

UNIVERSITY OF ULSTER

Paper No ASQEC/19/12

ACADEMIC STANDARDS AND QUALITY ENHANCEMENT COMMITTEE

17 June 2019

Agenda Item 2

ITEM REFERRED BY SENATE: ORDINANCE XLII FITNESS TO PRACTISE

COVER SHEET

In attendance to present: Professor O Barr and Ms C McGoran

Action is required of the Committee as indicated below.

To consider and advise Senate on revised Ordinance XLII.

Professor Owen Barr presented proposed revisions to Ordinance XLII (now Fitness to Practise) to ASQEC's March meeting and the proposed revisions were endorsed (the ASQEC paper is attached). Senate, at its April meeting, also endorsed the proposed revisions but referred one matter back to ASQEC and the Senate minute is shown below:

19.32 Ordinance XLII Fitness for Professional Practice (Paper S/19/27)

Senate AGREED revisions to Ordinance XLII and recommended to Council that the revised Ordinance be approved.

It was suggested that the Ordinance might be further revised to include students' responsibilities to disclose health issues. It was noted that some regulators have their own Fitness to Practise requirements and require sign off by students about their health on an annual basis. The Students' Union indicated that it was uncomfortable with mandating students to disclose illnesses. It was AGREED that there should be further discussion at ASQEC regarding health disclosure.

The original Ordinance and the revised Ordinance do not require disclosure. Students are encouraged to disclose relevant conditions and avail of support available through the University.

In order to facilitate ASQEC's consideration of this matter the Academic Office consulted with Professor Barr and other staff identified by him and their comments are shown below (documents referred to are available through weblinks):

1. Professor Owen Barr's comments

I acknowledge that a number of professional regulators have published requirements in relation to students making a self declaration about their health. I am most familiar with those related to healthcare such as the Nursing and Midwifery Council, Health and Care Professions Council and the General Medical Council. All of these regulators have published information in this area.

It is important to note what is considered to be good health, for example within the Nursing and Midwifery Council guidance it relates to being able to provide safe and effective care without supervision. There is no list of conditions relating to mental or physical health provided that would mean a student could not apply for nursing. The current NMC guidance (weblink – [Annex 1](#)) which applies to people seeking to join the NMC register at the end of their course, but which is considered guidance for selection on to a undergraduate nursing course, states that ‘

43. 'This means that you only need to tell us about your health condition and/or disability if:

43.1 you believe that your health condition and/or disability does affect your ability to practise safely and effectively, or

43.2 you believe that your health condition and/or disability could affect your ability to practise safely and effectively, and

43.3 you aren't sure you will be able to adapt, limit or stop your practice if your health condition and/or disability does or could affect you, and/or

43.4 you haven't made your employer or education provider aware of your health condition and/or disability but need their support in order to ensure that colleagues, people in your care or the public aren't placed at risk.' (NMC 2019, p9)

I suggest further advice is sought from Dr Patricia McClure (Health Sciences) and Prof Louise Dubras (NIGEMS) in relation to HCPC and GMC respectively.

My understanding under disability legislation is that students can choose to provide information (or not) on any health or disability related issue and if this information is shared, that consideration should be given to a medical assessment, if felt appropriate, and also the provision of appropriate 'reasonable adjustments'. If information on a health or disability issue is not shared and the university is unaware of it, my understanding is that there is not a requirement to provide reasonable adjustments.

Within the UCAS process, there is an opportunity, but not a requirement to share information a health or disability issue. Further advice on this could be sought from Angela Getty (Equality and Diversity and Inclusion).

I am not aware of any requirement by a professional body that requires or mandates sharing this information, although the advice is to share it, in order to that discussion relating to support can occur.

I agree when students are applying for courses they should be provided with information on this area specific to their course, reflecting the requirements of the professional body associated with the course (for example the advice from NMC above when applying for nursing courses). I do not support the university requiring information on health or disability to be shared. On a practical level, some of the first questions to be asked is 'which health or disability does it feel should be shared?', 'which courses does this relate to?', 'why is it required that this information is shared for that course?', 'what use will the university make of this information?'

