

Agenda Item 14

Enclosure 11

**Health and Care Professions Council
06 December 2018**

Data, intelligence and research evidence

For discussion

**From Katherine Timms, Head of Policy and
Standards**

Council, 6 December 2018

Data, intelligence and research evidence

Executive summary and recommendations

Introduction

Strategic priority 4 of the HCPC Corporate plan outlines our intention to:

‘Make better use of data, intelligence and research evidence to drive improvement and engagement.’

This paper seeks to set out an aspirational framework to support the delivery of strategic priority 4 through four key deliverables:

1. Understand and respond appropriately to equality, diversity and inclusion matters.
2. Continually improve our core regulatory functions.
3. Influence professional practice and prevent the causes of harm.
4. Inform our approach to communication and engagement.

Decision

Council is invited to discuss the attached paper at Appendix A.

Background information

The HCPC Strategic intent can be found [here](#).

The HCPC Corporate plan can be found [here](#).

The HCPC Research strategy can be found [here](#).

Resource implications

There are currently no expected resource implications for this.

Financial implications

There are currently no expected financial implications for this work.

Appendices

- The Data, intelligence and research evidence paper is attached at Appendix A.
- Legal advice is attached at Appendix B.

Date of paper

23 November 2018

1. Introduction

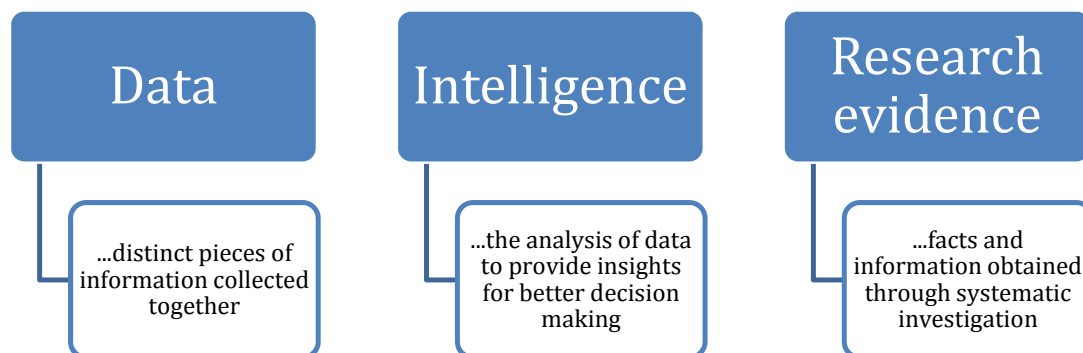
Data, intelligence and research evidence in context

1.1. The HCPC's corporate plan (2018-2020), underpinned by the vision, values and strategic objectives set out in the Strategic intent (2016-2020), articulates the strategic priorities to deliver our public protection remit.

1.2. The corporate plan identifies four strategic priorities

- **Strategic priority 1:** Improve our performance to achieve the Professional Standards Authority's Standards of Good Regulation.
- **Strategic priority 2:** Ensure our communication and engagement activities are proactive, effective and informed by the views and expectations of our stakeholders.
- **Strategic priority 3:** Ensure the organisation is fit for the future and is agile in anticipating and adapting to changes in the external environment.
- **Strategic priority 4:** Make better use of data, intelligence and research evidence to drive improvement and engagement.

What do we mean by data, intelligence and research evidence?



What are the constraints of our current approach to data and intelligence?

1.3. Our current approach to data collection, and the systems we use, constrain our ability to use data in the most intelligent way. In particular:

- We don't collect and/or store certain key pieces of information, which mean we are unable to answer key questions on important topics, for example:
 - representation of certain protected characteristics through our processes,

- geographical trends in fitness to practise, or
- registrant mode of practice (private, NHS, part-time, full-time, etc).
- Information is not accessible in an intuitive way, so complex reports considering multiple factors can be challenging, if not impossible.
- Transactional events are overwritten by subsequent events, particularly in the registration process. This means we are often unable to access historical data.
- We don't have a systematic, centralised way to record information sent to registrants outside of the Education, Registration, and FTP systems. Similarly, we don't have a systematic, centralised way to record information sent to other stakeholders.

How does our Research strategy (2016-20) fit in to this work?

