

## **Managing fitness to practise: a guide for registrants and employers**

### **Introduction**

This document stems from the work being done around health, disability and registration. The over-arching policy ([www.hpc-uk.org/health\\_disability/index.html](http://www.hpc-uk.org/health_disability/index.html)) recommends that the Council produce guidance for registrants on managing their fitness to practise. This has been expanded to cover areas beyond health and disability, and also to provide information for employers, and a guide to 'scope of practice'.

The Education and Training Committee has agreed that this document should be consulted on. Both the Education and Training Committee and the Registration Committee have submitted their comments and suggestions for improving the document, which have been incorporated where possible.

### **Decision**

The Council is asked to agree

- to consult on the attached document;

and then, depending on the outcome of the consultation:

- to amend and review the document;
- to get it edited by the Plain English Campaign and Crystal-marked if possible; and
- to publish it online and in hard copy.

### **Background information**

Information on the Council's work on health and disability is available online here:

[http://www.hpc-uk.org/health\\_disability/index.html](http://www.hpc-uk.org/health_disability/index.html)

The registration committee have seen a first draft of part of this document, and agreed that it should be expanded, and sent to the Education and Training committee for comments, where it was referred to the Council.

### **Resource implications**

'Managing fitness to practise' is a document which sets out guidelines for a process that is already part of being a registered health professional, or supporting an employee. It is therefore proposed to hold a primarily online consultation (with a news release, and hard copies being sent to the HPC's 300-strong consultation list and also to any additional relevant groups with an interest in the document's contents).

Posting information online, organising mailing, co-ordinating responses, reviewing document in light of responses.

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Managingyourfinesstopractisepaper

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DD: None

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**Financial implications**

A mailing to c. 300 people: Covering letter, plus 15 pages of draft document.

**Background papers**

None

**Appendices**

None

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## **Introduction**

### **About us**

We are the Health Professions Council. We are a health regulator, and our job is to protect the health and wellbeing of people who use the services of the health professionals registered with us.

To protect the public, we set standards that health professionals must meet. Our standards cover health professionals' education and training, behaviour, professional skills, and their health. We publish a Register of health professionals who meet our standards.

Health professionals on our register are called 'registrants'. If registrants do not meet our standards, we can take action against them which may include removing them from the Register so that they can no longer practise.

### **Who do we regulate?**

The health professionals we regulate at the moment are:

- arts therapists;
- biomedical scientists;
- chiropodists and podiatrists;
- clinical scientists;
- dietitians;
- occupational therapists;
- operating department practitioners (from autumn 2004);
- orthoptists;
- prosthetists and orthotists;
- paramedics;
- physiotherapists;
- radiographers; and
- speech and language therapists

We may regulate other professions in the future. For an up-to-date list of professions, please see our website.

### **Protected titles**

Each of the professions has at least one professional title which is protected by law. It is a criminal offence to claim to be registered with us if you are not, or to use a protected title that you are not entitled to use. We will prosecute people who commit these crimes.

## **Fitness to practise**

This document is about the fitness to practise of registrants. When we say that someone is fit to practise, we mean that they have the skills, knowledge, character and health to practise their profession safely and effectively. We also mean that we trust them to act legally.

Over any health professional's career, their skills and their scope of practise will change. Likewise, over their career, there may be times when their fitness to practise is impaired, either permanently, or for a certain period of time.

Examples:

A chiropodist, who has been practising safely for many years, develops problems with his fine motor skills during his sixties. He notices that his hands shake, and finds he can no longer perform surgery without the danger of harming his patients. This may be a permanent change to his fitness to practise.

A paramedic's personal circumstances mean that she is under a large amount of stress, and this is affecting her in the workplace. She is concerned that in an emergency she would be unable to practise effectively. This is likely to be a temporary change to her fitness to practise.

In most cases, fitness to practise can be managed by employers and health professionals and we do not need to be involved.

However, if there is a risk to the public, we will have to take action.

