Agenda Item 6

Enclosure 4

Paper RC 13 / 03

REGISTRATION COMMITTEE

TEST OF COMPETENCE IN ENGLISH

From : the Executive

FOR DISCUSSION AND AGREEMENT

For applicants applying from outside the EEA the HPC can implement a test of competence in English. The Committee will make a recommendation to the ETC as to what test/s it considers acceptable to demonstrate language proficiency.

The International English Language Testing System (IELTS) is the test most commonly used by several regulators. HPC presently uses IELTS; candidates are asked to supply HPC with the result of the test. The test can be taken at any British Council Office around the world or in the UK.

The Committee is asked :

(a) to consider the continued use of the IELTS and, if appropriate, recommend to ETC its continued use,

(b) to consider and recommend the required IELTS Grade,

(c) to consider an alternative language proficiency test and, if appropriate, recommend to the ETC the adoption of such alternative test.

To : Chief Executives
GChC
GDC
GMC
GOC
GOstC
GSCC
HPC
NMC
RPSGB

21 February 2003

Dear Colleague

ASSESSING LANGUAGE COMPETENCE

I enclose a non-paper on the above on which I should welcome your views, either in writing or at your meeting with the Department on 10 March.

Yours sincerely

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ASSESSING LANGUAGE KNOWLEDGE : DISCUSSION PAPER

Introduction

UK regulators can assess the knowledge of English of overseas qualified practitioners, but not of EU nationals. Several factors provide the opportunity to consider the scope for.a more coherent overall approach. In essence, these arrangements date back 22 years, since when the regulatory environment has radically changed. The law and practice is complex and variable .The more strategic focus on international recruitment , the unprecedented expansion of the EU , together with negotiations on the draft EU Qualifications Directive have all stimulated debate. Annex A gives some background on that proposal and the current position. Annex B outlines some possible actions. These are very much subject to your views on the issues raised below, and any others you consider relevant.

1. Why assess language knowledge at all ?

What are you views on first principles ? For its part, the Government is committed to promoting excellence in communication skills across the whole health and care workforce within an overall commitment to positively driving up service quality and enhancing the experience of patients and clients. Strengthening inter-professional education so as to build communication skills into basic training is a specific priority.[1] It has also welcomed and acknowledged the substantial service contribution made by overseas-qualified staff. While their training and experience may have equipped them with adequate communication skills, deploying these still entails an appropriate level of linguistic competence. This in turn creates a demand for tailored induction programmes, to which NHS employers are already responding imaginatively.

2. How effective is language assessment ?

Is there any objective evidence of harm or risk to clients or colleagues due to communication deficits, differentiated by whether the practitioners concerned were

- overseas-qualified and subject to a pre-registration language check
- exempt from one because EEA nationals
- exempt from one because UK qualified ?

While such material would be valuable - assuming it was feasible to produce it - it may in the short-term be more useful to refer to the universal perception

[1] DH : Delivering the NHS Plan(2002), paragraph 9.7

revealed by responses to the draft Directive of the key role of communication skills, not just to manage risk but to positively drive service quality and patient empowerment.

3. What is special about health and care professions ?

The relevance of language skills to other occupations is not at issue. It is the totality of competences expected of health and care professionals that might be seen as creating a special case. Proficiency in speaking, understanding, reading and writing English is fundamental to every practitioner, for several reasons. He may be called on to act on his own initiative, and without supervision or support, in life-threatening and other critical situations. He may have routine contact with vulnerable patients, clients or carers, whose own ability to communicate may be affected through distress, disability, or dialect, or whose own first language is not standard English. He must, where appropriate, be able to explain diagnoses, treatment options, and drug regimes, and to obtain informed consent. He must be able to communicate rapidly and effectively with colleagues, employers, other agencies directly or indirectly involved with his clients' health and welfare, and with professional and regulatory bodies. He must be able to understand the ethical, legal and scientific norms relevant to his practice and to the delivery of health and care services at local and national level, and to keep abreast of developments in those fields. He must be able to participate in continuing professional development, to profit from further training and experience, and to supervise, mentor and train other health and care staff and students.

