and will intervene in a potential health matter only where the information provided indicates that there is a risk to public protection, to public confidence in the profession or to the registrant themselves.

We have also reviewed and updated the HCPTS Practice Note on Health Allegations to provide enhanced guidance for panel members when deciding whether a matter should be referred to a Health Committee; when allegations may be cross-referred between the Health and Conduct and Competence Committees; and when it may be appropriate to request or admit expert evidence in relation to a registrant's health. The Practice Note will be considered by the next Tribunal Advisory Committee in September 2018.

The statement of approach and amended Practice Note will be supported by the following initiatives currently in development:

- New operational guidance for HCPC decision makers on how to identify and investigate health cases;
- Guidance for HCPC decision makers on the thresholds to be applied when considering health allegations;
- Training for HCPC staff on the new policy and related guidance;
- Training for panel members on the approach to considering health allegations and the new Practice Note;
- Development of new template forms and letters and enhancements to the case management system to support staff in investigating health cases.

The statement of approach and supporting guidance dovetail with other activities in the FTP Improvement Plan, not least the review of the Standard of Acceptance policy. It will be crucial to ensure that our approach to both of these key areas, and the roll out of any related operational changes and training, are aligned.

Interim guidance on how to identify health concerns that may require investigation has been provided to the case management teams to ensure they are supported whilst the development work is ongoing.

Decision

The Council is asked to discuss and agree the approach set out in Appendix 1.

Background information

The development of a statement on our approach to health concerns forms part of the scheme of work, set out in the FTP Improvement Plan, to regain the following particular Standards of Good Regulation:

- Standard 3 – where necessary, the regulator will determine if there is a case to answer and if so, whether the registrant's fitness to practise is impaired or, where appropriate, direct the person to another relevant organisation.
- Standard 5 – the fitness to practise process is transparent, fair, proportionate and focused on public protection.
- Standard 8 – all fitness to practise decisions made at the initial and final stages of the process are well reasoned, consistent, protect the public and maintain confidence in the profession.

Resource implications

There are no additional resource implications.

Financial implications

None.

Appendices

Appendix 1 – HCPC Approach to the Investigation of Health Matters

Date of paper

10 May 2018

HCPC's Approach to the Investigation of Health Matters

Introduction

1. The purpose of this document is to set out HCPC's approach to investigating concerns that indicate that a registrant may have a health problem. This document should be considered alongside our Approach to Fitness to Practise and Standard of Acceptance policies and guidance for decision makers in relation to health matters and our fitness to practise process.
2. The HCPC's overarching objectives are to protect and promote the health and safety of the public; to protect and uphold public confidence in the professions it regulates; and to set and maintain standards of conduct and performance for members of those professions.
3. Under the Health and Social Work Professions Order 2001 (the Order) a registrant's fitness to practise can be impaired for a number of reasons, which are set out in the legislation. One of those reasons is a registrant's physical or mental health. By impairment we mean when a registrant is unfit or unsafe to practise without restriction.
4. When we receive a concern about a registrant's fitness to practise, from any source, we will undertake initial enquiries to establish whether that concern meets our Standard of Acceptance. If it does, further investigation will take place to enable us to formulate detailed allegations to be put before an Investigating Committee Panel, who will determine if there is a case to answer. When a case to answer decision has been made we will prepare the case for a final hearing, which may involve some further investigation. Our approach to assessing health matters set out in this document applies to all stages of the fitness to practise process.
5. Our Standards of Conduct, Performance and Ethics makes clear that registrants have a professional duty to make changes to their practise, or cease practising, where their physical or mental health may affect their performance, judgement or place others at risk (Standard 6.3).
6. The HCPC will not normally need to take action in relation to a registrant's practise on health grounds unless there is a risk to public safety, to public confidence in the profession or to the registrant themselves. Where we do need to intervene, we will take care to balance our duty to protect the public with the registrant's rights.

Factors we will take into account when assessing health matters

7. We will take all relevant factors into account when assessing any information that indicates that a registrant may have a health condition that presents an actual or potential risk to the safety of the public, themselves or the wider public confidence in the profession.