1.4. Our Research strategy sets out how research can ensure the HCPC's work is evidence informed. Namely by:

- undertaking research in to our regulatory role and functions;
- ensuring that research contributes to robust decision making;
- disseminating research, for example through seminars with stakeholders;
and
- using research findings to contribute to the development of wider regulatory policy.

1.5. The Research strategy also outlines the key benefits of commissioning research:

- Improved insights into the impact of what we do.
- Increased objectivity and independence of evidence gathering and analysis.
- Access to data (e.g. literature) or data subjects (e.g. service users and carers) that might otherwise be challenging to access or engage meaningfully.
- Triangulation of data (for example, research adding weight to professional experience or the findings of engagement activities).
- Benefiting from the expertise of external research teams and their capacity to undertake research.

1.6. The Research strategy sets out three key objectives:

- **Objective 1:** to commission / undertake research which supports better decisions, continuous improvement and the engagement of stakeholders.
- **Objective 2:** to build internal capacity to manage effectively the delivery of research.
- **Objective 3:** to engage effectively with employees, Council members and stakeholders to disseminate the outcomes of research and identify themes and issues to be addressed through future research.

In order to fully realise the research strategy, we need access to better data and intelligence, and additional resources to deliver the work.

How does data, intelligence and research evidence help us realise the HCPC corporate plan?

1.7. Strategic priority 4 sets out a clear vision to use data, intelligence and research evidence to drive improvements in our policies, standards and processes and our engagement with stakeholders. This approach enables us to improve performance in our core regulatory functions (strategic priority 1), improve communication and engagement (strategic priority 2), and ensures we are a responsive and agile regulator (strategic priority 3).

1.8. By developing the way we collect and use data, we would be better informed, building a robust evidence base to support appropriate and fair decision making; at a strategic, policy and operational level.

1.9. This document seeks to provide an aspirational framework to support our delivery of these objectives and sets out the key deliverables required to achieve that, should we be able to secure resources through our proposed fee rise. Those would be to:

- **Key deliverable 1:** Understand and respond appropriately to equality, diversity and inclusion matters.
- **Key deliverable 2:** Continually improve our core regulatory functions.
- **Key deliverable 3:** Influence professional practice and prevent the causes of harm
- **Key deliverable 4:** Inform our approach to communication and engagement.

1.10. If we were to take this work forward, we would propose aligning the timescales for delivery of this strategy to the Corporate plan and the Research strategy, and for the key deliverables to be reviewed and revised for 2020 onwards.

2. Key deliverables

Understand and respond appropriately to equality, diversity and inclusion matters

Understanding and responding appropriately to equality, diversity and inclusion matters through the use of data, intelligence and research evidence, and responding appropriately supports strategic priorities 1 and 4

2.1. In respect of its public functions, the HCPC must comply with the public sector equality duty. This sets out that we must have due regard to the need to:

- eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
- advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and
- foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

2.2. During 2018/19 we have been developing an Equality, diversity and inclusion (EDI) policy and action plan. Whilst at a department level we have always met the principles outlined in the Equality Act 2010, publishing a written policy and action plan will help improve transparency, underline our commitment to our public sector equality duty, and provide a framework for progressing equality, diversity and inclusion issues.

2.3. In June 2018, the Professional Standards Authority (PSA) consulted upon revised Standards for good regulation. They are proposing to include a new general standard concerned with EDI:

“The regulator understands the diversity of the registrant population and its service users and ensures that its processes do not impose inappropriate barriers or otherwise disadvantage people with protected characteristics.”

2.4. In order to meet the PSA’s proposed new standard, we need to develop the way we collect and interrogate EDI data.

Registrant

2.5. We propose requiring registrants to provide their EDI data, or actively opt out, during the registration and renewal processes. This will ensure increased volumes

of EDI data to enable us to understand registrant diversity and take action to address any areas of concern.

- 2.6. In our current system we have EDI data for around 1% of the registrant population, although we do not link this to the registrant record, and are unable to analyse the data against other data, such as decision making. We are unable to accurately predict the percentage of EDI data we would obtain through our proposed approach, but based on that of other regulators, we would expect this to be in the region of 50-75% of the register.
- 2.7. The time required to develop our systems to do this automatically would require us to implement an interim manual process to ensure we could meet the PSA's proposed standard once implemented. We would collect data through the renewal process, gathering information from each profession in turn, and having an overall picture across the professions within two years.