4. How proficient should they be ?

The degree to which individuals will deploy their language skills will vary : talking to clients may be the core activity of a psychotherapist and an incidental one for a biomedical scientist. On the other hand, effective communications within the team is just as critical to care outcomes. To the extent that authorisation to practise - rather than appointment to a job - is subject to linguistic assessment, the adoption of different standards for different groups tends to dilute the case for treating health and care professions, in principle and en bloc, as a special case. The relevance of profession-specific standards may also diminish, given an increasingly versatile workforce and more fluid role boundaries, within which practitioners must have equal opportunities to develop, extend or switch competences, no matter where or as what they first qualified. It is for employers to fine-tune skills and abilities to particular posts - such as competence to use or to acquire languages other than English – provided they avoid duplicating any assessment by the regulator, or the individual's relevant qualifications and experience, wherever obtained.

An objective and consistent standard known in advance meets one Community objective, of clarity and certainty for migrants. Equally, caution

Is required to avoid offending another, that migrants should not be unreasonably denied the opportunity to demonstrate that they have acquired a competence required of home State nationals in some other way. The court holds Insistence on a single local test to be an unjustified barrier to free movement, and the Commission has argued that a formal requirement is not invariably proportionate where linguistic competence was acquired through informal or non-formal learning. This tends to contradict its observation in Haim II [2] that

" *suitable means[* of examining the linguistic knowledge of a dentist wishing to set up] *include for example a written and/or oral language test* "

One option could be to articulate clearly the competences required, and allow maximum flexibility to applicants in showing how they met them. Would it for example be reasonable to exempt an individual if the qualifications on which he relied and/or his subsequent professional experience had been satisfactorily undertaken wholly or substantially in English, perhaps for some specified minimum period ? This would not exclude the possibility of reference to IELTS or other acceptable criteria where that requirement was not met. Ideally, any formal test and preparatory courses should be widely and frequently available both within and outside the UK and at reasonable cost to the individual.

5.Should the regulators assess linguistic knowledge ?

All UK respondents agree with AURE[3] that they should, and as a precondition of registration. The Commission's view is that language requirements must be formally separate from recognition requests, and any assessment must come afterwards. They say It is not intended to oblige host States to provide or fund language training. Nor may they demand that any proof of language knowledge accompany a recognition request. That is not a new view,[4] but neither has it been supported by any legal argument. It is probably to be interpreted as driven more by an overall policy imperative to remove remaining internal market barriers, and so to avoid new ones at all negotiable costs. At the same time, the options floated in the Commission's non-paper - of standards for particular groups or modes of practice - imply that it sees these as in principle compatible with Community Law. More significantly, other member States appear content to leave linguistic assessment to employers where these exist and otherwise to a mix of market forces and individual ethics. Some would be happy to drop the provision altogether. While this might be a more attractive option than the provision as it now stands, it would clearly be less attractive than what AURE would like. No provision at all would perpetuate the current uncertainty, and exacerbate it by removing any presumption, within the Directive, of linguistic assessment for temporary service providers. It would therefore leave the UK with the not entirely fireproof option of introducing

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[2] See Annex A, paragraph A.9

[3] Save for the Association of Optometrists and, at EU level, the PGEU

[4] See Annex A, paragraph A.11

" near-registration " assessment for EEA nationals - and possibly for other overseas-qualified practitioners - and taking its chance of challenge, whether formally or via increasingly high profile alternative dispute resolution procedures, such as SOLVIT.

6. So why not leave it to employers ?

This would perpetuate the existing split between handling by employers of EEA nationals and by regulators of other overseas-qualified applicants. Given that the public is more likely to be concerned with competence than nationality, it compounds just the sort of anomaly they find incomprehensible - why a UK (or Canadian) national native English speaker qualified in a French Canadian University must pass a stringent language test to practise medicine here, while a Spanish national with the same qualification is exempt. Or why the Canadian is exempt if he marries the Spaniard and both come to work here. The Spanish national might - if he had an employer, who might or might not be aware of the exemption - be assessed as linguistically competent on whatever basis he chose - possibly just an interview. Further public education is indicated once the task of assessing migrants from the ten Accession States passes automatically from the regulators to employers and/or individual clients. .

