

Council, 7 July 2010

Removing the health reference requirement for registration

Executive summary and recommendations

Introduction

At its meeting on 10 December 2009, the Council approved the Education and Training Committee's decision to consult on removing the health reference as a requirement for registration. This paper discusses the responses received to that consultation, which was held between 4 January and 9 April 2010. At present a health reference completed by a doctor ('a registered medical practitioner') is required for entry to the Health Professions Council Register. In the consultation we suggested that the health reference should be replaced with a self-declaration to confirm that the applicant does not have a health condition which would affect the safe and effective practice of their profession.

The text of this consultation analysis paper was agreed and recommended to Council by the Education and Training Committee on 8 June 2010. The paper sets out the process of the consultation, an analysis of the responses received for each question, and our conclusions. As a result of the responses we received as part of the consultation we recommend that the health reference should be removed as a requirement for registration with the HPC, and replaced with a form of self-declaration. An amended timetable for enacting the change is appended to this report—while the overall timescales of the project have not changed, there has been some amendment to the timings for consulting on and producing amended guidance.

Decision

The Council is invited:

- To agree that the existing requirement for a health reference at point of entry to the Register should be removed (subject to amendments to the Health Professions Council (Registration and Fees) Rules Order of Council 2003); and
- To approve the text of the consultation responses document (subject to minor editing amendments and legal scrutiny) for publication on the HPC website.

Background information

ETC paper 22 September 2009:

http://www.hpcuk.org/aboutus/committees/educationandtraining_archive/index.asp?id=481, (enclosure 6).

ETC paper 25 November 2009:

http://www.hpcuk.org/aboutus/committees/educationandtraining_archive/index.asp?id=484, (enclosure 11).

Council paper, 10 December 2009, [http://www.hpc-](http://www.hpc-uk.org/assets/documents/10002BDAConsultationonremovingthehealthreference-enc10.pdf)

[uk.org/assets/documents/10002BDAConsultationonremovingthehealthreference-enc10.pdf](http://www.hpc-uk.org/assets/documents/10002BDAConsultationonremovingthehealthreference-enc10.pdf).

Resource implications

- Writing, mailing and analysis of consultation on revisions to the guidance on health and character
- Revising application form guidance notes
- The resource implications are accounted for in the Policy and Standards department workplan for 2010-2011.

Financial implications

- Cost of running the public consultation on the amended guidance
- Cost of printing and mailing the consultation document.
- The financial implications are accounted for in the Policy and Standards Department budget for 2010-2011.

Appendices

An amended proposed timetable is appended to the paper.

Date of paper

25 June 2010

DRAFT – subject to HPC Council approval

Removing the health reference as requirement for registration

Analysis of responses to the consultation on removing the health reference as a requirement for entry to the HPC Register, and our decisions resulting from responses received.

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DRAFT FOR DISCUSSION/APPROVAL COUNCIL 7/7/2010

1. Introduction

1.1 About the consultation

We consulted between 4 January and 9 April 2010 on removing the requirement to provide a health reference for entry to the Register. At present a health reference completed by a doctor ('a registered medical practitioner') is required for entry to the Health Professions Council Register. We suggested that the health reference should be replaced with a self-declaration to confirm that the applicant does not have a health condition which would affect the safe and effective practice of their profession. If the change was agreed, this would involve a change to the Health Professions Council (Registration and Fees) Rules 2003.¹

We sent a copy of the consultation document to around 400 stakeholders including professional bodies and education and training providers, and advertised the consultation on our website.

We would like to thank all those who took the time to respond to the consultation document. You can download of the consultation document and a copy of this responses document from our website: www.hpc-uk.org/aboutus/consultations/closed.

1.2 About us

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

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

1.3 The health reference

Our legislation requires us to make sure someone is of 'good health' and 'good character' for entry to the Register.² An applicant to the Register must complete and sign the application form. In doing so they are required to self-declare whether they have any condition that would affect their ability to practise. Along with a self-declaration, our statutory rules set out that a health reference completed by a doctor is also required for entry to the Register.³ The health reference is based on an individual's fitness to practise a

¹ Health Professions Council (Registration and Fees) Rules 2003:
<http://www.hpc-uk.org/publications/ruleslegislation/index.asp?id=204>

² Article 5(2)(b), Health Professions Order 2001:
<http://www.hpc-uk.org/publications/ruleslegislation/index.asp?id=199>

³ Rule 4(2)(b), Health Professions Council (Registration and Fees) Rules 2003

profession. In the reference the doctor is asked to tell us whether the individual has any condition that would affect their ability to practise the profession safely and effectively.

1.4 Disability Rights Commission report

In 2006/07 the Disability Rights Commission (DRC) investigated barriers faced by disabled people entering the nursing, teaching, and social work professions. In 2007 the DRC published a report called 'Maintaining Standards: Promoting Equality',⁴ which concluded that health standards have a negative impact upon disabled people's access to regulated professions; lead to discrimination; and deter and exclude disabled people from entry to these professions. The report recommended that all health requirements should be revoked, on the basis that health requirements have not been proven to provide protection for the public.