Employees and partners

- 2.8. We also propose developing the range and depth of our diversity monitoring data for the recruitment and retention of employees and partners to ensure we understand and respond to challenges in appropriate representation of different groups across employees and partners. We collect the majority of this data already, through established HR processes, but within this work would look to extend our capabilities, particularly around data reporting. The work required around data collection and reporting for employees would be owned by HR.
- 2.9. In order to achieve this we would require systems which enable us to improve our abilities to collect and analyse this data in a range of ways.

Continually improve our core regulatory functions

Continually improving core regulatory functions through the use of data, intelligence and research evidence supports strategic priorities 1 and 4

- 2.10. In order to continually improve our core regulatory functions, we need to develop our approach to the collection of data and intelligence.
- 2.11. Our core regulatory functions cannot be considered in isolation in this regard. In order to assess trends and issues, and act intelligently in response, we need to track information about registrants' education, personal details, ongoing work information, and concerns raised about their fitness to practice.
- 2.12. The key areas our data and intelligence would need to focus on to support continual improvements would be:
 - Understanding the characteristics of registrants, in particular protected characteristics.

- Tracking student perspectives on quality assurance.
- Monitoring the quality of practice-based learning.
- Using data from other bodies to inform our quality assurance approach.
- Tracking where a registrant studied/trained to understand issues arising from certain programmes.
- Profiling career stage.
- Clarifying where registrants consider themselves lone practitioners.
- Categorising allegation types in a clear and systematic way, in a system which ensures reports are easily accessible.
- Holding contemporaneous data on a registrant's workplace (organisation, Trust (where appropriate) and region).
- Being able to establish the root cause of fitness to practise concerns (education, stage of career, CPD, etc).
- Profiling the stage of cases (individually and collectively)
- Understanding not well founded decisions by tracking decision making.

2.13. We would need to be able to interrogate data at a:

- **case level** – to better support our approach to decision making and our understanding of an individual case in a fast and effective way;
- **organisational level** – to establish if there are key trends which, if identified, can be targeted to prevent issues arising in the future;
- **regional level** – to understand issues in different areas of the country to inform proactive communications and engagement; and
- **national level** – to provide robust evidence to inform our policies and standards.

Influence professional practice and prevent the causes of harm

Using data, intelligence and research evidence to influence professional practice and prevent the causes of harm supports strategic priorities 3 and 4
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2.14. In order to protect the public, we also need to be a responsive regulator by:

- contributing to public inquiries;
- responding to public inquiry recommendations relevant to us;
- being agile in supporting the evolving nature of the professions we regulate; and
- using our data, intelligence and research evidence to proactively preventing problems.

Public inquiries

2.15. Public inquiries are typically commissioned on high profile matters, with significant public interest and under limited timeframes. They require data and intelligence from relevant organisations quickly and coherently.

2.16. Given the constraints of our current approach to data and intelligence, our ability to support fast and effective delivery of accurate and detailed information to public inquiries can sometimes be limited. By improving the data we hold, and our ability to access and report on that data, we would be able to provide a more robust contribution to public inquiries, where required.

2.17. Improved data and intelligence would also assist us in addressing any recommendations arising from public inquiries which are of relevance to us. By understanding the profile of our stakeholders, registrants and fitness to practise cases, we could take action in a targeted, informed and intelligent way, realising benefits and change quickly and effectively.

Supporting our professions

2.18. Our professions are subject to rapid change; in the environment in which they work, the roles they take, and the challenges they face. In response to workforce issues, societal expectation, and an ageing population, we've seen unprecedented change in the scope of practice of some of our professions.

2.19. This speed of change requires us to respond promptly and effectively to ensure we meet our public protection obligations. Our standards, policies and processes can quickly become out of date, resulting in challenges for our registrants. By interrogating our data, and making better use of research evidence, we could develop standards, policies and processes in an informed and proactive way to

ensure we reflect the challenges and issues faced by registrants in their places of work.

Preventing problems

2.20. The HCPC is committed to increasing its efforts to preventing problems rather than taking action afterwards. This has a number of benefits:

- reducing harm to physical/mental health of service users and carers;
- reducing any potential disruption to service user care by keeping registrants in practice;
- reducing the impacts on registrants' careers and wellbeing;
- improving trust in healthcare professionals; and
- reducing the costs associated with fitness to practise processes, both to the regulator, and the registrant.