Current guidance to NHS employers is generalised, and compliance is not monitored. While it could be strengthened by direction, this would not obviate the risk of a multiplicity of approaches to its application both by locality and over time, depending on labour market conditions, nor the consequent difficulties of monitoring and compliance. It would cover neither non-NHS employers - whose representatives endorse AURE's view - nor self-employed practitioners. Separate arrangements would be needed within and between each UK country to deal with cross-border flows. By contrast, assessment by regulators has the advantage of consistency, economy of scale and concentration of expertise, which could be enhanced to the extent that they felt able to follow a broadly similar approach across all the groups covered. As for reliance on market forces, this may be an entirely appropriate mechanism for Finland, but a less attractive option for our health and care sector in terms of public protection, given the extent of recruitment from overseas to the UK and of workforce mobility within it. Individual clients will rarely be in a position to evaluate the competence of practitioners before receiving their services, and might reasonably, but incorrectly, rely on registration as guaranteeing its linguistic component.

7. Who should be assessed ?

Ideally, the same rules and procedures should apply to all EU and overseas qualified practitioners(although rules on temporary service provision are peculiar to the former). Non-EU nationals currently have no Treaty rights other than those derived , for example by marriage, from EU nationals; but they are placed at a disadvantage solely on grounds of nationality since they must meet a pre-registration language requirement from which EU nationals are

exempted. To require linguistic assessment for UK applicants as well would demonstrate that EU migrants were authorised to practise, in the terms of Treaty Articles 43 and 52 , " *under the same conditions*" as UK nationals. It would however be on the one hand disproportionate actually to assess everyone, and on the other fatuous to introduce a rule only to devise ways of exempting those targetted(save perhaps for those - are there any ? - trained and experienced entirely in Welsh). The better defence against any charge of discrimination might be to able to demonstrate that standards for all UK pre-registration qualifications, and ethical rules for all UK registrants, incorporated specific core competences in communication which subsumed those in linguistic knowledge required of practitioners qualified elsewhere.

8. When should they be assessed ?

Could a system of " near-registration testing " work without compromising quality standards ? If applicants were required to provide evidence of language proficiency after their registration decision, this would avoid the burden on those whose are rejected for unrelated reasons. Those who were qualified for registration, but for this requirement, could be asked to satisfy it within a set period during which their practice might be limited(for example to managed environments in which satisfactory supervision and on or off the job language training was available), and failing which it would lapse. While this could not be an " adaptation period " in the legal sense, it might take place under similar conditions. It would facilitate international skills mobility, get people into practice earlier but within the jurisdiction of the regulator, and enable employers to support recruits requiring it. But such an arrangement would require both a change in the law, and effective collaboration between regulators and service and education providers.

In principle, it would apply equally to EU nationals wishing to provide services temporarily, but would build in the flexibility to deal proportionately with marginal cases. If, for example,[5] the regulator were satisfied that an Italian physio accompanying his team to the UK intended to stay for a specified period and to confine his services to Italian speakers, other than in an emergency, it would have the discretion require a lower level of language proficiency than for a physio wishing to practise at large, and to confine his practice accordingly. Any temporary service providers seeking employment could still lawfully be asked to fulfil job-specific language requirements.

[5] a real one : see COM(2002)441 : The State of the Internal Market for Services; p.33

ANNEX A

DISCUSSION PAPER : ASSESSING LANGUAGE KNOWLEDGE : BACKGROUND NOTE

A1. This Annex identifies some relevant texts and interpretations, starting with the draft EU qualifications Directive. That proposes the following provision, which would apply to all professions and would be confined to establishment rather than temporary service provision :[6]

" 1. Persons benefiting from the recognition of professional qualifications shall have a knowledge of languages necessary for practising the profession in the host member State.