1.5 Council for Healthcare Regulatory Excellence report

In response to the DRC report, the Department of Health (DH) commissioned the Council for Healthcare Regulatory Excellence (CHRE) to provide advice on the health regulators' requirements regarding registrants' health.⁵ The CHRE made five recommendations:

1. The language of 'good health' should be overhauled and replaced with a single requirement of fitness to practise on initial entry to the register.
2. Consideration should be given to changing the regulatory bodies' legislative frameworks so that they have a single fitness to practise committee.
3. Regulatory bodies should consider the most proportionate means of ascertaining the information they need to determine whether those seeking entry to their registers are fit to practise.
4. Regulatory bodies should consider how they can best explain to registrants and potential registrants that health is only considered in relation to their capability to practise safely and effectively, and will not be used to unfairly discriminate against them or place them at disadvantage.
5. Regulatory bodies should make sure appropriate guidance is given to those who look to and interpret the regulatory body requirements and standards for practice, particularly in education and training institutions.

1.6 Changing the health reference requirement

We have reviewed whether our current health reference requirement is the best way to determine whether those seeking entry to our Register are fit to practise.

⁴ DRC report, 'Maintaining Standards: Promoting Equality':

<http://www.maintainingstandards.org/>

⁵ CHRE report, 'Health Conditions: Report to the four UK Health Departments':

http://www.chre.org.uk/_img/pics/library/090630_Health_Conditions_FINAL.pdf

Any requirements we make must be proportionate to the level of risk. There has only been a few times when information included in a health reference has raised potential concerns. To date we have refused registration to only two applicants on the grounds of health, and one of those applicants was granted registration on appeal after the consideration of further relevant information. The small number of applicants refused registration on the grounds of health suggests the public would not be at greater risk of harm if the health reference currently signed by a doctor was changed to a self-declaration. The purpose of the health declaration is often misunderstood, and may also be seen as a potential barrier by people trying to join our Register. The number of cases which result from information disclosed in the health reference is extremely low. For these reasons we agree with CHRE that the health reference should be replaced with a self-declaration.

To do this we would have to replace Rule 4(2)(b) of the Registration and Fees Rules with a requirement for all those seeking entry to the Register to make a self-declaration relating to any health conditions that may affect their fitness to practise. Subject to the rules being changed, we would also have to amend the relevant sections of our guidance on health and character, and the guidance notes which accompany the HPC application forms.

The results of this consultation will help the HPC to decide whether the current health reference requirement should be changed, and if so, how it should be amended or replaced.

1.7 About this document

This document summarises the responses we received to the consultation. The document starts by explaining how we handled and analysed the responses we received, providing some overall statistics from the responses. Section 3 provides a summary of the responses. Sections 4-6 are structured around the questions we asked in the consultation document.

In this document, 'you' or 'your' is a reference to respondents to the consultation, 'we', 'us' and 'our' are references to the HPC.

2. Analysing your responses

Now that the consultation has ended, we have analysed all the responses we received. While we cannot include all of the responses in this document, an overall summary can be found in section 3.

2.1 Method of recording and analysis

We used the following process in recording and analysing your comments.

- We recorded each response to the consultation, noting the date each response was received and whether it was submitted on behalf of an organisation or by an individual;
- We also recorded whether the person or organisation agreed or disagreed with each question (please see section 2.2);

- We read each response and noted the comments received against each of the consultation questions, and recorded any general comments;
- Finally, we analysed all the responses.

When deciding what information to include in this document, we assessed the frequency of the comments made and identified themes. This document summarises the common themes across all responses, and indicates the frequency of arguments and comments made by respondents.

2.2 Quantitative analysis

We received **77** responses to the consultation document. (We have included and taken into account late responses to the consultation if they were received on or before 16 April 2010 but were unable to consider comments made in responses received after this date.) **29** responses (**38%**) were made by individuals and **48** (**62%**) were made on behalf of organisations.

Table 1 below provides some indicative statistics for the answers to the consultation questions. Please note: some respondents did not clearly indicate the question to which they were responding, or responded more generally.

Table 1: Quantitative results

Question	Yes	No	Unclear / Unsure
Question 1 – Do you agree that we need to retain some kinds of requirement relating to health at point of entry to the Register? If not, why not?	87%	5%	8%
Question 2 – Do you agree we should remove the health reference as a requirement for entry to the Register and replace it with a self-declaration? If not, why not?	85%	10%	5%
Question 3 – Do you agree with the terms of the proposed self-declaration? If not, why not?	70%	14%	16%

3. Summary of responses

The following is a high-level summary of the comments we received in response to the consultation document. Please see sections 4-6 for more detailed analysis. The more general comments we received are summarised in section 7.

3.1 Retaining a health requirement related to Register entry

A significant majority of respondents agreed that the HPC should retain some form of requirement related to health at the point of entry to the Register.

The arguments for retaining a health requirement included:

- It is important to maintain some form of health reference requirement to ensure professionals are accountable for maintaining and managing their health to protect those who use their services.
- A health requirement at point of entry to the Register is necessary in order to ensure the HPC can respond meaningfully to any change in a registrant's health at a later date.
- It is important to know that a professional is physically and mentally capable of carrying out their role.

The arguments against retaining a health requirement included:

- Individuals should not have to declare health problems that are of no relevance to their role and responsibility.

3.2 Replacing the health reference with a self-declaration

A majority of respondents supported removing the health reference and replacing it with a self-declaration. Many of those respondents who supported the proposal qualified their answers by outlining issues the HPC should consider and address when establishing any self-declaration requirement.