The way that we work is based on the important principle of 'professional self-regulation'. What this means is that every health professional on our Register has a personal responsibility to maintain and manage their own fitness to practise, and to make decisions about whether they are fit to practise their profession.

## **This document**

To help explain how this works, we have produced this document as a guide. In it, you can read about how registrants can manage their own fitness to practise. It also contains information for employers on when they may need to let us know their concerns about an employee's fitness to practise.

As with the other documents we have produced, we have written this document in clear, modern English, so that it is easy to understand what we expect from people on our Register. In the section for registrants, 'you' refers to someone registered with us, a 'registrant'. In the section for employers, 'you' refers to someone who employs a registrant.

If you are worried about your fitness to practise, or about the fitness to practise of someone you employ, please read the whole of this document.

If you have read this document, and you are still concerned that a registered health professional's fitness to practise means that there may be a danger to the public, then you should write to us. Please see the section 'More information' on page 14.

## **Managing fitness to practise: information for registrants**

### **Why manage your fitness to practise?**

Anyone can complain to us at any time if they are worried that a registered health professional does not meet our standards. We look at each complaint carefully to decide whether we can take action, and we look at all the evidence before deciding whether a health professional's fitness to practise is impaired.

However, before informing us, there are steps that health professionals and employers can take in order to manage fitness to practise at a local level in the workplace.

You do not have to take these steps; you can come straight to us at any stage if you would prefer. But you may find that managing fitness to practise locally, with your colleagues, your manager, your employer, or by yourself, can be an effective and simple way of making sure that you meet our standards, that the public is protected, and that we do not need to get involved.

If your fitness to practise is impaired, it can be a distressing time for those involved, and managing fitness to practise locally as we describe here, might help lessen the stress caused to those involved.

Doing this, and following the steps that are described here, does not guarantee that no one will make a complaint about you. But if you are taking steps to manage your fitness to practise, and to ensure that you are practising safely and effectively, and someone does complain about you to us, any action you have taken to manage your fitness to practise will be taken into account.

### **Our expectations of all registrants**

Our standards of conduct, performance and ethics say that, 'You must always... limit your work or stop practising if your performance or judgement is affected by your health'. (p.2)

Our generic standards of proficiency say that every registrant must 'know the professional and personal scope of their practice...' (1b.1)

We expect all registrants, before practising, to consider whether they have the skills and training to practise safely. In addition, we expect registrants

to assess their own fitness to practise, to keep their own fitness to practise under review, and to restrict or to adapt their practice where *any* factor, (including their health, a disability, their competence, or anything else) may affect their fitness to practise.

This is a general expectation which applies to all registrants, not only those who consider themselves to have a health or disability issue, or those registrants who have made us aware of their health or a disability.

### **Example**

An example of how this might work in practice is taken from section 2b.5 of the Standards of proficiency which states that registrants must:

**'be able to maintain records appropriately**

be able to keep accurate, legible records and recognise the need to handle these records and all other clinical information in accordance with applicable legislation, protocols and guidelines'

A registrant who knows that her handwriting is normally considered to be illegible may take steps to print her notes in block capitals, or to type them up, to ensure that they can be used effectively by her colleagues. In this way, she takes reasonable steps to adjust her practice to ensure that she meets the standard.

Other examples of registrants who may make adjustments to meet this standard include a visually impaired registrant who needs an assistant or special software to help them take their notes, or a registrant with dyslexia who might prefer to keep electronic notes. In each case, the registrant would have taken reasonable steps to ensure that they met this part of the Standards of Proficiency.

### **Professional self-regulation**

The first stage in the management of fitness to practise is therefore individual 'professional self-regulation'.

Specifically, we expect that if you feel that your fitness to practise may be impaired, either in the long or short term, you would in the first instance take steps yourself which might include:

- seeking medical help or other support as appropriate;
- negotiating reasonable adjustments to your working conditions with your employer;

- restricting your scope of practice to those areas where you are confident that your practice fully meets the Standards of Proficiency for your profession;
- removing yourself from practice; and / or
- removing yourself from the Register if appropriate, while an issue is addressed.

