

A common approach to good character across the health professions regulators

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Contents

Executive Summary.....	2
1 Background.....	5
2 The good character requirement.....	5
3 Central features of different approaches to good character	8
4 Basis for a common approach	10
5 Assessing evidence	14
6 Europe	16
Annex A: Current approaches to good character amongst the UK health professions regulators	19
Annex B: Current approaches to good character by the regulators of other professions in the UK	23
Annex C: Current approaches to good character in other countries	28

Executive Summary

i When a person applies to join a health profession, the regulator seeks to establish that they are capable of safe and effective practice. For this reason, health professions regulators have requirements for establishing adequate competence, health and, for some professions, indemnity insurance. The regulators also have requirements pertaining to past behaviour and conduct which have the purpose of establishing that, as far as possible, there is no reason for the regulator to believe the applicant has acted, or is liable to act, in a way that runs contrary to the safe and effective practice of the profession. For most of the regulators this is based on the requirement in their respective legislation that they be satisfied an applicant is of 'good character' before the applicant is registered. Those regulators that do not have a formal good character requirement consider the same issues in their registration procedures, as part of determining whether an applicant is fit to practise.

ii The requirement of good character (and its equivalents amongst the regulators that describe their entry requirements in different terms) is an important part of the registration procedures for the health professions. It provides a mechanism for people to be excluded from membership of a profession on the basis that, beyond lacking the knowledge or skills or being incapable of safe and effective practice because of a health condition, they have shown themselves to be the sort of person that we as a society do not wish to hold the position of a health professional. Health professionals have a relationship with members of the public unlike that in many other sectors, one which is rooted in the mutual trust, confidence and respect that are necessary for a profession to be practised safely and effectively. To prove that they are fit to enter this relationship there are expectations that a prospective professional must meet.

iii The purpose of this paper is to recommend a basis for a common approach to 'good character' across the health professions regulators. It is intended that this be based on objective and fair criteria that are clear to the parties that share in the central relationship that defines health professions – that between the professionals and members of the public. Similarly, it must be clear to those seeking to become a professional what is expected of them in order to demonstrate that they are fit to enter into this relationship. To inform our recommendations, CHRE have reviewed a range of current approaches to good character by the regulators of health and other professions in the United Kingdom and internationally. We have also looked at the standards of the health professions regulators and the wider debate on professionalism in the health professions to provide additional context for our conclusions. From this we have identified four key elements which we believe form a basis on which good character can be approached. These are whether an applicant has acted, or there is reason to believe they are liable in future to act:

- (i) in such a way that puts at risk the health, safety or well-being of a patient or other member of the public
- (ii) in such a way that his/her registration would undermine public confidence in the profession

- (iii) in such a way that indicates an unwillingness to act in accordance with the standards of the profession
- (iv) in a dishonest manner.

iv CHRE consider that these are the core elements, that can be viewed as pertaining to ‘character’, which the regulators should assess when establishing whether an applicant is fit to practise as a health professional and suitable for registration in the profession. However, it is important to be clear that what we term ‘good character’ is a label that covers one element of establishing an applicant’s fitness to practise and suitability for registration. The four criteria above should be assessed by the regulators because they are important to establishing this fitness and suitability in their own right, not in virtue of being constituent parts of the concept of ‘good character’.

v The use of the term ‘good character’ is potentially problematic because it is not widely used outside English-speaking countries and has no equivalent in Europe. Good character is a culturally specific concept that does not make obvious what is being assessed to people from those from cultures where it is not used. Consequently, the term may be less readily understandable to applicants, referees and regulators from many other countries than the more explicit criteria that CHRE believe form core elements of it. Although what specifically is contained in standards and would be judged as to undermine public confidence in the profession may also vary by culture, these are more understandable concepts to those from other cultures.

vi The proposed criteria are important to protect the public from unwarranted risk of harm and to underpin the mutual trust, confidence and respect between health professionals and patients and the public, which are essential to professional-patient relationships which facilitate effective practice. It is not important whether these criteria are brought together under the label of good character or viewed directly as part of the wider notion of fitness to practise, without recourse to the additional terminology of good character. The fact that many regulators have equivalents to good character requirements, expressed in different terms but with a common core to what is assessed, highlights that the issues can be approached as clearer criteria, rather than requiring an abstract notion of good character.

vii In this sense, our conclusions offer principles that provide a basis for the health professions regulators to approach the issues raised by good character, rather than providing a formal definition of the term. They develop the key elements pertaining to character that are important to applicants’ fitness to practise and suitability for professional registration, to go along with the regulators’ other significant considerations such as having the necessary technical competence.

viii In the light of the information a regulator receives regarding an applicant, it needs the flexibility to judge the particularities of each case on its merits. The seriousness of an applicant’s conduct should be judged in terms of its relevance to the practice of the profession and any mitigating or aggravating factors associated with their particular case. These considerations should be

made in line with the regulator's approach to fitness to practise, if the conduct was that of an existing registrant. In this way there would be common core criteria for applicants, but each regulator would have the flexibility to assess evidence with regard to the risk it poses in relation to practising the particular profession. This is important because a central purpose of good character requirements is to ensure that those admitted to the profession will uphold the type of relationships with patients and the public that underpin its effective practice.

ix In two significant senses the good character requirement should be understood as a dynamic, rather than static, concept. Firstly, a judgement is being made on all the available evidence about an applicant's past actions. Applicants should be encouraged to show how their actions since a particular incident demonstrate insight into the incident and relates to their capability for safe and effective professional practice. Consequently, although there may have been actions that would have caused a regulator to turn down an applicant were they considering it at a particular point in time, evidence of rehabilitation would allow a person to demonstrate they no longer lack the requisite character on the basis of these previous actions.

x Good character is also dynamic in a second sense. What we, as a society, take to be good character for the purposes of practising as a health professional is dependent on the nature of the relationships between professionals and patients and the public, and on wider social norms. The nature of these relationships and norms can change over time, and have done so historically. Actions that would undermine public confidence and what are the appropriate emphases of professional standards should be viewed as varying in correspondence with any changes in these relationships and norms that may take place. Hence, the ways in which regulators assess character – which actions demonstrate a lack of character and constitute relevant rehabilitation and insight – and the according judgements they make on applicants, need to have the agility to respond to these wider social developments.

xi When it comes to making a judgement on good character, the regulators can only affirm that that, given the evidence available to them, they are not aware of any factor that would call into question the good character of the applicant. References to good character should reflect this as it is important that the public are not misled on the level of assurance that the regulators can give regarding their registrants. The regulators cannot assure that an individual possess particular traits, only that given the evidence available it is not reasonable to believe the individual lacks them.

xii Clear guidance outlining these considerations and appropriate training should be given to those making the assessment to ensure consistency. For the purposes of transparency and accountability guidance documents should be available to applicants and members of the public. Clear guidance should be provided by regulators to education institutions to ensure judgements made on whether an applicant's suitability for enrolment or continuation on a course are consistent with the regulator's requirements for entry to the profession.