2. The member States shall ensure that, where appropriate, the beneficiaries acquire the language knowledge necessary for performing their professional activity in the host member State "

THE EC TREATY

A2. The Treaty does not mention migrants' language knowledge. But any requirements member States(" MSs ") impose must be consistent with its objectives and with caselaw. EC43 prohibits restrictions on the freedom of establishment of nationals of one MS in the territory of another, and goes on to stipulate that

"Freedom of establishment shall include the right to take up and pursue activities as self-employed persons...under the conditions laid down for its own nationals by the law of the country where such establishment is effected ..."

EC39 and 49 similarly prohibit restrictions on, respectively, freedom of movement for workers and freedom to provide services. In each case, such prohibitions can be subject to limitations justified

" on grounds of public policy, public security or public health. "

EC REGULATIONS

A3. Regulation(EEC)No 1612/68 on freedom of movement for workers has direct effect in MSs. Article 3 prohibits direct or indirect discrimination against nationals of other MSs in relation to applications for or offers of employment. However, it adds that

" This provision shall not apply to conditions relating to linguistic knowledge required by reason of the nature of the post to be filled "

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[6] COM(2002)119 : Proposal for a Directive of the European Parliament and of the Council on the recognition of qualifications; Art.49.

EC SECTORAL DIRECTIVES

A4. The General Care Nurses, Midwives, Dentists, Pharmacists and Doctors Directives have the same provision, common to establishment and services :

" Member States shall see to it that, where appropriate, the persons concerned acquire, in their own interest and that of their patients, the linguistic knowledge necessary for the exercise of their profession in the host member State "

[7]

Directives are binding on MSs as to the effect to be achieved.
In this case, that is a mystery on which the court has never ruled.

EC GENERAL SYSTEMS DIRECTIVES

A5. The General Systems Directives, 89/48/EEC and 92/51/EEC, under which all other health and care professions move, do not mention migrants' language knowledge. Hence the emergence of shifting interpretations such as those cited at A11 - 13 below Nor do those Directives deal with service provision.

EC TRANSPORT DIRECTIVE

A6. Directive 94/58/EC on minimum levels of training for seafarers lays down criteria for the language skills of crews of passenger vessels. This measure falls outside the scope of the mutual recognition Directives and has a different Treaty base. As such, it is legally fireproof. It could nonetheless be seen as representing a clearer Community acknowledgement of the need for effective communication in the general interest than has been the case for health and care professions.

EC CASELAW

A7. In Gebhard(C-55/94), the court established principles that bear directly on the interpretation of the provisions mentioned at A2 above, and so, indirectly, on the consideration of language requirements. These are that any measures liable to hinder or make less attractive the exercise of certain freedoms guaranteed by the Treaty must

*" * be applied in a non-discriminatory manner;*
** be justified by imperative requirements of general interest;*
** be suitable for securing the objective they pursue; and*
** must not go beyond what is necessary to attain it "*

A8. In Groener(case 379/87), the court found the application of an Irish

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[7] Directives :77/452/EEC,.15.3; 78/686/EEC, .18.3; 80/154/EEC, 16.3; 85/433/EEC, 15.3 (for " patients", substitutes " customers "); 93/16/EEC,.20.3.

language requirement to certain lectureships compatible with Community Law, insofar as it was imposed by reason of the nature of the post, and was both proportionate and non-discriminatory. Thus it dealt with employment, as opposed to licensure.

A9. In Haim II(C-424/97), the court dealt with a challenge to the imposition on an EU national with a third country diploma of a German language requirement as a condition of dental practice under a social security scheme. It ruled .

> *" that the competent authorities of a member State may make the appointment, as a social security practitioner, of a national of another member State who is established in the first member State and authorised to practise there, but has none of the qualifications mentioned in Article 3 of Directive 78/686/EEC, conditional upon his having the linguistic knowledge necessary for the exercise of his profession in the host member State of establishment "*

A10. The Advocate-General's Opinion in Haim II, which the court noted but which is not part of its judgment, is of interest in articulating certain special considerations which may be held to apply to dentistry, and so, by extension, to other health and care professions. He says

> *" The reliability of a dental practitioner's communication with his patient and with administrative authorities and professional bodies constitutes an overriding reason of general interest, such as to justify making the appointment of a dental practitioner under a social security scheme subject to language requirements. Dialogue with patients, compliance with rules of professional conduct and law specific to dentists in the member State of establishment and performance of administrative tasks require an appropriate knowledge of the language of that State "*