The arguments for removing the health reference and replacing it with a self-declaration included:

- That self-declaration is a proportionate risk-based approach that reflects the reasonable expectation that individual health professionals are capable of acting autonomously and taking responsibility for their own health issues.
- Self-declaration is fairer as there are currently inconsistencies between individual GPs as to how they interpret and apply the health reference requirements.
- A self-declaration does not discriminate against people with disabilities in the way a health reference might.

The arguments again removing the health reference and replacing it with a self-declaration included:

- Some registrants will lack the necessary awareness of their health issues—including mental health issues—to be able to self-declare responsibly, putting the public and vulnerable service users at risk.
- The health reference is a more adequate way of identifying those registrants who do not have a good understanding of their own health problems, and who would put the public at risk.

3.3 Proposed terms of the self-declaration

A majority of respondents supported the terms we have proposed for the self-declaration, with a number of respondents supporting the general direction of the self-declaration but suggesting small amendments or additions. A number of the respondents who did not support the idea of replacing the health reference with a self-declaration left this question unanswered.

The arguments agreeing with the terms of the self-declaration included:

- This is a sensible way forward given that there have been very few health issues that have prevented entry to the Register.
- This recognises that registrants are autonomous professionals who are able to manage their own health and fitness to practise.
- While the terms are clear, the declaration should be accompanied by clear guidance notes on issues to consider when self-declaring.

The arguments disagreeing with the terms of the self-declaration included:

- It is not possible to word a self-declaration to establish a degree of culpability on the part of the professional who makes a declaration in good faith, but ultimately still puts patients at risk—practitioners should still be required to supply a certificate of medical fitness.
- The self-declaration should make it clear that appropriately managed health conditions do not necessarily impair a professional's fitness to practise.
- The declaration is not sufficiently informative—registrants should be reminded that mental as well as physical conditions can impair their fitness to practise, and be clearly informed of the consequences of making false declarations.

4. Retaining a health requirement related to Register entry

Q1. Do you agree that we need to retain some kind of requirement relating to health at the point of entry to the Register? If not, why not?

Summary

A majority of respondents—87 percent—agreed with this question, with 5.2 percent disagreeing, and 7.8 percent who did not respond to this question, or unclear in their response.

A few of the responses agreeing with maintaining a health requirement supported retaining the health reference, while most stated that some form of health requirement other than the current health reference was needed.

4.1 Retaining a health requirement for registration

We received the following comments agreeing that we should retain some form of health requirement at point of entry to the Register.

Professional accountability/responsibility

4.1.1 It is important to maintain some form of health reference to ensure professionals are accountable for maintaining and managing their health to protect those who use their services.

Proportionate response to risk to the public

4.1.2 Health requirements should be necessary, proportionate, and appropriate to what regulators need to know to carry out their role of protecting the public.

4.1.3 A form of health declaration at point of entry to the Register is necessary in order to ensure the HPC can respond meaningfully to any change in a registrant's health which affects their fitness to practise at a later date.

4.1.4 There are few occasions when personal health issues would prevent an individual from gaining entry to the register, and when health issues are identified, they should be dealt with on a case-by-case basis.

Cost/difficulty for applicants

4.1.5 The health reference has proved to be an awkward for a number of people to fulfil, particularly when they have moved locations within the preceding couple of years. The new proposals could make the registration process easier for these people without putting the public at risk.

4.1.6 One respondent noted that under the present system, a potential registrant needs their GP to complete the health reference, but different GPs set different fees for this service—some applicants pay nothing, while others are required to pay a substantial fee, up to £100. This

amount of money is often difficult to find for applicants who are completing training positions or study.

Ensuring the professional can fulfil their role

- 4.1.7 It is important to know that a professional is physically and mentally capable of carrying out their role.
- 4.1.8 A health requirement linked to registration is as essential as a good character requirement.

4.2 A health requirement should not be linked to registration

We received the following comments disagreeing with keeping a health requirement related to entry to the Register.

Discrimination

- 4.2.1 One respondent suggested that individuals should not have to declare health problems that are of no relevance to their role and responsibility.

Employer responsibility

- 4.2.2 While acknowledging that a practitioner's health can affect their practise, one respondent recommended that this issue should be a matter of responsibility for employers and colleagues rather than regulators.

4.3 Maintaining a health reference

- 4.3.1 A number of respondents to this question felt that only the current health reference system would effectively protect the public, as those health professionals who have unidentified or unmanaged health issues may not self-declare responsibly, and could pose a risk to the public unless they were identified through health screening. This issue is covered in more detail in the responses to question 2.

5. Replacing the health reference with a self-declaration

Q2. Do you agree we should remove the health reference as a requirement for entry to the Register and replace it with a self-declaration? If not, why not?

Summary

A majority of respondents—84.4 percent—agreed with the statement, with 10.4 percent disagreeing, and 5.2 percent unsure or unclear of their response.

While a large majority of respondents agreed with the proposal of removing the health reference as a requirement and replacing it with a self-declaration, many of those respondents also highlighted issues to consider around professionals who may not self-declare accurately. Many of those issues were also raised by respondents who disagreed with the proposal.

5.1 Why the health reference should be replaced with a self-declaration

We received the following comments agreeing that we should remove the health reference as a requirement for entry to the Register and replace it with a self-declaration.