1 Background

1.1 The Council for Healthcare Regulatory Excellence is an independent body accountable to Parliament. Our primary purpose is to promote the health, safety and well-being of patients and other members of the public. We scrutinise and oversee the health professions regulators¹, work with them to identify and promote good practice in regulation, carry out research, develop policy and give advice.

1.2 As a result of wide variation in approaches to the assessment of good character at the point of entry to the register, there are desires for these to be harmonised as part of promoting consistency across the health professions regulators. In July 2006, the Department of Health published *The regulation of the non-medical healthcare professions*, a review led by Andrew Foster that examined the effectiveness of professional regulation with the focus on ensuring proper protection of the public. The Foster Review recommended that 'All regulators should adopt a single definition of "good character", one of the legal requirements for getting registration. This should be based on objective tests'². This recommendation received positive support in responses to the consultation on the Foster Review.³

1.3 The Department of Health's subsequent White Paper, *Trust, Assurance and Safety – The Regulation of Healthcare Professionals in the 21st Century*, acknowledged the need for 'further effort to identify a common approach to "good character"' and asked CHRE to 'recommend a single standard definition of good character, working with the regulatory bodies and encompassing wider work within Europe to promote information sharing on the good character of professionals who cross national borders.'⁴

2 The good character requirement

2.1 Before being registered by a health professions regulator, an applicant must establish that they are fit to practise by satisfying the requirements set by the regulator for entry to the particular profession. The specific requirements for entry vary across the different regulators but, with the addition for some

¹ General Chiropractic Council, General Dental Council, General Medical Council, General Optical Council, General Osteopathic Council, Health Professions Council, Nursing and Midwifery Council, Pharmaceutical Society of Northern Ireland, Royal Pharmaceutical Society of Great Britain

² *The regulation of the non-medical healthcare professions* (p 15), available at: http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_4137239 (accessed 3 November 2008)

³ See the Department of Health's *Consultation analysis report: Good doctors, safer patients and The regulation of the non-medical healthcare professions*, available at: http://www.dh.gov.uk/en/Consultations/Responsestoconsultations/DH_066020 (accessed 3 November 2008)

⁴ *Trust, Assurance and Safety – The Regulation of Healthcare Professionals in the 21st Century* (p 10), available at http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_065946 (accessed 3 November 2008)

professions of proof of indemnity insurance as a condition of registration, the requirements cover the same broad issues.

2.2 The regulators have education and training requirements, which aim to establish that the applicant has the technical competence for practising effectively. There are health requirements, which aim to establish that the applicant is capable of practising effectively. Finally, as part of establishing an applicant is fit to practise as a health professional there are requirements pertaining to their behaviour and conduct. The purpose of these is to determine whether applicants are liable to behave and conduct themselves in a way consistent with the safe and effective practice of the profession. Applicants must also merit the trust and confidence of patients and the public, as this underpins the mutual respect that is necessary for the relationships between professional and patient that facilitates the effective practice of health professions.

2.3 The specific requirements pertaining to past conduct vary across some of the different regulators. In most instances their explicit purpose is establishing the 'good character' of the applicant, because this is required as part of the registration process by the regulators' respective legislation and regulations. The General Medical Council and the General Optical Council are exceptions to this. The GMC has the requirement that the Registrar considers that an applicant's 'fitness to practise is not impaired'. However, to this end, it has requirements regarding past conduct that cover the same ground as those of the other regulators that explicitly refer to 'good character'. Beyond health and professional performance, the Medical Act 1983 specifies that the GMC can consider fitness to practise to be impaired because of: misconduct; a conviction or caution for a criminal offence; or a determination by another regulatory or statutory body that fitness to practise is impaired. Similarly, the GOC no longer uses the notion of good character across its registration process. Good character only appears in the Opticians Act 1989 in reference to grandfathering provisions and for all other applicants it is the notion of being fit to practise as an optometrist or dispensing optician which applies.

2.4 A useful starting point for understanding good character is provided by legal advice tendered to the GMC when 'good character' was still part of its registration process. It states:

The issue may be approached this way: having regard to the individual's entire character and antecedents, would the right-thinking member of the public with full knowledge of the (proven) facts and matters regard him as being of good character for the purposes of registration as a medical practitioner or would the registration of that individual in the light of his known character be such as to bring the profession into disrepute.⁵

2.5 It should be noted that this advice was given in light of the GMC's legislation and standing orders at the time. In the current context of

⁵ From the GMC's response to a CHRE consultation on good character in 2006

professional regulation, reference to protecting the public should also have the status of a threshold, rather than just bringing the profession into disrepute.

2.6 For someone to have the character to be deemed fit for entry to a health profession they must be capable of practising effectively as a member of that profession. Alongside, having the necessary knowledge, skills and experience this involves their relationships with patients and with us all as a society more widely. Professionals must maintain our trust and confidence, not jeopardise our health, safety or well-being and maintaining the standards of the profession we are entitled to expect.

2.7 Professor Dame Margaret Turner Warwick has noted that ‘a professional person not only has particular knowledge and skill, acquired through training and refined by experience, but also agrees to conform to certain standards of personal behaviour and codes of practice. Because of their responsibilities to patients, professional doctors must also adhere to codes of behaviour’.⁶ This holds true for all the health professions, with professionalism necessarily defined by the responsibilities to, and relationships with, patients and the public that underpin the effective practice of that particular profession.