My view is that the guidance on this matter is best addressed on a course by course basis and the detail is covered on the guidance from the professional regulators for individual courses and current requirements under disability or equality legislation.

2. Professor Louise Dubras' comments

Thank you for asking for my input; it's provided me with a good opportunity to review current GMC guidance. The "[Valued and Welcome](#)" publication by the GMC (which supersedes "Gateways to the Profession") makes it clear that:

A school should make it possible for a student to share information about disabilities (including longterm health conditions) if they wish to do so. Once they have shared this information, the medical school must address the student's requirements for support as soon as reasonably possible. (my underline above).

Thus there is no requirement for students to provide a sign off about their health.

Medical students are strongly encouraged to disclose any physical or mental health issues in order that support can be provided and reasonable adjustments made. Their guidance also states that they ask for health information at the point at which a doctor is provisionally registered, but thereafter they rarely need or ask for health information.

A learning outcome for medical students to have achieved at the point of graduation includes

*"protect patients from any risk posed by their own health" and
"must demonstrate awareness of the importance of their personal physical and mental wellbeing and incorporate compassionate self care into their personal and professional life- which includes they must seek appropriate advice and support including being registered with a GP and engaging with them to maintain their physical and mental health"*

It would not be unreasonable to expect a student to declare annually that they are registered with a GP since this is a learning outcome of the programme, but that is different to disclosing any health conditions.

With regard to admissions, medical schools are encouraged to tell students in person at open days and the like that students with disabilities are welcomed, and that there is a process for disclosure to ensure reasonable adjustments. There is recommendation that appropriate Occupational Health services are provided and that students are advised about confidentiality, and how any information kept about them is used / shared as required.

3. Angela Getty's comments

You may wish to refer to the University's guidance on student disclosure (disability), which is available at:

https://www.ulster.ac.uk/_data/assets/pdf_file/0008/119807/Disability-Disclosure-Guidelines-for-Academic-and-Faculty-Support-Staff.pdf

Please bear in mind that, following institutional restructuring and GDPR, this requires updating.

Regardless, the guidance remains the same; there is no legal requirement for a student to disclose a disability, we cannot share disability information without consent (unless under exceptional circumstances) and we cannot refuse entry to a disabled person to a course where they would be 'unfit to practice' afterwards.

A short guide to SENDO is available at:

<http://www.equalityni.org/ECNI/media/ECNI/Publications/Employers%20and%20Service%20Providers/SENDOshortguide2010.pdf>

ECU's (now Advance HE) guidance is that:

'Institutions may need to work in partnership with external professional bodies to ensure competence or fitness to practice standards do not discriminate against particular student groups.' (p19 of Annex 3)

4. Dr Patricia McClure's comments

My understanding is similar to the others that under disability legislation students are not obliged to disclose information about any health or disability related issue but it is important they are given several opportunities to do so through the UCAS process and the admissions process in the university. Once they disclose the information, we are obliged to make reasonable adjustments and this includes for practice placements. Students in Health Sciences are encouraged to disclose any disability or LTC to their practice educators prior to commencing the placement, however if they choose not to do so, we cannot disclose this information. Students are advised that it is in their best interests to disclose their disability/LTC so that reasonable adjustments can be put in place to facilitate/support their learning. Staff and practice educators are advised that if a student health or disability issue is not shared and the university staff and the practice educators are unaware of it, there is no requirement to provide reasonable adjustments.

HCPC review each application to the register on a case by case basis and do not have any stipulations that prevent applicants with particular disabilities being registered. It is all about their ability to manage their condition without causing any harm to service users.

I hope some of the following information is useful.

The HCPC Standards of Education & Training can be accessed at:

<https://www.hcpc-uk.org/globalassets/resources/guidance/standards-of-education-and-training-guidance.pdf>

Standard 2.5 in the HCPC Standards of Education & Training states:

You should encourage applicants to give you information about a health condition which may affect the way they are able to learn on the programme, including the way

in which they interact with service users and carers. It is your responsibility to make sure you have made all reasonable adjustments for applicants and learners, in line with equality and diversity laws.