Professional responsibility/accountability

5.1.1 A majority of respondents who responded positively to this question felt that replacing the health reference requirement with a self-declaration was an appropriate response which reflects the accountability and responsibility given to practising health professionals, and that they are capable of recognising and managing their own health issues.

5.1.2 Self-declaration at the start of registration and professional practice places the onus on the professional to demonstrate knowledgeable, ethical, and responsible behaviour throughout their career.

Proportionate response to risk to the public

5.1.3 A significant number of respondents who supported the proposal felt that the self-declaration requirement was proportionate to the risk posed to the public—as long as there were systems in place to allow the HPC to verify the health status of professionals or to take fitness to practise action when concerns about a professional's health are raised.

Consistency with requirements of other health regulatory bodies

5.1.4 Several of the health regulatory bodies who responded to our consultation related their own experiences of using a similar self-declaration requirement for the professionals on their registers. This group of regulators had all found that there were very few occasions where self-declarations are found to be incorrect.

- 5.1.5 A number of other respondents who were not health regulatory bodies felt that our proposal to replace the health reference with a self-declaration was appropriate as it is consistent with the approach taken by other health regulators.

Inconsistent application of the health reference requirements

- 5.1.6 Inevitably, there are many different interpretations of the health reference requirements and how they should be applied. Some respondents felt that GPs often did not understand the requirements well enough to be able to give an appropriate assessment of an applicant's health and associated fitness to practise. This means that the reference process is inconsistent, with some applicants subjected to greater scrutiny by their GPs than others. This issue was raised by a number of respondents, with one respondent suggesting that the depth of assessment can range from 'thorough to cursory'—calling into question the accuracy of the health reference process, and whether it is an adequate way of protecting the public.
- 5.1.7 A number of respondents questioned the ability of GPs to be able to make valid judgements as to whether an applicant is capable of practising safely in their role. While a doctor providing a health reference will be able to identify a health condition, they are less able to state for certain whether that health condition would mean that the professional in question was unfit to practise.
- 5.1.8 Linked to the concerns noted in the previous paragraph, several respondents shared details of their experiences of their own difficulty in obtaining a health reference by their GP because of abnormal test results or the possibility of a future health problem which should not affect their ability to practice safely and effectively.
- 5.1.9 One respondent was concerned that the health reference system is open to discriminatory practice, so applicants with disabilities or mental health issues may be treated unfairly or face disproportionate difficulty in applying for a health reference, due to the limited knowledge or prejudice of individual GPs.

Cost and other difficulties

- 5.1.10 Linked with the concerns identified above, a number of respondents stated that the widely varying charges set by different GPs for the supply of a health reference are disproportionate, and it is unreasonable to expect those applicants who are asked to pay a significant fee to accept this expense when other applicants may not be charged at all.
- 5.1.11 As noted in a number of comments linked to question 1, a number of respondents noted the difficulties faced by some applicants in accessing a GP with the required knowledge of their health record, given that many newly qualified professionals may move location in order to start employment.

Managing health conditions

- 5.1.12 A number of respondents told us that when if a person is unwell, even with a serious illness, that will not necessarily mean that their fitness to practise is impaired. However, several respondents provided details of their own experiences of struggling to obtain health references because they had health conditions.
- 5.1.13 Several respondents commented that because of the way the current health reference requirements are interpreted, this may cause some potential applicants to avoid seeking treatment for medical problems from their GPs, as they may be concerned that they would be unable to obtain a health reference at a later date and then be unable to register to practise. This could potentially place the public at greater risk than if those professionals were able to self-declare their conditions, and then feel more confident in seeking appropriate treatment and support.

Identifying and assessing applicants with health conditions

- 5.1.14 A number of respondents who supported removing the health reference and replacing it with a self-declaration felt that the HPC should still be aware of—and put systems in place to deal fairly with—the small minority of applicants who will be unable to, or will decide not to self-declare their health conditions responsibly. This group of people may include individuals with mental health conditions or addictions whose medical condition may mean that their insight into their own health and ability to practise safely and effectively will be impaired to a certain degree, and who will not be capable of self-declaring responsibly. There may also be another group of people who would consciously decide to disguise the fact that they have a medical condition which could affect their ability to practise. A number of suggestions were made as to how this identified risk could be managed—by the HPC, other organisations, and responsible professionals—and these suggestions are detailed in the following paragraphs.
- 5.1.15 All the respondents who raised this issue as a concern felt that the HPC needs to have a means of identifying and effectively managing those applicants who cannot or will not responsibly self-declare their health conditions.
- 5.1.16 Several respondents suggested that if the self-declaration is put in place, then registrants should be reminded of their duty to declare concerns regarding registered colleagues. As an extension of this one respondent suggested that registrants in senior positions with supervisory responsibilities should also be encouraged to report concerns about pre-registration trainees.
- 5.1.17 Another respondent told us that the self-declaration requirement should be considered in conjunction with strengthening good employment practices in workplaces and encouraging employee health at work.

These measures could be included as part of regular performance appraisals and other wider workplace measures.

- 5.1.18 One respondent suggested that a system of ongoing medical revalidation could be a way of identifying professionals who have not declared their health conditions.
- 5.1.19 A number of other respondents made suggestions for forms of health-related checks other than self-declarations, which would potentially be an effective way of identifying applicants who are unable or unwilling to self-declare responsibly. These suggestions and comments are covered in sub-section 5.3.