2.8 Although far more difficult to test than knowledge, skills and experience, the nature of health professionals’ relationships with patients and the public demonstrates why applicants’ past behaviour and conduct need to be assessed. The public need to be assured that there is no reason to believe a health professional will fail to act in accordance with a minimum level of professionalism, facilitating the professional-patient relationships necessary for effective practice. As Dame Janet Smith has put it: ‘professionalism is the basket of qualities that enables us to trust our advisors.’⁷ The only way to approach making this assessment is to use past behaviour and conduct as a basis to determine whether or not these past actions suggest that they will act in accordance with the expectations of them in their professional relationships and practice.

2.9 To inform our recommendations, CHRE have reviewed a range of current approaches to good character by the regulators of health and other professions in the United Kingdom and internationally. The findings of this review are attached in the annexes to this document. We have also looked at the standards of the health professions regulators and the wider debate on professionalism in the health professions to provide additional context for our conclusions.

⁶ See Royal College of Physicians (2005) *Doctors in Society – Medical professionalism in a changing world, technical supplement* (p14), available at: <http://www.rcplondon.ac.uk/pubs/books/docinsoc/docinsocotech.pdf> (accessed 3 November 2008)

⁷ See Royal College of Physicians (2005) *Doctors in Society – Medical professionalism in a changing world* (p 15), available at <http://www.rcplondon.ac.uk/pubs/books/docinsoc/docinsoc.pdf> (accessed 3 November 2008)

3 Central features of different approaches to good character

3.1 Across the different approaches to good character CHRE have reviewed there are certain common core features.

3.2 Regulators consider good character relative to a particular profession, for the purpose of practising that profession, rather than approaching it as passing judgement on the applicant's character in a wider sense. This is in line with the GMC's legal advice quoted above, that good character should be judged for the purposes of registration as a member of a particular profession. The importance of this is made explicit in the consistent references to the relevance of conduct to the practice of the given profession. Following on from this, establishing confidence the applicant would act in accordance with the requirements of professional registration is a common reference point in approaches across different sectors and countries. On a basic level, conduct that would lead to a registrant being barred from practising should prevent an applicant from entering the profession in the first place.

3.3 The protection of the public is a central threshold across approaches to good character. This is referred to in a number of ways – such as harm to members of the public or upholding the health, safety and welfare of the public – but remains at the core of all approaches to good character.

3.4 Public trust in the profession is a consistent criterion. An individual cannot effectively practice their profession if unable to justify the confidence of those they serve. As is argued in the GMC's legal advice, if a reasonable member of the public, with knowledge of the facts regarding an individual's past conduct and behaviour, could not have trust or confidence in the individual providing their care, the individual lacks the character necessary to practise as a member of that profession.

3.5 Honesty and trustworthiness are often included independently as an additional requirement. This is not the case in all approaches; some regulators take these to be implicit in their other requirements, but all stress the importance of honesty and trustworthiness to their assessment of character.

3.6 A number of professions regulators use assessment frameworks to support their decision-making process on good character. These frameworks outline the general types of evidence that will be considered important in the assessment and indicate how these are weighted in terms of seriousness, aggravation and mitigation when making a judgement.⁸ However, all the regulators that have such frameworks do not treat them as providing a formula where inputs are assigned specific values and computed to determine an outcome. Rather the frameworks are treated as providing guidance for the processes the regulator goes through in assessing character, but with the precise weight assigned to each piece of evidence variable according to the particularities of a case.

⁸ See Annexes A, B and C for more detail on particular regulators' frameworks.

3.7 Flexibility in relation to particularities of individual cases is crucial because the nature of the evidence varies on a case by case basis, and a robust approach to assessing character therefore needs to have the flexibility to account for this. There are considerations that will mean two instances of the same type of conduct cannot be accounted for in the exact same manner. For example, in the *Fifth Report of the Shipman Inquiry*, it is noted that an immediate apology following a breach of trust affects the seriousness with which this should be treated in comparison with a similar breach of trust following which no immediate apology is forthcoming.⁹ Similarly, when it comes to weighting evidence offered for the purpose of demonstrating rehabilitation the weight assigned will vary in accord with its relevance to the initial conduct and so again needs to be considered in relation to the particularities of the individual case.

3.8 There were some suggestions in response to the recommendations of the Foster Review that a definition of good character should take a 'positive', rather than 'negative', approach. In this approach good character should be based on evidence of the possession of positive qualities for the practice of the profession, rather than the absence of evidence an applicant has acted in particular ways. The Nursing and Midwifery Council has some positive elements in its definition with its focus on an applicant's being 'capable of safe and effective practice' and being honest and trustworthy. However, the NMC emphasises the importance of negative consideration of past conduct 'not considered compatible with professional registration' and its guidance makes clear the centrality of past actions as potentially negatives in its assessments of good character. All the approaches to good character emphasise the same negative considerations. The approach of the Minnesota State Supreme Court with regard to the 'good moral character' of applicants to its Bar, comes closest to a positive approach insofar as it formulates its essential eligibility requirements in terms of abilities. However, these are still assessed in a framework that emphasises their establishment through absence of evidence that an applicant lacks the ability, rather than through positive demonstrations of it.

3.9 Having reviewed the evidence on good character and sought the views of interested parties, our conclusions cover three key areas:

- a basis for a common approach to good character across the health professions regulators based on four clear criteria which are equally applicable to all the regulators
- how evidence on applicants' character should be assessed to ensure the process is fair, transparent and targeted to risk.
- the relationship between our recommendations and wider work to promote information sharing that is currently taking place within Europe.

⁹ See *The Fifth Report of the Shipman Inquiry* (p 758), available at <http://www.archive2.official-documents.co.uk/document/cm63/6394/pdf/s521.pdf> (accessed 3 November 2008)

4 Basis for a common approach

4.1 The different approaches to good character and the legal advice of the GMC demonstrate that good character needs to be considered in relation to the practice of the profession in which an applicant is seeking registration. As a result, although it is possible to draw together a core to good character that can provide the basis for a common approach across the health professions regulators, this needs to be done in a manner that enables the regulator to take into account the context of the particular profession in its assessment.

