

Education and Training Committee, 9 June 2016

Health and Character Declarations Policy

Introduction

At its 3 March meeting the Committee approved changes to the Health and Character Declarations Policy which are intended to significantly reduce the numbers of declarations having to be considered by a Registration Panel.

A further change to the Policy is now needed, however, to ensure that applicants for registration or for readmission to the Register as well as registrants renewing their registration who have been cautioned or convicted for criminal offences are treated equitably irrespective of the UK country in which they practise or reside.

The need for this change is rooted in the same issue which has necessitated an amendment to the Standard of Acceptance for allegations. That amendment was approved by Council in May. Our proposal now is to replicate that change to the Standard of Acceptance in the text of the Policy.

Background

The background was fully set out in the paper considered by Council on 20 May in relation to the change to the Standard of Acceptance.

In sum, the Rehabilitation of Offenders Act 1974 provides for a large number of offences to become “spent” after specified time periods. The Act applies throughout Great Britain; and very similar legislation applies in Northern Ireland.

Its effect is that a person need not disclose spent convictions when asked about their criminal record unless a “statutory exception” applies. One statutory exception is that spent convictions must be disclosed for the purpose of enabling the HCPC (and other regulators) to assess a person’s suitability for registration.

In 2013 the Court of Appeal (of England and Wales) ruled that blanket disclosure of all cautions and convictions under a statutory exception was disproportionate. This led to a change in the law in England and Wales to introduce the concept of “protected” cautions and convictions. Most cautions/convictions are now protected from the need to disclose after specified periods. For example, an adult caution is protected after 6 years and an adult single conviction after 11 years.

In 2014 the Supreme Court – which has UK-wide jurisdiction – affirmed the Court of Appeal’s decision and made a declaration that the statutory exceptions disclosure regimes were incompatible with a person’s ECHR Article 8 right to respect for private life.

The law in Northern Ireland and Scotland was subsequently amended to give effect to this UK-wide ruling. However there are significant differences from the legal changes made in England and Wales. These differences were outlined to Council in May and are included again at Appendix 1.

Impact

As with the Standard of Acceptance, unless action is taken to amend the Health and Character Policy there is a risk anomalies will arise in the treatment of applicants for registration depending upon their UK country of residence.

As was noted in the Council paper in May, the HCPC must respect the differences in the individual countries’ legislation. This controls the information the HCPC is entitled to require a registrant or an applicant for registration to disclose. The use the HCPC makes of this disclosed information, however, is a matter for discretion. Disclosures of cautions/convictions simply form a part of the total information taken into account in determining whether a person is capable of safe and effective practice - Article (9)(2)(b) of the HSWPO 2001.

In May Council agreed that the Standard of Acceptance should be amended to provide, in effect, that cautions/convictions disclosed to the HCPC will, unless the Director of Fitness to Practise directs otherwise, be disregarded if they would be protected in England and Wales. We are proposing a like change to the Health and Character Declarations Policy. The proposed amendment is marked at Appendix 2.

Decision

The Committee is asked to approve the amended Health and Character Declarations Policy.

Resource implications

There are no additional resource implications as a result of this paper.

Financial implications

There are no additional financial implications as a result of this paper.

Appendices

- 1. Protected cautions and convictions
- 2. Health and Character Declarations Policy

Date of paper

June 2016

Protected convictions and cautions

England and Wales

In England and Wales, a spent conviction is a "protected conviction" if:

- it does not relate to a "listed offence";
- no custodial sentence was imposed;
- the person has no other convictions; and
- either:
 - if the person was under 18 when convicted, five and a half years or more have elapsed; or
 - if the person was 18 or over when convicted, 11 years or more have elapsed.

In England and Wales, a police caution is a "protected caution" if it does not relate to a "listed offence" and either:

- if it was given to a person under 18 at the time of the caution, two years or more have elapsed; or
- if it was given to a person aged 18 or over at the time of the caution, six years or more have elapsed.

For either purpose a "listed offence" means an offence to which Article 2A(5) of the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 applies.

Scotland

In Scotland, a spent conviction is to be a "protected conviction" if:

- it does not relate to an offence in the lists of offences which:
 - must always be disclosed; or
 - are to be disclosed subject to rules; or
- it relates to an offence in the list of offences which are to be disclosed subject to rules but at least one of the following applies:
 - the sentence imposed was an admonition or absolute discharge;
 - if the person was under 18 when convicted, seven and a half years or more have elapsed; or
 - if the person was 18 or over when convicted, 15 years or more have elapsed.

