

The Health and Care Professions Council's approach to the investigation of health matters

Introduction

The purpose of this document is to set out the HCPC's approach to investigating concerns that indicate that a registrant may have a health problem. This document should be considered alongside our Threshold policy for fitness to practise investigations, practice notes and guidance for decision makers in relation to health matters and applying our Threshold policy.

The HCPC's overarching objectives are:

- to protect and promote the health and safety of the public;
- to protect and uphold public confidence in the professions it regulates; and
- to set and maintain standards of conduct and performance for members of those professions.

Under the Health Professions Order 2001 (the Order) a registrant's fitness to practise can be impaired for a number of reasons, which are set out in the legislation. One of those reasons is a registrant's physical or mental health. By impairment, we mean when a registrant is unfit or unsafe to practise without restriction.

When we receive a concern about a registrant's fitness to practise, from any source, we will carry out an initial investigation to obtain the relevant information about that concern. We will then assess the concern and the information we have gathered about it against our threshold criteria. If we consider that the threshold has been met, we will draft allegations based on the relevant information we have obtained. We may need to carry out further investigation to obtain information pertinent to those allegations. These allegations will then be referred to a panel of our Investigating Committee, who will consider if there is a case to answer. When a case-to-answer decision has been made we will prepare the case for a final hearing.

Our approach to assessing health matters set out in this document applies to all stages of the fitness to practise process.

Our standards of conduct, performance and ethics makes clear that registrants have a professional duty to make changes to their practise, or cease practising, where their physical or mental health may affect their performance, judgement or place others at risk (standard 6.3).

The HCPC will not normally need to take action in relation to a registrant's practise on health grounds, unless there is a risk to public safety, to public confidence in the profession or to the registrant themselves. Where we do need to intervene, we will take care to balance our duty to protect the public with the registrant's rights.

Factors we will take into account when assessing health matters

We will take all relevant factors into account when assessing any information that indicates that a registrant may have a health condition that presents an actual or potential risk to the safety of the public, themselves or the wider public confidence in the profession.

Factors we will consider include, but are not limited to, the following.

- Information that indicates the registrant has an untreated, unacknowledged or unmanaged physical or mental health condition.
- The registrant is not managing their condition appropriately, such as by not complying with medical advice, guidance or a treatment regime.
- Where harm has been caused to service users, or there is a real risk of harm being caused, where the registrant's health is a contributory factor.
- Where we have received conflicting information about the registrant's health condition and / or the impact of their condition on their ability to practise safely;
- The registrant lacks insight into the nature or extent of their health condition, or we receive other information such as from a medical professional that raises concerns about the registrant's level of insight.
- Where the registrant has sought to mislead others about the existence or significance of a health condition.
- There is relevant, similar fitness to practise history.
- There is a pattern of behaviour indicative of the registrant having an unmanaged health condition.
- The registrant has been convicted of a drink or drug related driving offence where there are aggravating factors. For example, where the offence occurred on the way to, during or way home from work; where service users or children were present in the car; and where open container(s) of alcohol were found in the car.
- The registrant is currently or has recently been detained under the Mental Health Act 1983.
- There is risk of relapse or recurrence, or the health condition is of a type associated with a higher risk of relapse.
- The employer is unaware of the registrant's health condition, or the registrant has not engaged or complied with a support plan put in place by the employer.
- The registrant has left their employment and / or there is no action plan in place to supervise the registrant.
- Information indicates the conduct, behaviour, judgement or professional performance of the registrant has been adversely impacted by their health condition. Or, it indicates they may have a health condition.

It is likely we will need to carry out an initial investigation in order to satisfy ourselves as to the nature and extent of a registrant's health condition, and whether it may impair their ability to practise safely and effectively. When making our assessment of a health matter we will apply the relevant tests and thresholds as set out in our Threshold policy for fitness to practise investigations.

In some cases, the referrals we receive that give rise to a potential health concern about a registrant also suggest concerns about the registrant's conduct or competence. For example, a registrant who takes controlled drugs from the workplace for their personal use.

The Order sets out that allegations relating to a registrant's health must be considered by the Health Committee, and all other allegations by the Conduct and Competence Committee. As such, where a case involves allegations of impaired fitness to practise relating to both a registrant's health and their conduct or competence, the Investigating Committee will need to determine which committee should consider the case.

In these circumstances, it will be necessary for us to investigate the wider context of the case. This ensures that we have a good understanding of what occurred, whether there is an underlying health issue and the relationship between the registrant's health and the incident in which they are involved. This will enable us to progress the case in the way which best addresses the risks and issues that the case gives rise to. It also ensures that the Investigating Committee have all the relevant information before them to make an informed decision.

Health records, information and assessments

The HCPC will take a proportionate approach to investigating health concerns and to obtaining relevant evidence about a registrant's current health status. We will seek to obtain readily available information from relevant sources in the first instance and will take into account the totality of the information we hold. We will not ask registrants to provide new information where sufficient evidence already exists.

The types of information we may need to obtain in the first instance include:

- documents from the registrant's employer;
- occupational health assessments or other documents;
- a reference from a registrant's GP or other relevant medical or healthcare practitioner, such as a substance abuse support worker; and
- a letter or reference from a hospital consultant or other specialist.

Depending on the type or nature of the health condition, the availability of other suitable medical information, or where it is unclear whether the registrant has an underlying health condition, we may need to ask a registrant to undergo an assessment with a suitably qualified medical assessor. This is because in exceptional circumstances a medical report may be required to determine whether there is an underlying health issue that calls a registrant's fitness to practise into question.

We will always seek consent from a registrant prior to asking them to undergo an assessment. We will also ask for a registrant's consent before we seek to obtain information about their health, or their medical records, from any medical or healthcare practitioner. Registrants will be given a clear explanation of how any health-related information will be used. In particular, how any information provided may be put

forward to a panel that will hear and determine any allegation made against the registrant.

The HCPC does not have powers to compel a registrant to provide information about their health, disclose their medical records or details of their treating practitioner or to undergo a medical assessment. A registrant's compliance with any request for disclosure or participation in an assessment is, therefore, voluntary. However, whilst we cannot compel a registrant to provide such information, doing so will help us undertake a full and accurate assessment of the matter against our Threshold policy. It will also help us reach an outcome more efficiently and effectively.

The above should be considered alongside additional guidance provided to HCPC decision makers about how to investigate health matters and the application of this policy.

Related documents:

- The HCPC's Threshold policy for fitness to practise investigations.
- Operational guidance for HCPC decision makers on applying the Threshold policy.
- Operational guidance for HCPC decision makers on investigating health matters.
- Standards of conduct, performance and ethics, standards of proficiency and other guidance.