4.2 The central question is 'what is good character for the purpose of registration as a member of a particular profession?', and the crux of this issue is what needs to be established for the person making an assessment to be convinced of this. This provides the basis for approaching good character. For example, the NMC's definition of good character states that it seeks to establish that the applicant 'is capable of safe and effective practice without supervision', but on its own this does not provide objective criteria for establishing this.

4.3 Having reviewed a wide range of approaches to good character and having sought the views of interested parties, CHRE suggest that the following are the key elements around which a clear basis for approaching good character amongst health professionals can be formed:

(i) *Public protection*

Public protection and patient safety lie at the heart of professional regulation. As stated in *Trust, Assurance and Safety* 'the primary purpose of professional regulation is to ensure patient safety'. The health, safety and well-being of the patient should always be the first concern of any health professional. If in their past conduct applicants have shown disregard for the health, safety or well-being of others, they cannot be thought of as having the necessary good character for the purpose of practising the profession unless there is clear evidence of rehabilitation.

(ii) *Public confidence in the profession*

Past actions that could undermine the confidence a member of the public has in the care they receive or a professional providing it need to be weighed carefully in the context of all the evidence an applicant provides of their character. The central judgement here is whether, all things considered, members of the public should be able to have confidence in the care the applicant would provide.

(iii) *Acting in accordance with the standards expected of the profession*

Past departure in conduct from the standards of the profession and values that underpin them needs to be investigated before good character can be established. Such conduct should

include behaviour that shows a disregard for the autonomy and dignity of others or where personal beliefs have led them to treat others prejudicially. These human rights principles are central to the delivery of safe and effective care, and the public should be able to expect that these will be upheld by health professionals. Additionally, if applicants' behaviour shows that they have disregarded any other legal or regulatory requirements in the past, there is a need for compelling evidence – such as evidence of insight, remorse and rehabilitation – with the purpose of establishing that they are liable to do likewise should they be registered.

(iv) *Honesty and trustworthiness*

Although honesty and trustworthiness will often be implicit in the other three, it should be included in its own right. An applicant could demonstrate a lack of honesty or trustworthiness in circumstances that do not impact on the protection of the public, that would not impact on public confidence in the profession and that do not relate to acting in accordance with requirements on them. However, this lack of honesty or trustworthiness may in some circumstances still merit further consideration before a decision is made regarding a particular application. Significant instances of dishonest behaviour, or a pattern of it, show a person has in the past acted towards others in ways that suggest they do not merit the trust and confidence which is necessary for effective relationships between health professionals and patients. This goes beyond questions of public confidence in the profession contained in (ii) to being a question of whether on the basis of their past actions an applicant merits the confidence of those they seek to provide with care which underpins effective practice in the health professions.

4.4 CHRE consider that these are the core elements, that can be viewed as pertaining to 'character', which the regulators should assess when establishing whether an applicant is fit to practise as a health professional and suitable for registration in the profession. However, it is important to be clear that what we term 'good character' is a label that covers one element of establishing an applicant's fitness to practise and suitability for registration. The four criteria above should be assessed by the regulators because they are important to establishing this fitness and suitability in their own right, not in virtue of being constituent parts of the concept of 'good character'.

4.5 The proposed criteria are important to protect the public from unwarranted risk of harm and to underpin the mutual trust, confidence and respect between health professionals and patients and the public, which are essential to professional-patient relationships which facilitate effective practice. It is not important whether these criteria are brought together under the label of good character or viewed directly as part of the wider notion of fitness to practise, without recourse to the additional terminology of good character. The

fact that many regulators have equivalents to good character requirements, expressed in different terms but with a common core in terms of what is assessed, highlights that the issues can be approached as clearer criteria, rather than requiring an abstract notion of good character.

4.6 In this sense, our conclusions offer principles that provide a basis for the health professions regulators to approach the issues raised by good character, rather than providing a formal definition of the term. They develop the key aspects pertaining to character that are important to applicants' fitness to practise and suitability for professional registration, to go along with the regulators' other important considerations such as having the necessary technical competence.

4.7 It has been suggested that good character would be better approached in terms of positive qualities possessed. The core elements to good character listed above could be expressed as positive features. In this case an individual is of good character if they:

- (i) are committed to the health, safety and well-being of patients and other members of the public
- (ii) justify public confidence in the profession
- (iii) act in accordance with the standards of the profession
- (iv) are honest and trustworthy.

4.8 However, when it comes to making a judgement on good character – or, where that term is not used, these aspects of fitness to practise – the regulators can typically only affirm that, given the evidence available to them, they are not aware of any factor that would call into question the good character of the individual concerned. References to good character should reflect this as it is important that the public are not misled on the level of assurance that the regulators can give regarding their registrants. The regulators cannot assure that an individual possesses the four traits listed above, only that given the evidence available it is not reasonable to believe the individual lacks them. Hence requirements that regulators be satisfied an applicant is of good character are potentially misleading. Instead, it is better that the requirements are expressed in terms of what is actually being assessed by the regulator when it makes a judgement on an applicant.

4.9 Following on from the conclusions above, we suggest that the following are clear criteria on which to base a common approach to the consideration of good character across the regulators (whether this is expressed as criteria for an applicant to be deemed of good character for the purpose of practising the particular profession or as criteria to form part of an applicant's demonstrating fitness to practise):

An applicant has not acted in the past, and/or is not liable in the future, to act:

- (i) in such a way that puts at risk the health, safety or well-being of a patient or other member of the public

- (ii) in such a way that his/her registration would undermine public confidence in the profession
- (iii) in such a way that indicates an unwillingness to act in accordance with the standards of the profession
- (iv) in a dishonest manner.^{10,11}

4.10 Past actions that cause an applicant to fail to meet these criteria should not be an absolute bar to entry to the register. However, such actions should cause the regulator to examine the case individually to determine whether the applicant should be deemed of good character/fit to practise. For clarity, it therefore may be necessary to put in a preface the above criteria with a statement such as that of the Solicitors Regulation Authority which begins 'unless there are exceptional circumstances'.¹² The approach advocated above would then begin: 'Unless there are exceptional circumstances an applicant will not be deemed of good character/fit to practise unless the applicant has not acted in the past, and/or is not liable in the future, to act...'