2.21. In order to prevent problems, we first need to understand them. This requires systems which facilitate the collection and interrogation of the data in a streamlined, robust and intelligent way. The data and intelligence could then be used to inform:

- **Development of our standards, policies and guidance** – whilst we engage and consult on our standards, policies and guidance, having robust data regarding the application of our standards, and the areas particularly prevalent in fitness to practise means we could ensure even greater detail in areas which present more risk.
- **Closer liaison with employers and professional representatives** – understanding trends in complaints and fitness to practise outcomes would help inform a targeted approach to liaison with employers and professional representatives, making best use of resources to achieve meaningful change.

The ability to successfully interrogate data at an organisational and regional level would significantly increase our ability to target liaison with employers and professional representatives, influencing change and preventing harm.

- **Engaging service users** – the largest complainant group is the public, making up 41% of concerns raised. Many of these complaints get closed at an early stage.

In order to improve efficiency in our fitness to practise function, focusing on cases requiring action, and managing cases in a fair and timely manner, we need to better understand the reasons many complaints from the public get closed at an early stage.

By categorising allegation types in a clear and methodical way, in a system which ensures reports are easily accessible, means we could undertake targeted research to establish root causes for case closure in complaints made by the public.

- **Understanding trends across and within the four countries** – if we're able to have an improved understanding of trends in across the UK and within each of the four countries, we would be better equipped to assess risk and take selective action to address those risks. The collection of this intelligence would be through:
 - analysis of the diversity of our registrant groups to inform our approach to partner recruitment (to reflect the diversity of the professions) both within and across the four countries, ensuring fair decision making;
 - retrospective analysis of fitness to practise cases, both quantitatively using the information we collect during an investigation, and qualitatively through careful engagement with those involved in the fitness to practise process, to further understand the trigger points for fitness to practise issues; and
 - qualitative research to understand common misconceptions and misunderstandings; to inform myth busting activities.

Inform our approach to communication and engagement

Using data, intelligence and research evidence to inform our approach to communication and engagement supports strategic priorities 2 and d

2.22. Our approach to communication should be informed predominantly by qualitative research which seeks the views of each stakeholder group to assess their preferences, needs and views. This should be supported by the data we hold and the intelligence we develop. Together, data, intelligence and research evidence could help us:

- Strengthen our communication activities with all of our stakeholder groups, and ensure they are targeted and effective;
- Inform our approach to engagement with each of the four countries, ensuring we take account of the differences in policy and practice, and deliver information and activities in the most valuable way possible;

- Develop our approach to engaging with employers to help prevent problems and manage matters safely and effectively in a local setting where possible; and
- Develop appropriate mechanisms to involve service users and the public in the development of standards, policies and processes in a constructive and practical manner.

3. Reporting and system requirements

3.1. Whilst this paper does not seek to propose the appropriate IT systems to support the delivery of the data, intelligence and research evidence framework proposed above, there are a number of considerations that would need to be taken in to account in exploring this further.

Data security

3.2. There would need to be robust controls and governance mechanisms to ensure the data is collected and analysed according to the Information Commissioners Office requirements.

Data accessibility

3.3. The reporting functionality for our data and intelligence function would need to be:

- easily accessible to employees across the organisation;
- easily available to external stakeholders and the wider public;
- flexible and agile; and
- relied upon to provide accurate and up-to-date information.

3.4. We recommend consideration of an data and intelligence hub available to staff and the public, to satisfy the above requirements and to:

- provide insights in to student and registrant characteristics; for example age, gender and ethnicity;
- inform stakeholders about trends in education programmes;
- facilitate access to organisational, regional and national trends;
- present information about complaint volumes and case progress through the fitness to practise function;

- explore differences across the four countries
- assist our stakeholders in improving patient care; and
- inform our stakeholders in workforce planning.

3.5. This piece of work would need to be scoped in more detail and progressed through the major projects portfolio.

4. What are we able to do using our existing resources?

Data

4.1. Within our existing resources we are able to collect more data to satisfy the requirements set out in paragraph 2.12, but the storage and analysis of that data would be challenging.

Intelligence

4.2. Although we are able to collect more data using our existing resources, our ability to access that data through reports is constrained for two key reasons:

- **Limited system abilities:**
 - Information is not accessible in an intuitive way, so complex reports considering multiple factors can be challenging, if not impossible.
 - Transactional events are overwritten by subsequent events, particularly in the registration process. This means we are often unable to access historical data.
 - We don't have a systematic, centralised way to record information sent to registrants outside of the Education, Registration, and FTP systems. Similarly, we don't have a systematic, centralised way to record information sent to other stakeholders.
- **Employee resource:**
 - We currently undertake research and analysis of our core regulatory functions for development and reporting purposes. However, in order to facilitate more in-depth and targeted research and analysis, we would require further resources.