EUROPEAN COMMISSION INTERPRETATIONS

A11. As the guardian of the Treaty, the Commission's interpretation of Community Law carries substantial authority, notably, but not exclusively, in the absence of conclusive caselaw. Equally, its functions are as much political as legal, and its views may evolve over time. In reporting on Directive 89/48/EEC, it said : [8]

> *"Member States are not entitled to make proof of linguistic ability a precondition to the examination of a request for recognition under the Directive. Thus a member State is not entitled to include proof of knowledge of the host member State's language among the documents to be submitted with a request for recognition. The Commission accepts that requirements as to linguistic knowledge which are non-discriminatory and proportionate to the actual need to speak the host member State's language may be in conformity*

[8] COM(96)46 : Report to the European Parliament and the Council on the State of the General System for the Recognition of Higher Education Diplomas; p.32

with Community Law. Where a migrant's diploma does not attest to that knowledge, the host member State is required in accordance with Vlassopoulou [C-340/89] *to examine whether the migrant has acquired the necessary knowledge, by prior or subsequent education and training and by any professional experience. If no such proof is submitted, the absence of the necessary linguistic ability may be viewed as a " substantial difference "* [89/48/EEC, 4.1(b)] *justifying an aptitude test or an adaptation period. "*

A12. The Commission subsequently modified that view in reporting on Directive 92/51/EEC:[9]:

" Knowledge of languages may not, as a matter of principle, be the subject of a compensation measure, since it is not on the restricted list of situations in which such measures may be required [92/51/EEC,1(g) and 4.1(b)]. *Including it would also be unjustified on the grounds that any adaptation period or test would take place in the language of the host country. There is a fortiori no justification for an exemption from the migrant's choice between a test and an adaptation period in the case of language knowledge. "*

A13. The Commission subsequently amplified these views in its report on free movement of workers[10] :

" The ability to communicate effectively is obviously important, and a certain level of language may therefore be required for a job, but the court has held[Case 379/87, Groener] that any language requirement must be reasonable and necessary for the job in question, and must not be used as an excuse to exclude workers from other member States. While employers(whether public or private) can require a job applicant to have a certain level of linguistic ability, they cannot demand only a specific qualification as proof[C-281/98, Angonese].The Commission has received numerous complaints about job advertisements which require applicants to have as their " mother tongue " a particular language. The Commission considers that while a very high level of language may, under certain strict conditions, be justifiable for certain jobs, a requirement to be mother tongue is not acceptable ".

UK LEGISLATION ON PROFESSIONAL REGULATION

A14. UK law and practice has developed piecemeal and lacks coherence. Primary legislation on the regulation of **doctors, dentists, nurses** and **midwives** was amended in 1981[SI 1981/432] to avoid infraction proceedings by the Commission. The effect was to prohibit the regulators from applying an English language requirement to EU nationals holding EU qualifications as a condition of registration. Their explicit powers to apply such

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[9] COM(2000)17 :Report from the Commission to the Council and the European Parliament on the Application of Directive 921/51/EEC; paragraph 323.

[10] COM(2002)694 : Free Movement of Workers - Achieving the Full Benefits and Potential; Section 2.3.

requirements to practitioners of any nationality qualified outside the EU remained in place.

A15. These arrangements were subsequently subject to technical amendments to reflect the extension of rights of free movement to nationals of new MSs and European Economic Area(EEA) States outside the EU . A similar amendment for Swiss nationals is in the pipeline. As a consequence of the case of Morton Abrams (in which it was eventually accepted that a US national medically qualified in Belgium and married to an EU national was entitled under Community Law to practise in the UK), provision was also made to treat persons with enforceable Community rights in the same way as EU nationals. That includes UK nationals moving from within the EU, but not from outside it or within the UK. In addition, following legal advice that no useful distinction could be made regarding language requirements between EU nationals according to whether they qualified in or outside the EU, the legislation on doctors, dentists, nurses and midwives was amended, so as to exempt EEA nationals, and others with enforceable Community rights, from pre-registration language requirements, regardless of where outside the UK they qualified.