4.11 The liability to act in particular ways in the future requires the exercise of judgement as it in effect comes down to whether, in the light of the evidence available, it is reasonable to believe that the applicant might act in that way. It may seem that the liability to act in particular ways in future on the basis of their past behaviour is all that is important for considerations on an individual's admittance to the profession, and hence whether they have acted in those ways in the past as contained in our definition is irrelevant except insofar as it provides evidence for judgements on an applicant's liability to act in particular ways in future. However, past actions provide the only way to judge applicants' values and relationships and how these would impact on their practice. Regardless of whether an applicant is liable act in a particular way in the future, in rare circumstances their past actions may lead us to judge that they do not meet the expectations that we, as a society, have for members of that profession – that they do not merit the mutual trust, respect and confidence we demand of health professionals and which underpins professional practice.

4.12 In two significant senses the good character requirement should be understood as a dynamic, rather than static, concept. Firstly, a judgement is being made on all the available evidence about an applicant's past actions. Applicants should be encouraged to show how their actions since a particular

¹⁰ The precise wording of these criteria may need to be modified slightly subject to any legal advice on the exact wording. The GMC commented that criterion (iii) could be open to too-wide interpretation and suggested as an alternative 'has breached professional standards in a way which (were the applicant registered) would be likely to result in action on registration being considered or taken'. However it is important that this criterion captures both this and that if an applicant has failed to comply with the requirements of another regulatory body this indicates a disregard for the importance of professional standards in general and of acting in accordance with them.

¹¹ The use of the phrase "in a dishonest manner" intends to capture that a single minor lapse should not fail to meet the criteria, but that significant instances or repetition of dishonest behaviour would mean an applicant fails to meet the criteria.

¹² See Solicitors Regulation Authority *Guidelines on the assessment of character and suitability*, available at <http://www.sra.org.uk/documents/students/student-enrolment/characterguide.pdf> (accessed 3 November 2008)

incident demonstrate insight into the incident and relates to their capability for safe and effective professional practice. Consequently, although there may have been actions that would have caused a regulator to turn down an applicant were they considering it at a particular point in time, evidence of rehabilitation would allow a person to demonstrate they no longer lack the requisite character on the basis of these previous actions.

4.13 Good character is also dynamic in a second sense. What we, as a society, take to be good character for the purposes of practising as a health professional is dependent on the nature of the relationships between professionals and patients and the public, and on wider social norms. The nature of these relationships and norms can change over time, and have done so historically. Actions that would undermine public confidence and what are the appropriate emphases of professional standards should be viewed as varying in correspondence with any changes in these relationships and norms that may take place. Hence, the ways in which regulators assess character – which actions demonstrate a lack of character and what constitutes relevant rehabilitation and insight – and the according judgements they make on applicants, need to have the agility to respond to these wider social developments.

5 Assessing evidence

5.1 The assessment of evidence is crucial to approaching the issue of good character. The criteria suggested in section four may provide clear criteria on which to approach good character, but they do not provide objective tests for assessing it, as called for by the Foster Review. Objectivity must come from the way in which regulators assess an applicant's good character. However, in the light of the information a regulator receives regarding an applicant, it needs the flexibility to judge the particularities of each case on its own merits. The seriousness of an applicant's conduct should be judged in terms of its relevance to the practice of the profession and any mitigating or aggravating factors associated with their particular case. These considerations should be made in line with the regulator's approach to fitness to practise, were the conduct that of an existing registrant. In this way there would be common core criteria for applicants, but each regulator would have the flexibility to assess evidence with regard to the risk it poses in relation to practising the particular profession. This is because central to the purpose of requiring good character is to ensure that those admitted to the profession will uphold the type of relationships with patients and the public that underpin effective practice, which are common to these relationships, they may also vary somewhat depending on the nature of care the profession provides to patients and the public.

5.2 Clear guidance outlining these considerations and appropriate training should be given to those making the assessment to ensure consistency. For the purposes of transparency and accountability guidance documents should be available to applicants and members of the public. An assessment framework can help to ensure particular factors are considered and not

overlooked by those making decisions, and can provide additional transparency to the registration process.¹³ However, assessment frameworks cannot provide absolute objectivity; they provide a guide for those considering a case and can aid them in reaching a judgement on its particularities, but cannot remove the need for a person/panel to make this judgement. Guidance should also be provided by regulators to education institutions to ensure judgements made on whether an applicant's suitability for enrolment or continuation on a course are consistent with the requirements the regulator has for entry to the profession.

5.3 Where there are concerns about conduct, behaviour since the conduct occurred and other evidence offered by an applicant should be judged in relation to the nature of the offence and the practice of the profession. The purpose of this is to assess the extent to which the applicant is rehabilitated and the extent to which confidence can be established the past action is no longer indicative of their lacking the capability for safe and effective practise safely and effectively. Evidence provided by applicants for this purpose will inevitably vary from case to case, but emphasis should be given to positive behaviour that is relevant to the concerns raised by the initial conduct. For example, if an applicant had acted dishonestly for personal gain, involvement in community or other voluntary work for the benefit of others should be weighted more highly for the purpose of establishing rehabilitation than successful academic study. Again regulators should provide clear guidance and training for decision-makers and work to ensure there is consistency between their approach and those of education institutions.

5.4 A framework that guides assessments cannot be a formula whereby different types of evidence are antecedently defined such that the evidence in each case entails a particular outcome. Rather a framework should provide an objective basis to guide the process a decision-maker must go through in assessing character to reach a decision, but the precise weight assigned to each piece of evidence will need to vary with the particularities of the case. An inflexible and formulaic assessment framework would not allow regulators to consider the particularities that will inevitably be associated with each case, and therefore would prevent the regulator targeting its decision to the risk involved in the case.