Although some matters will be personal, and you might prefer to keep the details private, you might still find it useful to discuss the steps you are taking either with your manager or with another registered colleague. This kind of discussion could enable you to reflect on your scope of practice, and to get someone else's input on whether you can practise safely and effectively.

If you need to make substantial adjustments to your work, you will probably need to have some kind of formal discussion with your line manager, or with the Human Resources department where you work. (If you are self-employed and can adjust your working conditions yourself, this does not apply to you.)

### **Professional self-regulation, and our role as a regulator**

There is not necessarily any need for us to take action if any of the steps above are being carried out. This is because you, as an accountable registered professional, are judging your own fitness to practise, and making professional judgements as appropriate.

Our primary concern is where difficulty arises and you are not effectively managing your fitness to practise. For example, we would need to take action if you were continuing to practise even though you could not do so safely.

Your involvement in managing your own fitness to practise is an important part of professional accountability and responsibility, and a vital principle by which professional self-regulation works.

### **Your scope of practice**

Each profession that we regulate has its own Standards of Proficiency. You can download these from our website, or contact us to request a hard copy. These standards are divided into sections which set out the expectations of a health professional, the skills required for the application of practice, and the required knowledge, understanding and skills. Every registered health professional must meet these standards, and must also meet the Standards of conduct, performance and ethics.

When you first apply to come onto the Register, we need certain pieces of information from you, to make sure that you meet our standards. You need to send us a health reference and a character reference. You are also required to tell us about any criminal convictions or cautions, or any action taken against you by a professional body or another regulator.

Before you are registered, we also need to know that you meet our Standards of Proficiency. How we check that you meet our Standards of Proficiency varies depending on where you trained.

If you completed a UK approved course, this means that we have assessed your course; we know that it meets our Standards of Education and Training, and that people who complete that course meet the Standards of Proficiency for your profession. If you trained abroad, then your experience and qualifications are assessed by people from the same profession, to see whether you meet the Standards of Proficiency.

When you come onto the Register for the first time, this means that you meet the whole of the Standards of Proficiency for your profession<sup>1</sup>.

The Standards of Proficiency say,

We do recognise ... that your practice will change over time and that the practice of experienced registrants frequently becomes more focused and specialised than that of newly qualified colleagues, because it relates to a particular client group, practice environment, employment sector or occupational role. Your particular scope of practice may mean that you are unable to demonstrate that you continue to meet each of the standards that apply for your profession...

So long as you stay within your scope of practice and make reasonable efforts to stay up to date with the whole of these standards, this will not be problematic. However, if you want to move outside your scope of practice, you must be certain that you are capable of

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<sup>1</sup> The exception to this is applicants via the 'Grandparenting' route A, who need to demonstrate three out of the last five years 'lawful, safe and effective practice' in order to be registered. This transitional route to registration is only open for a limited time for each profession, and then closes. More information about Grandparenting is available on our website: [www.hpc-uk.org](http://www.hpc-uk.org)

working safely and effectively, including undertaking any necessary training and experience.

After you have been registered with us, we recognise that your scope of practice may change so that you can no longer demonstrate that you meet the whole of the Standards of Proficiency for your profession. This may be because of specialisation in your job, a move into management, education or research, or it may be because your fitness to practise in certain areas has become impaired. A changing scope of practice is not necessarily a cause for us to take action or a cause for concern.

### **Example**

A speech and language therapist's first job after graduating was one where she worked entirely with children. She worked in this area for nearly ten years, building up considerable expertise.

When the opportunity came to manage a team of speech and language therapists that worked with a variety of different patients, clients and users, she felt that her skills in these areas needed refreshing. With the support of her new employer, she attended training, and completed private study, to update her skills and ensure that she could safely extend her scope of practice, to effectively practise in her new role.