A16. As for other professions, in essence the same statutory arrangements now apply to those regulated by the **Health Professions Council** as to nurses, midwives, doctors and dentists. But primary legislation on the regulation of **pharmacists, opticians, osteopaths, chiropractors,** and **social care workers** does not mention language requirements.

OTHER UK LEGISLATION

A17. The European Communities(Recognition of Professional Qualifications) Regulations 1991[SI 1991/824, as amended] and the European Communities(Recognition of Professional Qualifications)(Second General System) Regulations 2002[SI 2002/2934] transpose into UK law Directives, 89/48/EEC and 92/51/EEC, respectively. Neither mentions language requirements.

A18. The GChC has by rules[SI 2002/2704] made provision for overseas qualified **chiropractors** to satisfy the Registrar that they have

" a satisfactory command of the English language "

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A.19. Admission to NHS **medical, dental** and **pharmaceutical**(but not **ophthalmic**) lists is the subject of separate legislation. Primary Care Trusts are variously required or empowered to refuse admission to lists to an EEA practitioner registered by virtue of an EEA diploma unless satisfied that he has :

" that knowledge of English which, in the interests of himself/ herself and persons making use of the service to which the application relates ,is necessary for the provision of pharmaceutical

services in the[Trust's] locality "[11]
Equivalent provision is in place for general medical[12] and dental practitioners[13]. The position of applicants who are EEA nationals with third country qualifications is subject to clarification.

UK PRACTICE

Regulators

A20. How and to what standard - where the law requires or permits them to do so - UK regulators assess the English language proficiency of prospective registrants is a matter for them. Practice therefore varies..For example, the GMC and NMC are currently guided by the achievement of specified IELTS (International English Language Testing System) scores by non-EEA nationals qualified outside the UK and UK nationals qualified outside other EEA States. The RPSGB also uses IELTS scores in assessing non-EEA overseas qualified practitioners other than those benefitting from reciprocal recognition agreements. The GDC has its own qualifying examination for non-EEA practitioners incorporating IELTS scores. The GOC is understood to proceed on a case-by-case basis. The HPC and GSCC have yet to establish their new registers. The GostC's rules, unlike the GChC's, appear to make no specific provision for linguistic assessment.

NHS bodies

A21. Departmental guidance to NHS employers in England[14] reminds them that evidence of registration of EEA nationals does not of itself guarantee linguistic competence. It advises them to assess the competence to communicate in English, to the standard required by the post concerned, of all job applicants, regardless of their nationality or country of origin. It does not suggest any specific standards or assessment tools.

A22. There is no extant guidance on the assessment of applicants for admission to NHS medical and pharmaceutical lists in England. Particular concerns about admission to dental lists led to the issue of guidance [15]to NHS bodies in England advising them to require EEA dentists, other than graduates of UK or Irish dental schools trained in English, to achieve a minimum IELTS score of 7 in each section.

DH/HRD-HRB
February 2003

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[11] The NHS(Pharmaceutical Services)Regulations 1992(as amended), regulation 4.
[12] For example, the National Health Service(General Medical Services Supplementary List) Regulations 2002{ SI 2001/3740)
[13] The NHS Act 1977(as amended), section 36(2).
[14] HSC 1999/137: Employment of EEA Nationals
[15] Circular of June 2002 from Almas Mithani to Health Authority Chief Executives.

ANNEX B : DISCUSSION PAPER : ASSESSING LANGUAGE KNOWLEDGE

OUTLINE OF POSSIBLE ACTIONS

EU LEVEL

B1.Amend draft qualifications Directive on following lines; fallback : support deletion of Article 49

Article 49

Knowledge of languages

1. Persons benefiting from the recognition of professional qualifications shall have the linguistic knowledge necessary for the exercise of their profession in the host Member State.

2.The Member States shall in accordance with their national rules and norms facilitate the reasonable availability of provision to enable the person concerned to acquire the knowledge mentioned in paragraph 1.