5.5 Negative considerations will always need to be central to decision-making determinations about character. It may occur that applicants have positive references affirming their possession of certain qualities, but also have past conduct that demonstrates they disregarded a principle important to practising the profession. In such circumstances it would not be reasonable to ascribe them as having the requisite good character to practise the profession *a priori*. Instead the evidence of the particular case would need to be weighed before it would be reasonable to make such an ascription – for example, is there evidence of rehabilitation from the references and other sources, what were the particularities of the conduct in terms of their mindset and other

¹³ See Annexes A, B and C for more discussion of assessment frameworks and examples of what they contain.

mitigating factors. This fits in with the GMC's legal advice – that regard should be had to an individual's entire character and antecedents before a judgement is made – but is adaptable into an approach which is based on clear criteria.

5.6 A number of regulators currently require applicants for registration to sign a statement that they have read and understood the regulator's specified standards document.¹⁴ One example of this is the HPC, which requires applicants to sign the statement: 'I declare that I have read, understood and will comply with the HPC's standards of conduct, performance and ethics.' We consider that this a good measure which other regulators may wish to consider and which could form part of a common approach to good character. It is important applicants understand the standards for the profession as they will need to practise in accordance with them. If an applicant has not read the relevant document this demonstrates a disregard for the standards and principles underpinning the practice of the profession and a lack of good character for the purpose of practising it.

5.7 The regulators work with education institutions and students to seek to ensure that students understand the meaning of the standards in practice and the importance of the values embodied in them. This work to foster professionalism is highly important. Demonstrating the importance of the professional values and the principles embodied in the regulator's standards to students could help to foster attitudes to practice that would lead students to carry these values and principles through into their future professional practice. Research from the United States has found that, with regard to medicine, those who display unprofessional behaviour during their education were far more likely to subsequently be subject to disciplinary action by a state medical board.¹⁵ The correlation was particularly strong for repeated instances of irresponsibility, such as unreliable attendance at a clinic and not following up on activities related to patient care and repeated instances of diminished capacity for self-improvement, such as failure to accept constructive criticism, argumentativeness and displaying poor attitudes. It is not unreasonable to believe given the variables used that these findings may extend across other health professions. Work to share good practice in this field across the regulators may prove useful.

6 Europe

6.1 The Foster Review called for CHRE's recommendation to encompass wider work on good character within Europe. CHRE have discussed this with Healthcare Professionals Crossing Borders. This is an informal partnership of health professions regulators from within Europe that works collaboratively on a range of regulatory issues. HPCB has pioneered the Certificate of Current Professional Status. This is a template to increase the consistency of

¹⁴ The GMC, GOC, HPC, NMC and RPSGB all have a statement to this effect, which applicants must sign as part of the registration process.

¹⁵ Papadakis M et al (2005) *Disciplinary Action by Medical Boards and Prior Behaviour in Medical School* The New England Journal of Medicine: 2673-2682

information exchanged by regulatory authorities and it provides a range of information about the current status of a health professional who is seeking registration with a regulator in another country. Additionally, HPCB has pioneered a Memorandum of Understanding on Case by Case and Proactive Information Exchange for complex cases.¹⁶ A number of regulators in Europe have signed up to this memorandum, which details how case by case information requests and responses should be handled by regulators and provides a framework for the sharing of information proactively.

6.2 The use of the term 'good character' is potentially problematic because it is not widely used outside English-speaking countries and lacks an equivalent in Europe. Good character is a culturally specific concept that does not make obvious what is being assessed to people from those from cultures where it is not used. Consequently, the term may be less readily understandable to applicants, referees and regulators from many other countries than the more explicit criteria that CHRE believe form core elements of it. Although what specifically is contained in standards and what would be judged as undermining public confidence in the profession may also vary by culture, these are more understandable concepts to those from other cultures.

6.3 In addition to this, the approaches to the issues covered by good character requirements and impact of behaviour on professionals' fitness to practise vary significantly from country to country. A study carried out in 1999 by GMC council member Stephen Brearley found that what is deemed to be acceptable behaviour, what constitutes a disciplinary offence, and the degrees of severity with which such offences should be judged currently varies considerably across Europe.¹⁷ In some countries personal relationships with patients that might be considered inappropriate in the UK can be viewed as acceptable. Some countries also have strong distinctions between professional and private conduct and would not consider fitness to practise affected by imprisonment for a crime unrelated to their professional practice. Due to the different approaches to considering the public interest and patient safety regulators in other countries may not consider a professional's standing to be affected by conduct that in the UK we would consider indicates a lack of good character. National data protection and privacy legislation limits the information that regulators in some countries can share with their counterparts and this variation amounts to a further obstacle to

6.4 These factors mean that regulators should not rely just on the information they receive from their counterparts abroad, for the purpose of establishing an applicant's good character. The regulator's information requirements should apply equally to all applicants for the purpose of establishing good character. As understandings of standards of practice and professionalism vary, it is especially important in the case of international

¹⁶ The template documents for this are contained in the Edinburgh Agreement, available at: http://www.hpcb.eu/hpcb/activities/edinburgh_agreement.asp (accessed 3 November 2008)

¹⁷ See Stephen Brearley *Regulation of doctors in the European Economic Area – types of misconduct, disciplinary machinery and exchange of information*. Report to the Conference Internationale des Ordres, February 1999

applicants that a regulator requiring references give strong guidance on the particular factors referees should include.

Annex A: Current approaches to good character amongst the UK health professions regulators

A.1 Amongst the health professions regulators for which 'good character' is a central part of the registration procedure,¹⁸ there is no common understanding of what good character is and no common approach to determining whether an applicant possesses it.

Existing definitions of good character

A.2 Amongst the regulators, the Royal Pharmaceutical Society of Great Britain and the Nursing and Midwifery Council have both defined 'good character' for the purposes of their respective registration procedures. The RPSGB defines good character as:

the absence of evidence that a person has committed (and/or has any disposition towards) conduct or behaviour that is inconsistent with the Standards of Conduct published by the Society, or the exercise of the pharmacy profession.¹⁹

A.3 The NMC uses the following definition:

Good character is important as nurses and midwives must be honest and trustworthy (NMC 2004). Good character is based on a person's conduct, behaviour and attitude, as well as any conviction or cautions that are not considered compatible with professional registration and that might bring the profession into disrepute. A person's character must be sufficiently good for them to be capable of safe and effective practice without supervision.²⁰

A.4 The reference to NMC 2004 is to the NMC's *Code of professional conduct* that was applicable when the definition was made. From April 2008 this document has been superseded by a new *Code*, but which continues to emphasise honesty and trustworthiness as key values for nurses and midwives.