Your scope of practice is the area (or areas) of your profession in which you have the knowledge, skills and experience to practise lawfully, safely and effectively, in a way that meets our standards and does not present any risk to the public or to yourself. Your scope of practice may change over time, and you should be aware of your scope of practice and ensure that you only practise within it. It is closely linked to your 'fitness to practise', but the two are not the same.

## **Managing fitness to practise: information for employers**

This section has been written for people who employ health professionals on our Register. You may find this section useful if you are dealing with an employee whom you think may not meet our standards.

Registrants work in a wide variety of settings, including large NHS Trusts, schools, prisons, local councils and in private practice. Sometimes a registrant will work as part of a large team of people from the same profession as them, sometimes they will be part of a multi-disciplinary team, or they may be the only health-professional within their place of work.

Whatever the work environment, it is important that you as their employer have some understanding of the regulation of their profession, of their fitness to practise, and how their fitness to practise may change over time.

We have written this section of the document to give you information about how you can help your employee to keep to our standards, and also information about if, when or how you should contact us if a registrant cannot meet our standards.

### **If I have concerns about an employee, when should I inform the HPC?**

Anyone can make a complaint to us about a registered health professional at any time. (see the section called 'Why manage your fitness to practise?' on page 5 for more information)

You can contact us before, during or after any action which you take to help remedy a problem with an employee. You may, however, find it useful to take steps to resolve an issue locally before involving us. This may particularly apply in large organisations with a well-established system for supporting members of staff, and with the resources to cope with staffing needs flexibly. In other, smaller places of work, you may find that you need to refer problems to us at an earlier stage.

While each case is unique, there are still some questions which are frequently asked by employers about how and when they should let us know if they are experiencing problems with an employee. Below, we have written general guidance which will help you decide whether or when you need to complain to us.

This is only general guidance, however, and if you are in any doubt you should contact us.

### **Fitness to practise and an employer's disciplinary procedures**

Our fitness to practise process allows us to take action if a health professional does not meet our standards. Our panels have a range of sanctions available to them:

- they can strike the registrant off the Register
- they can suspend them from the Register for up to two years;
- they can restrict their work in some way by issuing a 'conditions of practice order';
- they can caution the registrant;
- they can ask the people involved to try to resolve the issues through mediation; or
- they can take no further action.

### **Example**

A radiographer comes to a hearing where it is alleged that her fitness to practise is impaired because she is not competent. During the hearing, it becomes apparent from witness statements that the main problem is her standard of record keeping. The panel could impose a 'conditions of practice order' which stated that for one year she would need to get her records counter-signed by a colleague, and during that time she would also need to attend additional training in record keeping. If she kept to these conditions, she could remain on the Register.

A conditions of practice order could in its effect be similar to any efforts that you make to resolve problems that you are experiencing. You might, for example, make provision for the supervision or mentoring of an employee whose record-taking was called into question.

An important difference, however, is that our sanctions apply right across the UK, wherever that person practises, whereas the conditions an employer makes can only apply in that place of work.

Even if you are taking action which effectively resolves a problem that you are experiencing with an employee locally, you may find it useful to consider what could happen if your employee left you and began to work elsewhere, with people who did not know about the problems you had experienced. Would the public be at risk? Could the registrant practise lawfully, safely and effectively? There is also information on page 12 about 'Insight and understanding' which is relevant to questions like these.

There are some matters which are relevant to the relationship between an employer and employee which are not relevant to us. Examples of these sorts of issues could include timekeeping, or negotiations over pay and conditions.

If the issue that you are concerned with is related to the registrant's ability to meet our standards, and despite taking steps to resolve the issue locally, the health professional is still practising in a way that does not meet our standards, then it is important that we are informed.

### **Insight and understanding**

Whether a registrant has 'insight and understanding' into their own fitness to practise will be a key factor in determining whether they can manage their own fitness to practise, or whether we need to take action in order to protect the public. It may also be useful to you in deciding whether to complain to us about a health professional.