Memorandum

To: Katherine Timms, HCPC
From: Jonathan Bracken
Date: 26th November 2018

Data gathering

Katherine,

You asked for my advice on the scope for the HCPC to seek more information from registrants, complainants and other stakeholders for intelligence and research purposes and, in particular asked me to answer the following four questions:

1. What personal data are we able to seek from registrants, complainants and others in a mandatory way?
2. What personal data are we able to seek from registrants, complainants and others in a non-mandatory way (where they can opt out of providing)?
3. Are there any particular considerations we should take in to account in seeking information about protected characteristics?
4. What would be the requirements around data retention for this information? If this is to inform intelligence/reports so we're able to take action to better protect the public would we still require a policy covering timescales for retention?

As you will be aware, the UK data protection regime changed quite substantially earlier this year and now comprises the General Data Protection Regulation (EU) 2016/679 (**GDPR**) and the Data Protection Act 2018 (**DPA**).

The HCPC must process any personal data which it controls in a manner which conforms with that regime. Critically, it must take account of the Principles set out below in making any decision about the acquisition, use and retention of personal data.

Personal data

For this purpose, "personal data" is any information that "relates to an identified or identifiable individual" and so includes:

- information from which it is possible to identify an individual directly; and
- information from which, when used by anyone in combination with any other information, it is possible to identify an individual indirectly.

Information which “relates to” an individual and from which they may be identified clearly includes a name or registration number, but also includes other identifiers such as IP addresses or cookie identifiers.

Identifiers do need to be thought of in purposive terms. For example, where an individual is from a small group – such as a person within a narrow professional sub-specialty or of an ethnic background shared by very few people in the same locality - that professional or ethnic description may amount to an indirect identifier.

The GDPR does not apply to information which is truly anonymous, but information from which identifiers have been removed or replaced in order to pseudonymise the data still constitutes personal data for the purposes of the GDPR.

The Principles

In processing any personal data for any purpose, the HCPC must have regard to the seven principles relating to personal data processing which are set out in Article 5 of the GDPR:

- **lawfulness, fairness and transparency:** personal data must be processed lawfully, fairly and in a transparent manner in relation to individuals;
- **purpose limitation:** personal data must be collected for specified, explicit and legitimate purposes and not further processed in a manner that is incompatible with those purposes (further processing for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes is not considered to be incompatible with the initial purposes);
- **data minimisation:** personal data must be adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed;
- **accuracy:** personal data must be accurate and, where necessary, kept up to date and every reasonable step must be taken to ensure that personal data that are inaccurate, having regard to the purposes for which they are processed, are erased or rectified without delay;
- **storage limitation:** personal data must be kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the personal data are processed (but may be stored for longer solely for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes if appropriate technical and organisational measures are taken to safeguard the rights and freedoms of individuals);
- **integrity and confidentiality:** personal data must be processed in a manner that ensures appropriate security of the personal data, including protection against unauthorised or unlawful processing and against accidental loss, destruction or damage, using appropriate technical or organisational measures;
- **accountability:** the controller of any personal data is responsible for, and must be able to demonstrate compliance with the principles.

Special category data

Article 9 of the GDPR places additional controls on the processing of "special categories" of personal data which may create more significant risks to a person's fundamental rights and freedoms (this was known as sensitive personal data under the old law). The special categories of personal data are:

- racial or ethnic origin;
- political opinions;
- religious or philosophical beliefs;
- trade union membership;
- genetic data;
- biometric data (used for identification purposes);
- health;
- sex life;
- sexual orientation.

The processing of special category data is prohibited unless:

- (1) one of the lawful processing grounds applies (see "lawful processing" below); and
- (2) one of the specific grounds for processing special category data in Article 9 of the GDPR also applies (see "processing special category data" below).