A.5 The two definitions have a common core insofar as they focus on actions of an applicant and how these are compatible with the standards for practising the profession. The explicit purpose of the definitions is to establish an applicant's suitability to practise as a member of the profession. Although these definitions could be transposed for use in other professions, their application would vary with the expectations different regulators have of their registrants.

¹⁸ All the UK health professions regulators other than the GMC and GOC, which consider the same issues as part of their registration procedures as part of determining whether an applicant is fit to practise.

¹⁹ See RPSGB *Good character and health framework*, available at: <http://www.rpsgb.org.uk/pdfs/regracgoodchhealthfw.pdf> (accessed 3 November 2008)

²⁰ See the NMC's website section on good health and good character, available at: <http://www.nmc-uk.org/aArticle.aspx?ArticleID=2603> (accessed 3 November 2008)

A.6 The NMC specifically based its definition on the principle that what is acceptable for a person to enter the register is the same as what is acceptable for a registrant currently practising the profession.

A.7 The RPSGB's definition has a similar basis in that the definition refers to the 'Standards of Conduct published by the Society' as a basis for judging behaviour and dispositions to behaviour. Thus the RPSGB's judgement on an applicant's good character is directly linked to its standards of practice for a registrant currently practising the profession.

A.8 However, in its response to a 2006 CHRE consultation on good character the GMC expressed concern that if the RPSGB definition was followed to the letter, it would mean that the GMC never registered anyone. The GMC's argument was that if any departures from the standards laid out in *Good Medical Practice* are repeated or of a serious nature this would put a professional's registration at risk. However, a single incident of rudeness, for example, is not likely to lead to action jeopardising their registration. Yet if committing, or having any disposition towards committing, conduct incompatible with the standards would mean an applicant could not be regarded as being of good character, it implies that a single incident of rudeness would bar an applicant from registering in the profession.

Assessment of good character

A.9 All the regulators ask applicants a series of questions regarding past conduct as part of their registration processes. All request disclosures of any criminal convictions or cautions in the United Kingdom or elsewhere irrespective of time elapsed and whether or not it is spent under the Rehabilitation of Offenders Act 1974 (though this may exclude certain parking and minor traffic offences punishable only by fines). All request details of any disciplinary proceedings that the applicant has been through as a registrant of any other regulatory body. Most require disclosure of either specified civil proceedings or all civil proceedings (excluding divorce). Additionally, some ask the applicant to provide character references in support of their application.

A.10 Once this information has been obtained, there is no common approach amongst the regulators to the assessment of good character on the basis of the information they have. Some regulators have detailed assessment frameworks that guide this process, whereas others make this assessment on a case by case basis.

A.11 The RPSGB, for example, has developed a detailed assessment framework.²¹ This sets out matters that the registrar (or any employee to whom this function is delegated) is required to consider in deciding whether an applicant is of good character. It states that the 'registrar will consider whether

²¹ See the RPSGB *Good character and health framework*, available at: <http://www.rpsgb.org.uk/pdfs/regracgoodchhealthfw.pdf> (accessed 3 November 2008)

or not there is any evidence about [the applicant's] character' and lists what such evidence may include:

- criminal convictions
- cautions, bind overs, conditional discharges, admonishments or reports to a procurator fiscal
- findings by a body responsible for the regulation of a health or social care profession
- allegations, complaints or information about the applicant which have been brought to the attention of the registrar
- testimonials and character references about the applicant.

A.12 However, the framework also specifically leaves open the option for the registrar to make further inquiries in relation to evidence about the applicant's character beyond this.

A.13 The assessment framework then specifies factors that will assign weight to any evidence:

- the seriousness of the conduct or behaviour
- the relevance of the conduct or behaviour to the practice of pharmacy
- the relevance of the conduct or behaviour to the honour and dignity of the profession of pharmacy
- how recent was the conduct or behaviour
- the applicant's age at the time the conduct or behaviour was committed
- the applicant's personal mitigation in respect to the conduct or behaviour committed
- the applicant's efforts (or lack of) to rehabilitate himself since the conduct or behaviour was committed
- the applicant's insight (or lack of) in relation to the conduct or behaviour committed
- the extent to which the conduct or behaviour is counterbalanced by testimonials and character references about the applicant's subsequent and recent conduct and behaviour
- the extent to which the conduct or behaviour is characteristic of the applicant, or indicative of a propensity by the applicant to commit such conduct or behaviour
- the extent to which the applicant disclosed (or failed to disclose) the existence of the conduct or behaviour, during the application process
- the extent (or lack of) co-operation by the applicant with any inquiries into the conduct or behaviour made by the RPSGB.

A.14 Finally, the framework lists specific factors that will automatically qualify the conduct or behaviour as serious, if it:

- involves dishonesty, fraud or misrepresentation
- indicates drug or alcohol dependency
- results in a criminal conviction or finding of misconduct/unfitness to practise by any body responsible for the regulation of a health or social care profession
- involves violence exhibiting intentional or deliberate disregard of human life
- involves non-consensual sexual acts
- involves any sexual acts with children
- involves trafficking in, or illegally manufacturing, any controlled drug
- poses a threat to public health, safety or welfare
- involves discrimination on the grounds of race/colour/religion
- indicates a blatant disregard for the law or the system of registration.

A.15 On the other hand, many of the regulators approach the assessment of good character differently. If an applicant to the General Chiropractic Council makes a relevant disclosure or fails to respond to a request by a registration officer, the registrar then assesses that application individually. The General Osteopathic Council additionally requires an enhanced Criminal Records Bureau disclosure from all applicants, but has a similar approach of assessing each case individually. The GOsC sees its requirement of CRB checks to be important because osteopathy is a largely self-employed profession and so the GOsC views itself as assuming the employer-like role in this regard.