We do not see having a disability as a barrier to becoming a health and care professional. Our guidance document, Health, disability and becoming a health and care professional, provides information for disabled people applying to approved programmes and for admissions staff considering applications from disabled people. You should make applicants aware of this and other relevant guidance during the admissions process.

When making an admissions decision about someone who has told you about a health condition, you should take into account our Guidance on health and character, which provides information on how we consider health information about people who apply for registration with us.

The HCPC Guidance on health and character can be accessed at:

<https://www.hcpc-uk.org/resources/guidance/guidance-on-health-and-character/>

Standard 6.3 of HCPC standards of conduct, performance, and ethics says: *'You must make changes to how you practise, or stop practising, if your physical or mental health may affect your performance or judgement, or put others at risk for any other reason.'* When you apply to our Register we ask you to sign a declaration to confirm that you do not have a health condition that would affect your ability to practise your profession. We call this a self-declaration.

You only need to declare information about a health condition if you believe that your health may affect your ability to practise safely and effectively. If you tell us you have a health condition that might affect your fitness to practise, we will use the Guidance on health and character information you give us to decide whether you should be registered. You do not need to tell us about your health condition or disability if it does not affect your ability to practise safely and effectively, or you know you are able to adapt, limit, or stop your practise if your condition does affect your ability to practise.

You should tell us about your condition if it affects your ability to practise safely and effectively, or if you are not sure whether you will be able to adapt, limit, or stop practising as needed if your condition affects your ability to practise. When we talk about 'health' we are not making judgements about whether people are 'healthy' or in 'good health'. We are also not making judgements about disabilities. You may have a disability or long-term health condition which would mean that you would not consider yourself to be in 'good health'. However, as long as you manage your condition or disability appropriately, and have insight and understanding, this will not prevent you from registering with us. Having a disability should not be seen as a barrier to becoming a health and care professional.'

The HCPC Health, Disability and becoming a health and care professional document can be accessed at:

<https://www.hcpc-uk.org/globalassets/resources/guidance/health-disability-and-becoming-a-health-and-care-professional.pdf>

It states: Disclosing information about your disability to an education provider

When applying to an education programme, you will have the opportunity to tell the provider about your disability. Education providers have a responsibility to give you various opportunities to tell them this information in a safe and confidential way, but it is your decision whether you do so. We strongly recommend that you do.

Continue to disclose your disability to your education provider

During your programme, it is important that you have a realistic understanding of whether you can do tasks safely and effectively. Your ability to do certain tasks or the level of support you might need to carry them out may change over time. We strongly recommend that you continue to tell the relevant staff any important information about your disability throughout your programme. This will make sure that any adjustments you have in place can continue to provide you with the most effective support. If you develop a disability during your programme, we would encourage you to tell the appropriate staff. This will make sure that you receive any support or adjustments you may need to help you manage your condition and take part fully in your programme

PROPOSED AMENDMENTS TO ORDINANCE ON FITNESS FOR PROFESSIONAL PRACTICE

COVER SHEET

Consider and recommend to Senate revised Ordinance XLII.

The changes are summarised as follows:

1. Change in title from Fitness for Professional Practice to Fitness to Practise to align with the professional regulators (GMC, NMC, Pharmaceutical Society of NI) use of the term.
2. The use of the term 'practice learning' to replace 'placement'.
3. Amendments to the anonymous disclosure paragraph (6) to encourage disclosure of complainants.
4. Clarity on the steps/procedures for investigation (10-16), including timelines, and referral to the regulatory procedures for the relevant profession.