Lawful processing

Article 6 of the GDPR sets out the lawful grounds upon which personal data may be processed, at least one of which must apply when the HCPC processes any personal data. The grounds may be summarised as follows:

- **Consent:** the individual has given clear consent for their personal data to be processed for a specific purpose;
- **Contract:** the processing is necessary for or in connection with a contract to which the individual is a party;
- **Legal obligation:** the processing is necessary to comply with the law;
- **Vital interests:** the processing is necessary to protect someone's life;
- **Public task:** the processing is necessary for the performance of an official function or task in the public interest, and the function or task has a clear basis in law;
- **Legitimate interests:** the processing is necessary for the legitimate interests of the controller or a third party, unless those legitimate interests are overridden by the interests or fundamental rights and freedoms of the individual.

In discharging its statutory functions under the Health and Social Work Professions Order 2001 (the **Order**), the HCPC will be able to rely upon the “public task” ground. To the extent that it wishes to collect personal data for wider purposes, the grounds which are most likely to apply would be consent and legitimate interests.

Processing special category data

Article 9.2 of the GDPR specifies the grounds for processing special category data.

As an EU Regulation, the GDPR has ‘direct applicability’ in the UK and (unlike an EU Directive) does not need to be transposed in order to have effect in domestic law. However, some provisions of the GDPR have been supplemented by the domestic law, including Article 9. Consequently, that Article must be read and applied in accordance with section 10 of, and Schedule 1 to, the DPA.

In summary, the Article 9.2 grounds for processing special category data are:

- (a) where an individual has given clear consent (unless EU or domestic law prohibits the processing and the prohibition cannot be overridden by consent);
- (b) where processing is necessary to meet a legal obligation on the controller in respect of employment, social security, etc.;
- (c) where processing is necessary to protect an individual’s vital interests who is legally or physically incapable of giving consent;
- (d) in the course of the legitimate activities of a non-profit making organisation with a political, philosophical or trade-union aim, where the individual is a member, former member, etc.;
- (e) where the personal data has manifestly been made public by the individual;
- (f) where processing is necessary in pursuit of a legal claim or when a court is acting in its judicial capacity;
- (g) where processing is necessary for reasons of substantial public interest (under EU or domestic law which is proportionate to the aim pursued, respects the essence of the right to data protection and provides specific measures to protect the fundamental rights and freedoms of the data subject);
- (h) where processing is necessary for the purposes of preventative or occupational medicine, assessment of working capacity, medical diagnosis or the provision of health or social care, etc.;
- (i) where processing is necessary for public health purposes (under EU or domestic law);
- (j) where processing is necessary for archiving in the public interest, scientific or historical research purposes research and statistics.

The ground of most relevance to the HCPC, both in terms of its statutory functions and any wider data gathering, is that in Article 9.2(g); processing that is necessary for reasons of substantial public interest.

Section 10(3) of the DPA provides that the processing of special category data under Article 9.2(g) of the GDPR is only lawful in the United Kingdom if it also meets a substantial public interest condition in Part 2 of Schedule 1 to the DPA.

Part 2 of that Schedule sets out 24 conditions which permit the processing of special category data, many of which will be of limited relevance to the HCPC (for example, processing undertaken by political parties, by insurers and occupational pension providers, or by the governing body of a sport for anti-doping purposes).

In respect of its statutory responsibilities, the HCPC will be within paragraph 6 of that Schedule (statutory etc. and government purposes) which provides as follows:

Statutory etc and government purposes

6(1) This condition is met if the processing—

- (a) is necessary for a purpose listed in sub-paragraph (2), and*
- (b) is necessary for reasons of substantial public interest.*

(2) Those purposes are—

- (a) the exercise of a function conferred on a person by an enactment ...*

There are also other conditions which are relevant to the discharge of “protective functions” which will apply to three HCPC’s fitness to practise functions.

In respect of information gathering which is not strictly required by the HCPC for the purposes of discharging its regulatory functions, Part 2 of Schedule 2 only provides one condition which may be of relevance. Paragraph 8, relating to the monitoring of equality of opportunity or treatment provides as follows:

Equality of opportunity or treatment

8(1) This condition is met if the processing—

- (a) is of a specified category of personal data, and*
- (b) is necessary for the purposes of identifying or keeping under review the existence or absence of equality of opportunity or treatment between groups of people specified in relation to that category with a view to enabling such equality to be promoted or maintained...*

(2) In sub-paragraph (1), “specified” means specified in the following table—

<i>Category of personal data</i>	<i>Groups of people (in relation to a category of personal data)</i>
<i>Personal data revealing racial or ethnic origin</i>	<i>People of different racial or ethnic origins</i>
<i>Personal data revealing religious or philosophical beliefs</i>	<i>People holding different religious or philosophical beliefs</i>
<i>Data concerning health</i>	<i>People with different states of physical or mental health</i>
<i>Personal data concerning an individual's sexual orientation</i>	<i>People of different sexual orientation</i>

That condition is qualified. Processing must not be carried out for the purposes of any measure or decision with respect to a particular data subject or if it is likely to cause substantial damage or substantial distress to an individual. In addition an individual may give written notice to a data controller requiring the controller not to process personal data under that condition in respect of which the individual is the data subject.

