

Regulation, Employment and Disability

The function of HPC, like any other similar regulator, is to establish, apply and ensure compliance with threshold standards for each profession it regulates as a whole. In doing so, HPC acts as the “gatekeeper” for entry to those profession but, because of the variables involved, does not and cannot ensure that registrants will have the appropriate knowledge, skills or other qualities for a particular post. HPC’s role is about fitness to practise in the broadest sense rather than fitness for purpose in the specific sense. Employers need to recognise that limitation and ensure that their own selection procedures properly address fitness for purpose.

The gatekeeping standards that HPC uses are the Standards of Proficiency. Those standards, drawn up in collaboration with the professions and other stakeholders set out the threshold knowledge ad skills which are required for entry to the register and thus to professional practise. The Standards apply upon entry to the HPC register and throughout a practitioner’s professional life. They are the standards which every registrant must, as a minimum, adhere to and against which any lack of competence will be judged. Nonetheless they are threshold standards and therefore it must be must be remembered that they only represent the minimum requirements for registration expected of a newly qualified practitioner.

The regulator, in putting or keeping practitioners on the register, is effectively making a statement that they are considered to be capable of practising their profession safely and effectively, but is not making any statement about their suitability for a specific post within that profession. Registrants will clearly not be automatically suitable for every post and employers will need to assess their suitability, taking account of any legal obligations, not only in terms of knowledge, skill and experience but also a wide range of other factors including any relevant health or disability issues.

Regulation is by its nature a discriminatory process and therefore applicants with certain health problems or disabilities may find that they are not eligible for registration. Discrimination, provided it is fair and objective, is not wrong but that word is often used as shorthand for “unfair discrimination”, which clearly is wrong.

HPC’s function is to protect the public and therefore in some instances it will have to exclude a person from registration. The critical factor is that no one should be excluded on the basis of a Standard or other requirement which is biased, unfair or simply not required as a measure of public protection. The Standards against which a decision to admit a person to the register is made must be objectively justified.

For example, it is now well established that a person who is visually impaired is eligible for registration as a physiotherapist provided that they have been trained to practise with that disability. There is clearly a difference between a student who began his or her training with visual impairment and thus was trained in a manner which accommodated that disability, and a student who has lost his or her sight as a result of an accident which occurred shortly after completing their course which they undertook without any visual disability. But, subject to that fairly obvious caveat, visual impairment is not a ground for HPC refusing to register someone as a physiotherapist.

Equally, such a physiotherapist will be able to undertake a broad range of roles within the profession but, just like any other applicant, may not be suitable for every post that comes along. Whether that physiotherapist should be employed in a specific post, if necessary, taking account of the obligation to make reasonable accommodations under the Disability Discrimination Act, will be a matter for the employer and not the regulator.

As HPC oversees a system of profession-led self regulation, once practitioners are on the register, it is largely for them to manage their own scope of practice, including making adjustments to take account of any disability that may come to affect them. Employers need to be aware of, and support practitioners in meeting, that obligation.

There are many health problems or disabilities that may develop during a person's working life which, provided the practitioner effectively manages his or her own scope of practice, will not preclude them from remaining on the register even though it may well have prevented them from being registered in the first place. For example, the invasive nature of podiatric practice would preclude applicants with significant visual or motor skills impairment from being registered as a podiatrist, because they would be unable to meet essential elements of the Standards of Proficiency. However, a podiatrist who developed such a disability later on would be able to remain on the register if they were effectively managing their own scope of practice, for instance by occupying a managerial post or some other position where their disability had no bearing on their personal fitness to practise.

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