Other comments

- 5.1.20 One respondent stated that the 'one-size-fits-all' approach applied to checking the health status of all professions regulated by the HPC is unfair as different professionals will need to be fit to practise different procedures depending on the role they fulfil.

5.2 Why the health reference should remain

We received the following comments disagreeing with to proposal to remove the health reference and replace it with a self-declaration.

Risk posed by undeclared health conditions

- 5.2.1 All the respondents who shared comments on their opposition to the proposal to remove the health reference and replace it with a self-declaration raised concerns about the risk posed to the public by applicants who are unable or unwilling to self-declare responsibly. A number of points—some of which were similar to concerns noted by respondents who agreed with the proposal—were raised in relation to this issue, and these are summarised below.
- 5.2.2 Health professionals could pose a risk to the public if they were able to practice with an unidentified or undisclosed health condition. There will be some professionals who will lack the self-awareness required to be able to self-declare a health condition—especially a health condition they themselves are unaware of, or perhaps one which they may wrongly decide does not affect their fitness to practise. There may be other health professionals who decide to disguise the fact they have a health condition in order to be able to practice.
- 5.2.3 There are some health conditions which may not affect the day-to-day functioning of a professional outside of their work, but which could put patients at risk in a healthcare environment. These conditions could include a range of mental health issues, Parkinson's disease, multiple sclerosis, or substance abuse. People with these types of conditions may lack the self-awareness needed to declare their condition responsibly, and may only be identified through a form of health screening such as the current health reference system.

- 5.2.4 One respondent suggested that there is an associated risk to employers who employed registered professionals in good faith, although it may turn out that some professionals should not be on the HPC register because of undeclared health conditions.

Prioritising patient safety

- 5.2.5 A number of respondents told us that the health reference is a more adequate way of judging the fitness to practise of individual health professionals, and should be retained for the safety of the public—and particularly vulnerable service users.
- 5.2.6 A number of these respondents felt that patient safety should be put ahead of the inconvenience to professionals of fulfilling the health reference requirement. One respondent felt that ‘the health reference is as essential as the character reference, especially for professionals who work with emotionally and mentally vulnerable people’.

Need for further evidence

- 5.2.7 Two respondents suggested that it would be valuable to obtain more evidence of the safety of a regulatory process based on self-declaration before considering it as a legitimate alternative to the health reference.

Fairness of health reference

- 5.2.8 One organisation told us that there is ‘no evidence that [the health reference] prejudiced anyone in a way that would infringe the Disability Rights Act or the 2007 report from the Disability Rights Commission’.

5.3 Replacing the health reference with other requirements

We received the following comments which supported removing the health reference but suggested that other forms of health or fitness to practise assessments were more appropriate than a self-declaration.

Occupational screening

- 5.3.1 Several respondents asserted that the occupational screening undertaken by many employers is a more relevant way of assessing a professional’s ability to carry out their role safely and effectively than the current health reference by a GP.

Fitness to practise declarations

- 5.3.2 One organisation suggested that ‘there may be value in the applicant’s higher education institution, or competent authority if applying from outside of the United Kingdom, also providing a fitness to practise declaration as part of the initial registration process.’

Requests for GP health references

- 5.3.3 One organisation suggested that if the HPC decided to remove the health reference requirement, that it should retain the right to ask an applicant for a health reference or check up by a GP when or if a health concern is subsequently identified.

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6. Proposed terms of self-declaration

Q3. Do you agree with the terms of the proposed self-declaration? If not, why not? The proposed declaration states: 'I confirm I do not have a health condition which would affect my safe and effective practice of my profession'.

Summary

A smaller majority than for the previous questions agreed with this statement, with 70.1 percent of respondents agreeing with the terms of the self-declaration. 14.3 percent disagreed either wholly or partially with the terms, while a larger number of respondents—15.6 percent—were unclear in their response or chose not to answer this question. Some of these respondents may have felt that their answer to this question was implicit in their response to question 2.

A number of respondents suggested some minor amendments to wording or sentence structure to clarify the meaning of the self-declaration, but generally agreed with the overall intent of the proposed declaration.

6.1 The terms of the self-declaration are adequate

We received the following comments in support of the proposed terms of the self-declaration.

Proportionate and appropriate

6.1.1 A number of respondents who commented positively on the proposed terms of the self-declaration felt they were appropriate as they focused on an individual's health and their ability to practise safely and effectively, while placing emphasis on that individual's responsibility to have insight into their own health status as a professional.

Declaring all health conditions

6.1.2 While agreeing with the basic principle of the declaration, a number of respondents felt that applicants should be encouraged to declare all information relating to their health whether or not any condition they may have could affect their fitness to practise. This would allow the HPC to be able to make an informed judgement as to whether further investigation of a condition was necessary. One respondent suggested that this would also allow the HPC to track 'at risk' professionals for future issues.

Guidance

6.1.3 A number of the respondents who agreed with the terms of the self-declaration also strongly supported our intention to provide updated guidance related to the self-declaration requirement. Some respondents made suggestions for issues which should be covered in the guidance—these are summarised below.