8. Factors we will consider include, but are not limited to, the following:
- Information that indicates the registrant has an untreated, unacknowledged or unmanaged physical or mental health condition.
 - The registrant is not managing their condition appropriately, such as by not complying with medical advice, guidance or a treatment regime.
 - Where harm has been caused to service users, or there is a real risk of harm being caused, where the registrant's health is a contributory factor.
 - Where we have received conflicting information about the registrant's health condition and/or the impact of their condition on their ability to practise safely.
 - The registrant lacks insight into the nature or extent of their health condition, or we receive other information such as from a medical professional that raises concerns about the registrant's level of insight.
 - Where the registrant has sought to mislead others about the existence or significance of a health condition.
 - There is relevant, similar fitness to practise history.
 - There is a pattern of behaviour indicative of the registrant having an unmanaged health condition.
 - The registrant is currently or has recently been detained under the Mental Health Act 1983.
 - There is risk of relapse or recurrence, or the health condition is of a type associated with a higher risk of relapse.
 - The employer is unaware of the registrant's health condition, or the registrant has not engaged or complied with a support plan put in place by the employer.
 - The registrant has left their employment and/or there is no action plan in place to supervise the registrant.
 - Information indicates the conduct, behaviour, judgement or professional performance of the registrant has been adversely impacted by their health condition, or indicates a health condition.
9. It is likely we will need to carry out further enquiries in order to satisfy ourselves as to the nature and extent of a registrant's health condition, and whether it may impair their ability to practise safely and effectively. When making our assessment of a health matter we will apply the relevant tests and thresholds as set out in our Standard of Acceptance policy.
10. In some cases, the referrals we receive that give rise to a potential health concern about a registrant also suggest concerns about the registrant's conduct or competence. For example, a registrant who takes controlled drugs from the workplace for their personal use.
11. The Order sets out that allegations relating to a registrant's health must be considered by the Health Committee, and all other allegations by the Conduct and Competence Committee. As such, where a case involves allegations of impaired fitness to practise relating to both a registrant's health and their conduct or competence, the Investigating Committee will need to determine which Committee should consider the case.
12. In these circumstances, it will be necessary for us to investigate the wider context of the case to ensure we have a good understanding of what occurred, whether there is an underlying health issue and the relationship between the registrant's health and the incident in which they are involved. This will enable us to progress the case in the way which best addresses the risks and issues that the case gives rise to, and to ensure that the Investigating Committee have all the relevant information before them to make an informed decision.

Health records, information and assessments

13. The HCPC will take a proportionate approach to investigating health concerns and to obtaining relevant evidence about a registrant's current health status. We will seek to obtain readily available information from relevant sources in the first instance and will take into account the totality of the information we hold. We will not ask registrants to provide new information where sufficient evidence already exists.

The types of information we may need to obtain in the first instance include:

- Documents from the registrant's employer.
 - Occupational Health assessments or other documents.
 - A reference from a registrant's GP or other relevant medical or healthcare practitioner such as a substance abuse support worker.
 - A letter or reference from a hospital consultant or other specialist.
14. Depending on the type or nature of the health condition, the availability of other suitable medical information, or where it is unclear whether the registrant has an underlying health condition, we may need to ask a registrant to undergo an assessment with a suitably qualified medical assessor. This is because in exceptional circumstances a medical report may be required to determine whether or not there is an underlying health issue that calls a registrant's fitness to practise into question.
15. We will always seek consent from a registrant prior to asking them to undergo an assessment. We will also ask for a registrant's consent before we seek to obtain information about their health, or their medical records, from any medical or healthcare practitioner. Registrants will be given a clear explanation of how any health-related information will be used. In particular, how any information provided may be put forward to a Panel that will hear and determine any allegation made against the registrant.
16. The HCPC does not have powers to compel a registrant to provide information about their health, disclose their medical records or details of their treating practitioner or to undergo a medical assessment. A registrant's compliance with any request for disclosure or participation in an assessment is therefore voluntary.
17. The above should be considered alongside additional guidance provided to HCPC decision makers about how to investigate health matters and the application of this policy.

Related documents:

- HCPC's Approach to Fitness to Practise
- Standard of Acceptance policy