A person who would otherwise need to disclose a 'Schedule B1' or 'Schedule 8B' offence (offences which are to be disclosed subject to rules) can apply to a Sheriff under section 116ZB of the Police Act 1997 for that offence to be omitted from a disclosure certificate.

The Sheriff may grant that application if satisfied that "the details are not relevant for the purpose for which the certificate was required". In that event, Disclosure Scotland will issue a new certificate with the relevant offence(s) omitted.

As there is no equivalent to police cautions in Scotland, the legislation makes no reference to the disclosure of alternative disposals to prosecution in that jurisdiction.

Northern Ireland

In Northern Ireland, a spent conviction is a "protected conviction" if:

- it does not relate to a "listed offence";
- no imprisonment, service detention or custodial order was imposed;
- the person has no other convictions; and
- either:
 - if the person was under 18 when convicted, five and a half years or more have elapsed; or
 - if the person was 18 or over when convicted, 11 years or more have elapsed.

For this purpose "listed offence" means an offence listed in Article 1A(4) of the Rehabilitation of Offenders (Exceptions) Order (Northern Ireland) 1979.

Health and Character Declarations Policy

Introduction

The Health and Social Work Professions Order 2001 (the **Order**) provides that registration decisions, including decisions on whether a person meets the prescribed requirements as to good health and good character, are the responsibility of the Education and Training Committee (the **Committee**).

This document sets out the Committee's policy on dealing with health declarations and character declarations made:

- by applicants seeking admission or re-admission to the Register;
- by registrants seeking to renew their registration; and
- at other times by registrants ("self-referrals").

The Health and Care Professions Council Standards of Conduct, Performance and Ethics set out the HCPC's expectations of registrants. It is also expected that anyone who wishes to be admitted to the HCPC register will meet those standards. They are the basis on which the HCPC assesses potential fitness to practise concerns about a registrant and they are also the standards that will be used by the Committee to help decide whether to admit a prospective registrant to the Register.

Registration Assessment Panels

Health and character declarations made to the Committee by a person seeking admission or re-admission to the Register or on renewal of their registration will, other than in the circumstances set out below, be referred to a Registration Assessment Panel. The Panel will be comprised of three members, at least one of whom will be a registrant from the same profession as the person concerned and one of whom will be a lay member. If detailed health issues need to be considered, the Panel may include a doctor or receive advice from a medical assessor.

The function of the Registration Assessment Panel is to provide a recommendation to the Committee on the course of action that should be taken in each case.

When considering health declarations, Panels should take account of whether the applicant/registrant has:

- sought medical or other support as appropriate;
- made reasonable adjustments to their working arrangements or agreed them with their employer; and
- restricted their scope of practice to those areas where they are capable of meeting the Standards of Proficiency.

When considering character declarations, Panels should take account of:

- the nature and seriousness of the offence or misconduct;
- when the incident occurred; and
- the applicant's/registrant's character and conduct since the incident.

Registration Assessment Panels will be convened on a regular basis to ensure that cases are dealt with expeditiously for all of the HCPC professions.

Admission and Re-admission

Applicants seeking registration by the HCPC must satisfy the Committee as to their good health and character.

Rule 5 of The Health and Care Professions Council (Registration and Fees) Rules Order of Council 2003 provides that:

"5. – (1) For the purpose of satisfying itself as to the good character of the applicant, the Committee shall have regard to-

- (a) the character reference provided under rule 4(2) or (3);*
- (b) any conviction or caution which the applicant has received in the United Kingdom for a criminal offence or a conviction received elsewhere for an offence, which if committed in England and Wales, would constitute a criminal offence;*
- (c) any determination by a body responsible for regulating or licensing a health or social care profession to the effect that the applicant's fitness to practise is impaired; and*
- (d) any other matters which, in the opinion of the Committee, appear to be relevant to the issue,*

and for this purpose the Committee may seek information additional to that provided with the application for registration from any person or source as it considers appropriate.

(2) For the purpose of being satisfied as to the physical or mental health of the applicant, the Committee shall have regard to:

- (a) the declaration provided by the applicant under rule 4(2)(b), and*
- (b) such other matters as appears to it to be relevant,*

and for this purpose the Committee may seek information additional to that provided with the application for registration from the applicant and from any other person or source as it considers appropriate and may require the applicant to be examined or further examined by a doctor nominated by the Committee.”