Ordinance XLII**Fitness to Practise**

1. This Ordinance refers to the procedures to be implemented when a student is judged unfit for entry to a profession for which there are academic, behavioural and health requirements that must be met in order to ensure suitability to practise that profession. Examples of relevant professions are Nursing, Health Visiting, Occupational Therapy, Physiotherapy, Radiography, Optometry, Podiatry, Chiropractic, Dietetics, Clinical Physiology, Sports Studies, Speech and Language Therapy, Education, Social Work, Youth and Community Work, Biomedical Sciences, Pharmacy and Architecture. This list is not exhaustive, and it may be added to by the University at any time.
2. The Fitness to Practise procedure exists to protect:
 - (a) the public interest, by safeguarding client/patient well-being;
 - (b) the student's interests by ensuring that students do not proceed into an academic programme or career for which they may well not be suited or for which a regulatory body may not register them.
3. Students may be considered unfit to practise on the grounds of:
 - (a) physical or mental health reasons;
 - (b) criminal or other serious misconduct;
 - (c) unprofessional conduct or action;
 - (d) unsuitability for the academic and/or practise demands of the professional education.
4. Concern that a student may, for behavioural or health reasons, be deemed unfit to be admitted to or to practise in a profession towards which his or her course of study leads, should be disclosed in writing to the Executive Dean of the relevant Faculty. Concerns may arise from one incident or from a pattern of behaviour over time.
5. Anyone, including University staff and professional staff involved in student clinical/ professional practice learning who becomes aware of evidence of health, behavioural or academic unsuitability which may preclude a student from completing the course of study or from undertaking the required professional practise should report the facts in writing to the Executive Dean at the earliest opportunity.
6. If the person making such disclosure, as in 4 and 5 above, identifies his or herself, this will make it possible for the University to undertake prompt action. In exceptional circumstances the Executive Dean may permit the discloser's identity to remain confidential, provided this is consistent with natural justice. Anonymous disclosure can be made. However, it must be recognised that if the discloser

remains anonymous this can limit the University's ability to take action, as it is likely to be more difficult to investigate and gather evidence.

7. Boards of Examiners, Student Progress Committees, and the University Disciplinary Committee may also refer students to the Executive Dean under this Fitness to Practise procedure.
8. In some situations, where there is an allegation of plagiarism, it may be appropriate to consider the case under both academic and fitness to practise procedures. In these circumstances the academic process will be conducted first and conclude before beginning the fitness to practise process.
9. Students whose courses are covered by the Fitness to Practise ordinance must disclose any criminal convictions to the University before entering the course or immediately such a conviction occurs during the course. This will enable the student to be provided with guidance about entry requirements for registration within the profession concerned. If a student fails to disclose this information and it subsequently comes to light, the student will be referred to the Executive Dean who may instigate the Fitness to Practise procedure.
10. Issues relating to professional practise may arise as a consequence of behaviour associated with diagnosed or suspected mental or physical health problems or from addiction. In such circumstances the Fitness to Practise procedures will only be invoked if medical and/or counselling interventions have not successfully addressed the behaviour or if the student has refused all such interventions.
11. The Executive Dean will appoint an appropriate person (e.g. Head of School, Course Director) to undertake an investigation of the case in line with the relevant professional regulator guidelines. This person will prepare a report on the circumstances of the case, normally within 5 working days of being appointed, and will make this report and recommendations for course of action available to the Executive Dean.
12. Where the alleged behaviour does not require a formal investigation with a Fitness to Practise Panel, the appropriate course of action as recommended under clause 10 will be agreed by the Executive Dean and the Head of School within 5 working days of the preliminary report from the appointed person; a timeline for monitoring and review will also be determined. This course of action will then be discussed with the student and on agreement, will be managed through to completion by the appropriate person. A record of the outcome will be recorded and kept on the student's file.

Precautionary Suspension

13. The Executive Dean of the Faculty in which the student is registered may suspend a student until the completion of a fuller investigation of the circumstances reported. This power may be used when a student displays inappropriate behaviour while on practice learning or when about to go on practice learning.

14. During a period of precautionary suspension, the student will be entitled to access the University's student support services and will be offered any pastoral support required.