A registrant is judged to have insight and understanding of their fitness to practise if they have a realistic, informed idea of the limits of their safe practice, and they understand the need to remain within their scope of practice, to ensure that their patients, clients and users are not put at risk and that there is not any danger to themselves.

In almost all cases where the registrant has a good understanding of their impaired fitness to practice, an accurate perception of their narrowed scope of practice, insight into their limitations and an informed idea of the steps they should take to remain within their scope of practice, they can remain registered and we do not need to get involved.

In cases where a registrant does not have insight and understanding into their fitness to practise, and there is potential danger to the public, then we should be informed.

### **Making adjustments to a registrant's working conditions**

In this document, we recommend that health professionals take an active part in managing their own fitness to practise, and we suggest a number of ways in which health professionals can ensure that they meet our standards. See the section 'professional self-regulation' on page 6 for more information.

One of the ways that a registrant can manage their fitness to practise is by negotiating adjustments to their working conditions with their employer.

### **Example**

A registered occupational therapist is affected by clinical depression, for which he is on medication. His doctor recommends that he change his medication, and while he is doing this, he experiences difficulties managing his depression. In particular he finds some aspects of work difficult and distressing. He speaks to his employer, who agrees that until the issue with his medication is resolved, his rota will be adjusted so that he does not have to work in an area that was causing him particular difficulty.

In the example above, the employee has identified an area of work in which he may not be able to meet our standards. He has negotiated with his employer, and effectively restricted his scope of practice to reflect the management of his fitness to practise, so that he will only work in areas where he is confident that he meets our standards. There is therefore no need to involve us, as there is no danger to the public.

You might find it useful to know that resources to help you make adjustments for an employee may be available from Access to Work. Access to Work is a government scheme that provides funding for disabled employees to purchase equipment and support they need to enable them to succeed in their job. For more information see [www.jobcentreplus.org.uk](http://www.jobcentreplus.org.uk)

Although we do not place any legal obligation on you to change your employee's working conditions, we hope that as a good employer you would be flexible in order to support and retain an employee. As an employer, you are also subject to certain duties under the Disability Discrimination Act, which may be relevant depending on the nature of the case. For example, all employers are legally obliged to consider 'reasonable adjustments' for disabled employees. Altering working hours or conditions can be considered a reasonable adjustment.

For more information about your duties under the Disability Discrimination Act, see the Code of Practice for employers, which is available online at [www.drc.org.uk](http://www.drc.org.uk)

### **Referring to our standards**

You can download copies of our standards from our website, or you can contact us to request a copy.

Our standards provide a useful reference tool in deciding whether to complain to us about an employee. If we receive a complaint, and that

complaint reaches the stage of a hearing, it is these standards that the panel will refer to. They will hear evidence on whether or not the health professional meets the standards.

## **Complaining to us about a health professional**

Anyone can let us know that a registrant may not meet our standards. This can include a colleague, their employer, or a patient.

However, our Standards of Conduct, Performance and Ethics say that:

‘you must protect patients if you believe that they are threatened by a colleague’s conduct, performance or health. The safety of patients, clients and users must come before any personal and professional loyalties at all times. As soon as you become aware of any situation that puts a patient, client or user at risk, you should discuss the matter with a senior professional colleague. If you feel that you cannot raise the matter with a senior colleague, you can contact our Registrar.’ (p. 3)

‘you must also tell us (and other relevant regulators and professional bodies) if you have any important information about your conduct or competence, or about other registrants and health professionals you work with.’ (p.5)

So if you are registered with us, and you believe that a registered colleague does not meet our standards, then you must inform us.

### **More information**

More information about us and our role is available on our website.

[www.hpc-uk.org](http://www.hpc-uk.org)

There is also information online about past fitness to practise cases, and future hearings.

If you are worried that your fitness to practise may be impaired, or you are concerned that a registered health professional does not meet our standards, you should write to our Director of Fitness to Practise at the following address:

Health Professions Council,  
Park House,  
184 Kennington Park Road,  
London,  
SE11 4BU