- 6.1.4 Applicants with health conditions should be given a clear understanding as to whether they should or should not declare.
- 6.1.5 Clear guidance should be provided to applicants on the purpose of the self-declaration process, the responsibilities it gives them as autonomous professionals, what the limits of the process are, and how the application would be taken forward if the applicant did have a health condition.
- 6.1.6 The guidance should make clear the implications and/or consequences of signing a self-declaration. One respondent told us it should be made clear that failure to disclose relevant information would be considered an offence.
- 6.1.7 One organisation suggested that any guidance produced should make clear the links between the self-declaration process at point of entry to the register and the existing self-declaration requirements regarding changes to health and good character of professionals already on the register, as well as clarification of what the terms 'health' and 'good character' mean.
- 6.1.8 One respondent suggested that the guidance should also make it clear that employers need to know of health conditions in order to provide appropriate support to registrants, and that employers should be advised on how to handle false declarations by registrants who are unaware of their health condition.

Similarities to other regulators

- 6.1.9 A number of respondents supported the terms of the self-declaration as being similar in style and requirement to other health regulatory bodies.

6.2 The terms of the self-declaration are inadequate

We received the following comments disagreeing with the proposed terms of the self-declaration.

Inadequate protection

- 6.2.1 Two respondents felt that the terms of the self-declaration were not adequate to protect the public.
- 6.2.2 One respondent told us that 'it is not possible to word any self-declaration to establish any degree of culpability on the part of the professional if the declaration was made in good faith but [the professional then] placed patients at potential risk'. This respondent felt that only by producing a certificate of medical fitness would an applicant adequately prove that they were safe to practise.
- 6.2.3 Another respondent stated that a number of other issues need to be covered in the self-declaration to take into account the individual circumstances of different applicants, and that the terms of the declaration should make it clear to applicants the penalties for not declaring relevant health conditions.

Managing health conditions appropriately

- 6.2.4 Several respondents felt that while the principle of the proposed self-declaration is good, the declaration should allow differentiation between not having any relevant condition and having such a condition but it not impairing fitness to practise because the professional making the declaration is managing it appropriately.
- 6.2.5 Two other respondents felt that the terms of the self-declaration should take into account the fact that some health conditions or impairments can fluctuate, and that applicants should be reminded that any condition that affects judgement or performance needs to be considered as part of the declaration process.

Self-awareness

- 6.2.6 Two respondents suggested that the terms of the wording should be changed from 'I confirm I do not have a health condition' to 'I confirm I am not aware of a health condition which would affect my safe and effective practice of my profession'. One respondent felt that by posing the declaration question in this way, the HPC and the applicant would be able to make a decision on fitness to practise 'in partnership'.

Minor amendments

- 6.2.7 A number of respondents agreed with the general principle of the self-declaration but suggested small amendments to the wording of the declaration, which are summarised below.
- 6.2.8 Another respondent suggested that the word 'would' should be replaced with 'could', recognising that there are some health conditions which might affect a professional's fitness to practise in some situations but not in others.
- 6.2.9 One other respondent felt that the declaration would make more sense if it read 'I confirm I do not have a health condition which would affect *the* safe and effective practise of my profession'.

7. General comments

Summary

In this section we have summarised the comments we received of a more general nature which were not directly related to each of the consultation questions but which were about health requirements relating to registration generally. Many of them touch upon the themes outlined in responses to the individual questions.

A small number of respondents chose not to answer some or all of the consultation questions, but provided evidence of their own or colleague's experiences of fulfilling the health reference requirements.

It should be noted that some of the comments we received showed that some respondents were confused about the current health reference requirements and how they work in practice.

7.1 Professionals with disabilities or mental health conditions

7.1.1 A number of professionals who have disabilities or mental health conditions shared their personal experiences of applying for the health reference in order to register with the HPC.

7.1.2 One professional who has a physical disability told us about the difficulties they had faced in applying for a health reference because some doctors do not understand the HPC's standards of proficiency, and how they should apply to professionals with disabilities. This respondent also felt that because of societal prejudice, applicants with disabilities may not be trusted to adequately self-assess their own health condition and associated ability to practise, even if they are able to do so safely.

7.1.3 Another registrant who has a mental health condition felt that from their personal experience they would not always be adequately self-aware to be able to responsibly declare their own health status all the time. This respondent felt that there is still a role for a medical referral in the HPC's registration procedures, as GPs who have a role in caring for applicants with ongoing health conditions will be best-placed to give a clear judgement as to that individual's ability to practise safely.

7.2 Checking the health status of new professions

7.2.1 One respondent questioned the current HPC policy of automatically transferring professionals from pre-existing voluntary registers onto the HPC register when that profession becomes regulated. They suggested that this may not be adequate to protect the public from professionals who may be on those registers but who did not need to prove their fitness to practise in relation to their health, in order to enter the pre-existing register.

7.3 Employer duties

- 7.3.1 A number of respondents suggested that if the HPC brings in a requirement for applicants to self-declare any ongoing health conditions, we should remind employers of their duties to proactively support registrants with long-term health conditions, as well as clarifying the process for referral to the HPC when necessary.
- 7.3.2 One respondent felt that the fitness to practise of individual professionals is better managed by their employer, and that there is an adequate legislative framework in place to do so, rather than requiring applicants to submit self-declarations.
- 7.3.3 One respondent wondered whether there would be a further duty placed on employers to more actively monitor and report registrants' health problems to the HPC if a self-declaratory requirement was introduced.