3. In the case of health and care professions, the host Member State may require the person concerned to acquire that linguistic knowledge which, in the interests of himself and his patients or clients, is necessary for the exercise of his profession in its territory. The detailed rules for the application of that requirement and the status of the person concerned while he is acquiring that knowledge shall be a matter for the competent authorities in that State. The application of this paragraph shall be common to establishment and the provision of services, but shall be without prejudice to the rights of the person concerned under Articles 2(2) and 5.

Article 3(1)

Definitions
[Add]

(d) " health and care professions " means the medical and allied and pharmaceutical professions, and shall in particular include a regulated professional activity related to health and/or social care for which remuneration and/or reimbursement is subject by virtue of national social security arrangements to the possession of professional qualifications "

B2. Ensure consultative arrangements are such as to facilitate the adoption of outcome-based minimum training requirements for health and care professions, including common core competences in communication.

UK LEVEL

Legislation

B3. Propose amendment of primary legislation having the effect of

Empowering all health and care regulators to require an applicant for registration who qualified outside the UK to satisfy them that he has that knowledge of English which in the interests of himself and his patients or clients is necessary for the practice of the profession in the UK, either

a. **before registration; or**
b. **subject to his acquiring that knowledge within a a specified period and to such other conditions of practice as they may impose for that purpose, failing which his registration shall be suspended**

B4. Supplementary provision to be made as required so that

a. **applicants entitled to reasoned and appealable decision on application for registration or suspension**
b. **breach of conditions is subject to fitness to practise proceedings;**
c. **register entries identify conditional registration.**
d. **powers of PCTs to assess language knowledge removed.**

Policy

B5. Regulators to explore defining(common)English language competences required of overseas applicants and determine what qualifications and or experience they consider as meeting them. Consideration to be given to equivalence(eg professional training and/or experience acquired wholly/mainly in English, over what period, whether certificated as satisfactory).

B6. Regulators to explore defining - to the extent this not already achieved - common core competences in communication to be delivered by all UK pre-registration programmes. Consideration to be given to incorporating/subsuming English language competences mentioned in B.5.

B7. Regulators to explore common ethical rules concerning registrants' accountability for acquiring/maintaining appropriate communication and language skills.

B8. Regulators/service/education providers to consider
Accessibility of language learning and testing facilities by locality (UK and overseas), frequency and cost;
provision of supervision/on and off job language support for registrants requiring it
constructive solutions for those suspended.

DH/HRD-HRB
February 2003

ITEM 6
ENCLOSURE 4

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Dear Lucinda

English Language Testing

We spoke recently about the Council's powers under the Health Professions Order 2001 (the Order) to require applicants for registration to undergo a test of competence in the English language and, in particular, whether article 12(1)(c)(iii) of the Order prevents the Council from requiring an EEA national to undergo such a test in any circumstances.

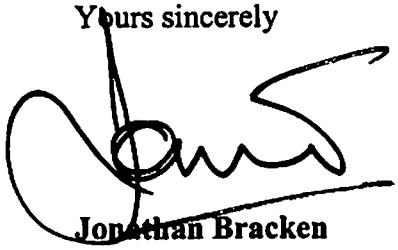
Although article 12(1)(c)(iii) provides that only persons who are not EEA nationals or exempt persons can be required to satisfy prescribed requirements as to knowledge of English, that article only relates to approved qualifications and I therefore believe that the restriction on English testing set out in that article must be read in the context of what constitutes an approved qualification.

An applicant for registration, in addition to satisfying the Education and Training Committee that he holds an approved qualification, must also satisfy that Committee that he is capable of safe and effective practice under the part of the register concerned (see article 9(2)). Clearly, the ability to communicate with patients and to make and understand case notes etc. is a critical element of safe and effective practice and I find it difficult to believe that article 12(1)(c)(iii) is intended to prevent the Council from requiring a person who is an EEA national to show that he or she has a satisfactory knowledge of English for this purpose. Consequently, it is my view that where there are reasonable grounds to believe that an applicant is not capable of safe and effective practice by reason of their poor command of the English language the Council can require that person to take an English language test in order to satisfy itself that the person concerned is capable of safe and effective practice, even if that person is an EEA national.

I trust this is helpful.

With kind regards.

Yours sincerely



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