Thus, the scope for the HCPC to process special category data outside of its strict statutory responsibilities is quite limited and, from a practical perspective will depend upon obtaining clear consent from data subjects.

Conclusion

By way of a conclusion, I have set out my answer to your specific questions:

1. *What personal data are we able to seek from registrants, complainants and others in a mandatory way?*

The HCPC has very limited powers to compel a person to provide personal data. It can require registrants to provide any information which is necessary for admission to or renewal of registration, etc. and, for example, require an education provider to submit any Information which is necessary for initial and ongoing approval of programmes (although, in practice this is likely to include only limited personal data). However, a failure to comply will inevitably result in an adverse decision being taken by the HCPC (assuming the missing information is determinative).

There are limited powers of compulsion in respect of fitness to practise proceedings, but these can only be exercised in the same manner as a court ordering the production of evidence and so are of limited relevance here.

In short, any requirement to provide information must relate directly to the discharge of a statutory function under the Order and it would be contrary to the Principles to lead individuals to believe that they must provide personal data to the HCPC when, in fact, it is being sought for a wider purpose.

2. *What personal data are we able to seek from registrants, complainants and others in a non-mandatory way (where they can opt out of providing)?*

Hopefully, as will be clear from the outline of the data protection regime set out above, the answer to this question will depend upon whether the data concerned is special category data.

If the data is not special category data, then it will largely be governed by Article 6 and can be obtained on the basis of consent or pursuit of a legitimate interest.

Consent is by far the best approach to take. The HCPC should provide a clear rationale for what is being sought and obtain explicit consent. Where information is sought in circumstances where an individual must provide some information, but is being asked to provide other information voluntarily, this should be made abundantly clear. This is consistent with the transparency Principle.

In theory, the legitimate interest ground does not require consent. However, the HCPC has a legitimate interest only to the extent that it is not overridden by the interests data subjects or their fundamental rights and freedoms, so it is good practice to both provide an explanation and consent to participation, at least in the first instance.

Where special category data is involved, Article 9 GDPR will be engaged and this is addressed in the answer to question 3.

3. *Are there any particular considerations we should take in to account in seeking information about protected characteristics?*

The protected characteristics under the equality legislation and the special categories of data are not aligned, but that is because the first is concerned with discrimination and the second only with the gathering of information. For example, marital status is a protected characteristic, but information about a person's marital status is not special category data. However, if that data is gathered, it would clearly be unlawful to use it to make a discriminatory decision.

The lack of alignment should not lead the HCPC to conclude that it can take a more relaxed attitude to the gathering of personal data which relates to the 'omitted' protected characteristics. Fundamentally, all data gathering must be conducted in accordance with the Principles and, for example, the HCPC should consider why it needs data on a person's marital status and what it will use it for before collecting it.

Where information about a protected characteristic is also special category data then, subject to the limited equality monitoring which is provided for in Paragraph 8 of Schedule 2 to the DPA, the HCPC will need to rely upon consent to process such data where it is not strictly required for a statutory purpose under the Order.

4. *What would be the requirements around data retention for this information? If this is to inform intelligence/reports so we're able to take action to better protect the public would we still require a policy covering timescales for retention?*

All data processing must be conducted in accordance with the Principles, and that includes the 'storage limitation' requirement that data must be kept for no longer than is necessary for the purposes for which it is processed. Thus, the HCPC would need to establish a clear and proportionate rationale in that regard.

In addition, where data is processed relying upon a condition in Schedule 2 to the DPA, the controller must have an appropriate policy document in place which:

- (a) explains the controller's procedures for securing compliance with the Principles in connection with the processing in reliance on the condition in question, and
- (b) explains the controller's policies as regards the retention and erasure of personal data processed in reliance on the condition, giving an indication of how long such personal data is likely to be retained.

JKB