Standards of Proficiency and Conduct

Given that there is some degree of overlap between the content of the standards of proficiency (SOP) and the standards of conduct, performance and ethics (SCPE), it is not unreasonable to question why the Health Professions Order 2001 (the Order) requires the Council two create these two, separate, documents rather than a single code.

For example, the SOP require registrants to 'be able to maintain confidentiality and obtain informed consent' whereas the SCPE states that registrants 'must respect the confidentiality of your patients, clients and users at all times'. Why is there this difference in emphasis?

The answer is that the SOP and SCPE perform two linked but nonetheless distinct roles.

In relation to the SOP, Article 5(2)(a) of the Order requires the Council to:

> 'establish the standards of proficiency ***necessary*** to be admitted to the different parts of the register being the standards it considers ***necessary*** for safe and effective practice under that part of the register'

Thus the SOP are principally the threshold standards for entry to the register, but are also the standards which apply throughout a person's professional life and against which that person will be judged if their competence is challenged.

As such, they must be written in a manner which makes them applicable in all of those situations, but in line with Article 5, primarily for those who have yet to come on the register.

Consequently, in terms of their language the SOP need to be expressed in expectational terms so that a person who is not yet on the register can comply with them. For example, a person undergoing training can comply with a requirement to "understand that fitness to practise must be maintained" but may not yet be in a position to put that into practice as, having just commenced training, they may not yet have a fitness to maintain.

Nonetheless, that requirement will still be effective in relation to a practitioner as, arguing in response to an allegation relating to fitness to practise that "it doesn't say I have to do it, just that I have to understand that I must do it. I do understand that, I just didn't bother doing it" is unlikely to be very convincing defence!

In relation to fitness to practise allegations, as the SOP are thresholds standards, their breach is of itself evidence that fitness to practise is impaired. As such they must be limited to what is necessary for safe and effective practice and, to that extent, cannot be aspirational in nature.

Article 21 of the Order requires the Council to "establish and keep under review the standards of conduct, performance and ethics expected of registrants and prospective registrants"

In contrast to the SOP, the SCPE do not have the same "force of law" and are, in effect HPC's Highway Code, in that breach of the SCPE can be taken into account in a fitness to

practise case but a breach of the SCPE alone is insufficient grounds to establish that fitness to practise is impaired. The case must be supported by other evidence. As such the SCPE can be aspirational.

Paradoxically, whereas Article 5 suggest that the SOP are just entry standards but in fact they also apply after registration, Article 21 states that the SCPE apply to both "registrants and prospective registrants" yet, in practice are of limited relevance to the latter. Although the SCPE may be considered when an application for registration is considered, the sorts of issues raised by applicants – such as prior criminal convictions – are matters which the HPC could determine on character grounds in any event, without recourse to the SCPE.

The SCPE are the standards expected of practitioners. As such they can be written in more 'absolute' terms than the SOP.

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