

Fitness to Practise and Continuing Professional Development

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Introduction

A question has arisen on a number of occasions recently as to whether continuing professional development (“CPD”) can be used as a mechanism for ensuring that practitioners remain fit to practise and, in particular, whether such an arrangement would be an adequate means of ensuring that a person whose name appears on the register but who is in a non-practising post, such as an academic or managerial position, maintains the necessary skills to continue to be registered.

For the benefit of Council members I have set out below a summary of the provisions of the Health Professions Order 2001¹ relating to initial registration, renewal of registration and continuing professional development and the conclusions which I have drawn from an analysis of those provisions.

In considering this issue it is important to recognise that the Council’s obligation in establishing and maintaining the register are as set out in Article 5(2)(a) which provides that:

“The Council shall from time to time... establish the standards of proficiency necessary to be admitted to the... register, being the standards it considers necessary for safe and effective practice...”

Thus no matter how accommodating the Council may wish to be for practitioners who may be regarded as not being in practice, the Council’s task is to ensure that only those who are capable of safe and effective practice, at least to the minimum standards set for an entrant to the profession concerned, are admitted to and remain on register.

Initial registration

In order to be admitted to the register a person must satisfy the conditions set out in Article 9(2) which are, in essence, to:

- hold an approved qualification² which was awarded within five years of the date of the application (or, if the qualification is older, to meet any additional training required by Article 19(3));

¹ All references to Articles in this paper are to the 2001 Order

² There are exceptions to this requirements, such as “grandparented” applicants and those applying under the EC mutual recognition Directives but those distinctions are not relevant for this purpose.

- meet the requirements for safe and effective practice – that is, any standards of proficiency, good health and good character which the Council may establish under Article 5(2); and
- pay the registration fee prescribed by the Council.

Registration is for a fixed period determined by the Council and at the end of that period a registrant may be entitled to renew their registration in accordance with Article 10.

Renewal of registration

Renewal of registration is subject to the applicant;

- meeting the requirements of Article 9(2)(b) and (c), that is, the requirements for safe and effective practice and paying the prescribed fee, as set out in the second and third bullet points above;
- fulfilling any CPD requirements; and
- If the applicant has not practised since last registered³, meeting any additional education, training or experience requirements imposed by the Council.

Continuing Professional Development

Article 19 enables the Council, by means of Rules, to require registrants to undertake CPD and contains a separate power to require persons who have not practised to undertake “refresher” education or training or to gain current practical experience.

Article 19(4) requires the Council to establish the standards to be met in relation to (1) CPD and (2) refresher education or training and thus envisages a distinction between the two.

Can CPD be used as a test of continuing competence?

The Council has an obligation to be satisfied that a registrant is capable of safe and effective practice and CPD could only be used to provide that information if was extremely prescriptive and amounted to a test of competence. Article 19 is drafted in a manner which clearly indicates that CPD is not intended to be used for this purpose, as it makes a distinction between CPD and refresher training.

Further, the Council has no power to require registrants to undergo periodic competence testing as part of the renewal of registration process; the power to require registrants to

³ or has practised for less than the period which the Council has prescribed for this purpose

undergo such testing only applies where there are adequate and justified grounds for concern in a particular case. In this regard it should also be noted that even if the Council's powers could be construed to permit such a course of action (and my clear advice is that they cannot) such a course of action would be disproportionate in Human Rights Act terms given that there is no suggestion that such testing is necessary for the overwhelming majority of registrants who are in day to day clinical practice.

The principal means of controlling non-practising registrants is the renewal of registration process. Article 10 clearly envisages that a registrant should be obliged to disclose the fact that they have not been practising and for the Council to then impose appropriate refresher training etc. Obviously the documents which a registrant completes on renewal of registration should provide for periods out of practice to be disclosed and failure to provide true and accurate information can then be dealt with as misconduct.

For this purpose some consideration needs to be given to what constitutes practice and there is no reason why the Council should adopt a narrow construction of that term so that in only encompasses those who treat patients or clients on a daily basis. A person engaged in the management of a practice or department or who teaches practitioners is just as much a practitioner as anyone else. Indeed, Paragraph 2(2)(a)(iv) of Schedule 1 to the 2001 Order recognises this as one of the requirements for registrant members elected to the Council is that they should be:

“...wholly or mainly engaged in the practice, teaching or management of [their] profession... or in research in these fields”

Thus, the 2001 Order envisages “practice” being a broad concept and this is consistent with the Council's obligations under Article 5, as a person would need to become so far removed from practice as to lose the ability to meet the standards of an entrant to the profession before they needed to be removed from the register.

Clearly, for those who are not involved in day to day clinical practice, CPD may provide a mechanism by which they can keep their skills up to date but the types of course (and other activities) which should be accredited for CPD purposes should reflect the fact that CPD is about *continuing* professional development. Thus CPD should allow practitioners to learn new skills and techniques, update their knowledge, keep abreast of the latest trends and help them become better practitioners in the widest sense, for example, by improved practice management standards. Article 19 quite clearly envisages that refresher training for non-practitioners should be different from CPD but that does not mean that such additional training cannot be accredited as CPD, simply that CPD should not be limited to additional training alone.

In conclusion, a registrant's ability to practise safely and effectively must be considered quite separately from their compliance with any CPD regime. Whilst a registrant can be disciplined for failing to comply with CPD requirements it does not make that person an incompetent practitioner. Equally, it must be borne in mind that a practitioner may be found to be incompetent notwithstanding that they have met their CPD requirements.