If an applicant declares a health or character issue, further inquiries should be made (in line with Rule 5(2) above) and the applicant must be advised that the information provided, and any further representations that they may wish to make, may be considered by a Registration Assessment Panel. The applicant must be given not less than 14 days in which to make any such representations.

The task of the Registration Assessment Panel in such cases is to make a recommendation to the Committee on whether the matters declared are of such a serious nature that the person concerned should not be admitted or readmitted to the register.

Renewal

Every two years, registrants are required to renew their registration. This involves making a declaration that:

- they continue to meet the HCPC’s standards of proficiency for the safe and effective practice of their profession; and
- there have been no changes to their health or relating to their good character which they have not advised the HCPC about and which would affect their safe and effective practice of their profession.

Where a registrant is unable to make that declaration, the case will be considered by a Registration Assessment Panel in the same manner as a declaration made on seeking admission or readmission to the register.

The recommendation that the Panel is asked to make to the Committee is whether the matters declared are of such a serious nature that the registrant should not be allowed to renew their registration.

If an application for admission, re-admission or renewal of registration is refused by the Committee, the person concerned has a right of appeal to the Council against that decision and will be informed of that right at the time they are informed of the Committee’s decision.

Self-referrals

Declarations made by registrants in accordance with the Standards of Conduct, Performance and Ethics are treated in the first instance as registration rather than fitness to practise issues.

However, if the information disclosed is sufficient to suggest that the registrant's fitness to practise is impaired, then it may be appropriate for the matter to be investigated further under Article 22(6) of the Order. That decision is a matter for the Chief Executive and Registrar¹.

All convictions, cautions and other potential character issues must be declared to the HCPC². However, based upon the prior recommendations made by Registration Assessment Panels, the Committee has identified certain categories of cases where the information declared (whether by self referral or on admission, re-admission or renewal) will rarely have a bearing upon a person's registration.

Except where the Director of Fitness to Practise³ considers otherwise, no further action needs to be taken in relation to:

- a caution or conviction received by a person before or while undertaking a programme of study approved by the HCPC which (as the case may be):
 - was considered by the education provider as part of its admission procedures and the person was admitted to the programme; or
 - was considered by the education provider under its student fitness to practise process and the person was not excluded from the programme;
- a caution for an offence which is not likely to have a bearing on a person's fitness to practise, including but not limited to an offence specified as being of that nature in the HCPC's Standard of Acceptance for Allegations;
- a conviction for an offence which is not likely to have a bearing on a person's fitness to practise and where:
 - the conviction was received more than 5 years before the person applied for HCPC registration;
 - the conviction did not result in the person receiving a custodial sentence (which includes any suspended term of imprisonment); and
 - the person has not been convicted of any other offence since that conviction;

¹ under authority delegated by the Council

² other than a conviction or caution which is 'protected' under the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, the Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Order 2013 or the Rehabilitation of Offenders (Exceptions) Order (Northern Ireland) 1979.

³ or a person authorised to act on behalf of the Director.

- a conviction for driving (or being in charge of) a motor vehicle having consumed alcohol in excess of the prescribed limit⁴ where:
 - there are no aggravating circumstances (including, but not limited to, failure to stop or only doing so following a police pursuit, failure to provide a specimen, obstructing police, etc.);
 - the offence did not occur in the course of professional duties, en route to or directly from such duties or when subject to any on-call or standby arrangements;
 - the penalty imposed does not exceed disqualification from driving for 12 months (with or without a fine); and
 - it is not a repeat offence;

- a conviction for any other motoring offence unless there is evidence that the safety of the public or service users has or may have been compromised;

- disciplinary action taken by an employer which is unconnected to the practise of a relevant profession and does not relate to conduct involving
 - violence;
 - dishonesty;
 - inappropriate sexual behaviour;
 - substance abuse or the possession or supply of drugs; or
 - conduct of a racially motivated, homophobic or similar nature.

In order to ensure that applicants and registrants are treated equitably, except where the Director of Fitness to Practise⁵ considers otherwise, no further action needs to be taken in relation to a caution or conviction which is disclosed by a person but which, in England and Wales, would be a protected caution or protected conviction in respect to that person under the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975.

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⁴ a similar approach may be adopted in respect of a statutory 'drug driving' conviction but, before doing so, further inquiries may need to be undertaken concerning the source from which the person obtained the drug in question and, in particular, whether it was obtained in the workplace.

⁵ or a person authorised to act on behalf of the Director.