7.4 Fitness to practise information from training institutions

- 7.4.1 One respondent commented that the staff responsible for organising and teaching training courses would be well-placed to know any significant health issues relating to recently graduated students. This respondent suggested that it should be the responsibility of individual universities to inform the HPC of any particular risks pertaining to particular students, or to advise the student that they themselves should inform the HPC when they register.
- 7.4.2 Another respondent suggested that health reference is not necessary for new graduates applying immediately after completing a training programme, as they are checked for fitness to practise due to clinical training placements while on the course. Under this arrangement, after a certain amount of time had elapsed (the suggested period was 2 years), students who had not applied for registration by that point would then need to complete a health reference.

7.5 Alternative requirements

- 7.5.1 One respondent who felt that the self-declaration by itself would not adequately protect the public from professionals who cannot or would not declare health conditions responsibly, suggested that other practising registrants on the same part of the register being applied for should be required to 'sign off' new applicants as being fit to practise. This requirement could be used in conjunction with the self-declaration, and would remove the difficulties of employee-employer interpretations of fitness to practise issues.
- 7.5.2 Another registrant suggested that the health reference requirement should be retained and repeated regularly throughout a registrant's career.

7.6 Understanding the health reference requirements

7.6.1 Three respondents questioned the necessity of replacing the health reference with another form of health-related requirement, if one of the major concerns about the health reference is that doctors misunderstand the requirements set. These respondents suggested that the HPC should provide further clarification for GPs on the health reference requirements so they are interpreted in a more uniform manner.

7.7 Consistency with other health regulators

7.7.1 One respondent questioned the HPC's decision to replace the health reference with a self-declaration requirement, as they felt this would set the HPC apart from the practice of other health regulatory bodies, and would weaken the HPC's ability to identify registrants who were not fit to practise due to health-related conditions.

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8. Our comments and decisions

The following section sets out our response to the range of comments we have received to the consultation, and our recommendations for further action.

8.1 Proportionality and risk

- 8.1.1 A wide range of respondents—both for and against the idea of replacing the health reference requirement with a self-declaration—raised the issue of balancing the risk to the public with the proportionality of any health-related requirement asked for by the HPC. Any decision the HPC makes on changing a process of entry to our Register needs careful consideration of the balance between protecting the public and making an appropriate and proportionate assessment of any individual's ability to practice safely and effectively. While we consider that the proposed self-declaration can be an adequate way of assessing a professional's health status and associated ability to practise safely and effectively, we understand respondents' concern that those applicants who cannot or will not self-declare responsibly are still taken into account.
- 8.1.2 Generally, we consider that with appropriate guidance and support, the majority of applicants will continue to show the necessary insight and understanding of their own health to be approved for entry to the Register. The small number of applicants currently refused HPC registration on the grounds of health suggests that the public would not be placed at increased risk if a self-declaration requirement was put in place. We also consider that as our registrants already practise as autonomous health professionals, that it is appropriate that they should demonstrate their individual understanding of their ability to practise safely and effectively at point of entry to the Register, as well as each time they renew their registration. This response is in line with our standards and the professional responsibility we expect from each professional on our Register.
- 8.1.3 While there is a risk that some applicants may not self-declare responsibly, if someone made a false declaration when applying for registration with us, we would investigate and could take action against that person, including removing them from our Register. As with registration, there have been only a very small number of cases where we have needed to take action against registrants because of an inappropriately managed health condition or disability. It is also likely that any registrant who is unaware of their own inability to manage their health would be brought to our attention through a variety of means—including colleagues and employers.

8.2 Understanding the health reference

8.2.1 We received a mixture of comments on the understanding of the health reference requirements. While a larger number of respondents felt that the misinterpretation of the requirements could lead to discrimination or at the very least an inconsistent application of the assessment, a smaller group of respondents felt that the HPC should instead produce better guidance so the requirements were applied more consistently. It should be noted that the current health reference guidance publication was produced in response to recognised concerns about the way in which the health reference requirements were being interpreted. However, despite the improved guidance, the requirements are still understood and interpreted differently by different doctors and applicants—even amongst respondents to the consultation, there was a varying degree of understanding of how the health reference process works in practice. While this issue is not the only factor in considering whether there is a fairer way of assessing applicants' health, it is a significant and ongoing problem, which we consider will not be solved by producing further guidance alone.

8.3 Discrimination

8.3.1 While some respondents told us that there is little or no evidence that anyone has been discriminated against when applying for a health reference, our concern is that if we continue to require applicants to our Register to complete a health reference, it is possible that some applicants may be subject to discrimination because of a health condition or disability. As there are many types of disabilities and health conditions which our registrants may have which would not necessarily affect their fitness to practise provided the condition or disability was managed appropriately, we would want to remove any potential barriers to those applicants seeking registration.

8.3.2 The HPC would want to avoid continuing a practice which was open to potential discrimination, as not only would this be unfair to applicants with health conditions or disabilities, but some people may be deterred from applying for registration because they are unduly concerned as to whether they could meet the health reference requirements. We also consider that by putting in place any other form of requirement where applicants needed another person to 'sign off' their health in some way would still be open to the type of discrimination highlighted above.