Investigation

15. In cases where a full investigation is recommended, the Executive Dean will, within 5 working days of receiving the report from the appropriate person, convene a Faculty Fitness to Practise Panel (hereinafter the Panel), and expedite a meeting date for the Panel, taking cognisance of the notice period required for the student. The Panel shall consist of:
 - (a) the Executive Dean or his/her nominee. The Executive Dean will Chair the Panel;
 - (b) the Head of the relevant School;
 - (c) a member of academic staff from the same professional discipline as the student;
 - (d) a member of academic staff who is not from the professional area concerned and who does not know the student;
 - (e) a registered professional practitioner from the professional area concerned.
16. A member of the Faculty administration staff will, with due regard to confidentiality, keep records of the proceedings and be responsible for circulating relevant documents.
17. The student will be given 10 working days' notice of the meeting of the panel. The notice will include:
 - (a) a brief statement of the allegations against him or her;
 - (b) details of any precautionary suspension or limitations on or conditions placed upon his or her studies or practice learning experience during the investigation;
 - (c) information on his/her right to be accompanied at the Panel meeting by a representative who is a member of the University;
 - (d) guidance to the student that they can provide further information in support of their case up to three days prior to the panel meeting.
18. The Panel may ask academic or clinical/professional staff connected with the case to provide written comments on the student's academic standing, conduct or health, explaining why there is concern as to the student's fitness to practise. The Panel will also be provided with information about the student's professional and academic progress and any other relevant information it requires.
19. The Panel will establish the facts of the case and in so doing may interview relevant individuals, including the student, or individuals nominated by the student. The student may be accompanied at the interview by a member of staff of the University, by another student, by a representative of the Students' Union or by a member of the professional organisation. Legal representation is not permitted.
20. The Panel shall satisfy itself that the student understands the purpose and importance of the proceedings of the Panel in respect of his/her case, understands his/her rights within the process, and has adequate support.

21. Wherever possible the Panel will resolve the issue in consultation with the student.
22. The Panel has the following powers when considering the student's behaviour and conduct:
 - (a) no action may be required;
 - (b) the student may be referred to Occupational Health, which may result in a period of leave of absence;
 - (c) recommend to the Faculty Board that the student discontinue studies on the course with possibility of transfer to another course;
 - (d) recommend to the Faculty Board that the student discontinue studies on the course without possibility of transfer to another course;
 - (e) if the student is at an appropriate stage in his/her programme, he/she may be offered an alternative award which does not lead to a professional qualification;
 - (f) the student may be referred to the University Student Disciplinary Committee;
 - (g) other action as deemed appropriate to the situation.
23. Should the Panel take the decision to refer a student to the University Student Disciplinary Committee, it will state in writing the reasons for its recommendation and supply any evidence it may have.
24. When the Panel takes the decision to recommend removing a student from a professional course it will:
 - (a) inform the student in writing, within 10 days of the Panel meeting, of the decision of the Panel, giving reasons for the decision;
 - (b) appraise the Pro-Vice-Chancellor (Education);
 - (c) provide feedback to the complainant(s).The findings of the Panel will be entered on the student's file.

Appeals Procedure

25. The student may appeal against the decision of the Panel on any of the following grounds:
 - (a) that new evidence has become available;
 - (b) that there has been procedural irregularity;
 - (c) that the decision of the Panel was inappropriate or too severe.
26. An appeal should normally be made through the Pro-Vice-Chancellor (Education) within 10 working days of receiving the decision of the Panel. The Pro-Vice-Chancellor (Education) will set up an Appeal Board (hereinafter the Board). The Board will consist of:
 - (a) Pro-Vice-Chancellor (Education) (Chair);
 - (b) the Executive Dean of another Faculty;
 - (c) a member of the professional body concerned who has not been involved in the consideration of the case.
27. The appeal will be considered within 28 days of the date the appeal was lodged.
28. The student will be invited to attend the Appeal Board meeting and be accompanied by a colleague, Trade Union member but not a legal representative.

The individual attending with the student may present new information in support of the student's appeal.

29. The Board will consider the statements and information provided by the Panel and any additional/new evidence provided by the student or the University which the Panel did not consider/receive.
30. The Chair of the Appeal Board is permitted to determine the procedures appropriate for individual cases.
31. The Board may set aside or vary or confirm the decision of the Panel.
32. There shall be no appeal against the decision of the Appeal Board.
33. The student be informed in writing of the decision of the Appeal Board within 10 working days of the Appeal Board meeting.