8.4 Guidance

8.4.1 We have noted the volume of comments around the need for clear guidance to accompany whatever decision the Council decides to make in relation to a health-related requirement for registration. In recognition of the concern expressed by many respondents as to how to ensure that all applicants are able to self-declare in a responsible and informed manner, we consider that we need to produce useful guidance for applicants covering what a self-declaration is and the associated responsibilities and consequences, and setting out when

we would expect applicants to declare any health conditions or disabilities they may have.

8.5 Cost

8.5.1 While cost is not the deciding factor for the HPC in deciding to remove the health reference, it is likely that the self-declaration would reduce the associated cost of doctor's fees and personal travel for applicants applying to the Register.

8.6 Consistency with other regulators

8.6.1 Some other UK health regulators have already adopted and successfully used self-declaration requirements, including the General Medical Council and the General Optical Council. For this reason, the HPC feels that a self-declaration would be consistent with the general standards of register entry for health professionals in the UK. We will also use the experiences of these organisations to inform our own development of guidance for applicants to our Register.

8.7 Conclusions/recommendations

Remove the health reference and replace with a self-declaration

8.7.1 We have decided to remove the health reference as a requirement for entry to the HPC Register, and replace it with a self-declaration of an applicant's health. We consider that this is a proportionate response to the risk posed to the public, and that it will—when accompanied by guidance—be an effective way of assessing the health and associated fitness to practise of applicants to our Register. We also consider that by removing the health reference and replacing it with a self-declaration that we are removing the possibility of discrimination against applicants with health conditions or disabilities which would not affect their fitness to practise, and putting in place a system which should be easier for applicants to understand and manage. This move is also consistent with the approach taken by a range of other UK-based health regulatory bodies.

Guidance

8.7.2 We will produce two different types of guidance—the guidance notes which will accompany the application forms, explaining how to complete the self-declaration; and relevant amendments will need to be made to our *Guidance on health and character* explaining the principles of self-declaration and associated issues to consider. General issues to be covered in this guidance will include maintaining fitness to practise as an autonomous health professional, how fitness to practise can be affected by a practitioner's health, and the implications and consequences of making a self-declaration. A number of subsequent amendments will also need to be made to the guidance publication *A disabled person's guide to becoming a health professional*.

Timescales

- 8.7.3 Following consideration of this paper by the Education and Training Committee and Council, if agreement is reached to remove the health reference the health reference, will be replaced by a self-declaration requirement in January 2011, along with approved forms and guidance. This change is subject to changing the Health Professions Council (Registration and Fees) Rules 2003. We will also consult on associated changes to the *Guidance on health and character*.

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9. List of respondents

Below is a list of all the organisations that responded to the consultation.

1. Association for Clinical Biochemistry
2. Association for Clinical Cytogenetics
3. Association for Perioperative Practice
4. Association of Clinical Embryologists
5. Association of Hearing Healthcare Professionals
6. British Acupuncture Council
7. British Association for Counselling and Psychotherapy
8. British Association of Art Therapists
9. British Association of Dramatherapists
10. British Dietetic Association
11. British Psychological Society
12. Cardiff Community Health Council
13. Chartered Society of Physiotherapy
14. College of Occupational Therapists
15. Cwm Taf Health Board
16. Dumfries and Galloway NHS Board
17. East Midlands Strategic Health Authority
18. Faculty of Occupational Medicine
19. Federation of Clinical Scientists
20. General Medical Council
21. General Optical Council
22. Heart of England Foundation Trust
23. HS Education for Scotland
24. Institute of Biomedical Science
25. Neuropsychologists UK
26. NHS Birmingham East and North
27. NHS Highland
28. NHS Isle of Wight Human Resources
29. NHS Tayside
30. Northern Ireland Ambulance Service
31. Nursing and Midwifery Council

32. Play Therapy UK
33. Royal College of Midwives
34. Society for Vascular Technology of Great Britain
35. South East Coast Ambulance Service NHS Trust
36. South East Coast Strategic Health Authority
37. South West Strategic Health Authority
38. The British Academy of Western Medical Acupuncture
39. The Registration Council for Clinical Physiologists
40. The Society of Analytical Psychology
41. The Society of Chiropractors and Podiatrists
42. The Society of Clinical Perfusion Scientists
43. The Society of Sports Therapists
44. United Kingdom Council for Psychotherapy
45. Unite—Hospital Physicists' Association
46. Velindre NHS Trust
47. Welsh Ambulance Services NHS Trust
48. Welsh Nursing and Midwifery Committee

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Appendix

Proposed timetable

8 June 2010 - Education and Training Committee - consultation analysis; decision to remove the health reference

7 July 2010 - Council - consultation analysis; decision to remove the health reference

16 September 2010 - Education and Training Committee - consultation document for changes to the guidance for health and character; and statutory rules

17 September 2010 - Council - consultation document for changes to the guidance for health and character; and statutory rules

October 2010 - Statutory Rules laid in time to come into force in January 2011

October 2010 to January 2010 - Consultation on changes to the guidance for health and character; and statutory rules

18 November 2010 ETC - Registration department seek approval of revised application forms and guidance notes

9 December 2010 Council - Registration department seek approval of revised application forms and guidance notes

January 2011 - Implement decision to remove the health reference

March 2011 - Education and Training Committee and Council meeting - consultation analysis for consultation on guidance on health and character; final guidance agreed

April 2011 onwards - publication of revised guidance