A.16 It is not only the regulators with fewer applications than the other UK-wide regulators that approach the assessment of an applicant's character on a case by case basis. The NMC specifically decided against a long list of acceptable and unacceptable characteristics as it believes cases need to be considered on an individual basis – in line with its Fitness to Practise and Investigating Committees' procedures. The NMC does though publish guidance on how it approaches good character, which includes a number of different scenarios explaining its rationale for deciding whether or not the applicant from the scenario was of good character. As its guidance makes clear, the NMC's approach means that the question it addresses in assessing good character is assessing whether or not the applicant is capable of safe and effective practice without supervision.²²

²² See the NMC's website section on good health and good character, available at: <http://www.nmc-uk.org/aArticle.aspx?ArticleID=2603> (accessed 3 November 2008)

Annex B: Current approaches to good character by the regulators of other professions in the UK

B.1 In many other sectors professions regulators have character requirements that applicants must satisfy before being registered. Regulatory bodies for solicitors, teacher and social care workers all have such requirements. The Solicitors Regulation Authority in England and Wales, the General Social Care Council in England and the Scottish Social Services Council, and the General Teaching Council for England have all undertaken significant pieces of work on their respective character requirements in recent years. Additionally, there is the Healthcare Support Workers pilot of employer-led regulation in Scotland which takes a different approach again to those of regulatory bodies.

Solicitors Regulation Authority

B.2 The SRA has the role of ensuring that, before admission, an individual is of the 'character and suitability' to become a solicitor, but nowhere in the Solicitors Act 1974 or the SRA's regulations is this term defined. However, the SRA states that it is its role 'to ensure that an individual admitted as a solicitor has the level of honesty, integrity and professionalism expected by a member of the public and other stakeholders, as well as other members of the profession, and does not pose a risk to the public or the profession.'²³

B.3 To this end the SRA has general principles that form the basis of the assessment. These are requirements that, when taking into account past and current behaviour, for the applicant to be of the character and suitability to become a solicitor confidence needs to be established that the applicant is:

- honest and trustworthy
- willing to comply with legal and regulatory requirements
- able responsibly to manage financial affairs for themselves and clients

and that there is no reasonable risk that the applicant's admission will:

- diminish the public's confidence in the solicitors' profession
- be harmful to members of the public, the profession or to him/herself.²⁴

B.4 The five principles do not formally define 'character and suitability' for the SRA, but they do show how the SRA interprets the character and suitability to become a solicitor and what forms the core of this requirement. Although the third of these relates specifically to the legal profession, the other four – honesty and trustworthiness; willingness to comply with legal and regulatory

²³ See Solicitors Regulation Authority *Guidelines on the assessment of character and suitability*, available at <http://www.sra.org.uk/documents/students/student-enrolment/characterguide.pdf> (accessed 3 November 2008)

²⁴ *Ibid*

requirements; public confidence; and public harm – transcend the legal profession and can equally be applied to the regulation of other professions. It is also worth noting that, like the definitions that are used by the RPSGB and NMC there is a clear relation to the specific profession. In their definitions the RPSGB and NMC both refer to their respective Codes and the practising of the particular profession, with the SRA referring to its regulatory requirements.

B.5 The SRA additionally breaks down each of the five principles to describe the behaviours that would generally prevent the necessary confidence from being established, how an applicant could still establish confidence in spite of these, and the type of supporting evidence that should be included for this purpose.

B.6 The approach has widespread support from the SRA's main stakeholders – a consultation on the assessment guidelines in 2007 received overwhelmingly positive responses.²⁵

General Social Care Council and Scottish Social Services Council

B.7 The GSCC and SSSC are both required by their respective legislation to be satisfied an applicant 'is of good character' prior to registration. Neither body has a formal definition of good character, or what is incompatible with it, but both have established frameworks for assessing complex and serious declarations or cases in which the information received has been unsatisfactory. It is made explicit that the assessment relates to the applicant's fitness to practise social work, such that the applicant is of sufficiently good character to practise social work from either the point of view of potential risk to service users or from the point of view of public confidence. The assessment is made with regard to:

- the relevance of the offence to social care work
- the seriousness of the offence
- the length of time since the offence
- whether the applicant has a pattern of offending
- whether the applicant's situation has changed since the offence was committed
- the circumstances surrounding the offence
- the applicant's explanation for the offence
- evidence submitted by the applicant of their good character
- the applicant's commitment to working safely in social care and upholding the trust and confidence of service users.^{26,27}

²⁵ See Solicitors Regulation Authority *Character and suitability guidelines consultation: Analysis of the responses*, available at: <http://www.sra.org.uk/securedownload/file/266> (accessed 3 November 2008)

²⁶ See General Social Care Council *Assessment of good character – risk framework*, available at: <http://www.gsc.org.uk/NR/rdonlyres/CC3D2AC4-79FB-4A6B-B36F-47A7456C444F/0/SuitabilitydocumentPDF.pdf> (accessed 3 November 2008).

²⁷ The Scottish Social Services Council has the same first six bullets in its assessment framework (though with minor, stylistic rather than substantive, changes in the wording) and replaces the last three bullet points with one point, which is the explanation for the behaviour.

B.8 As with the previous approaches examined, the GSCC is explicit that good character is assessed in relation to the practice of social work. There are also parallels here with the SRA's approach in that the potential risk to service users and public confidence are central to the assessment process.

General Teaching Council for England

B.9 Prior to an applicant being eligible for registration to practise as a teacher, they must be judged by the GTC as 'suitable' to be a teacher. Although no definition of 'suitable' is made, the GTC has suitability criteria against which it assesses applicants:

- has the applicant ever been the subject of a bar, partial bar, warning or other action by the Secretary of State in relation to working with children or misconduct
- has the applicant been convicted of a criminal offence, including motoring offences or has any criminal charges/proceedings pending against them (excluding fixed penalty traffic offences and parking fines)
- has the applicant been subject to any disciplinary action by any professional or regulatory body in this country or abroad or is currently subject to investigation by any such body
- is there a current employment disciplinary finding against the applicant or they are the subject of an employer's disciplinary investigation
- any other information which may have a bearing upon suitability to register, with reference to the Council's Code of Conduct and Practice for Registered Teachers or which could bring the reputation of the profession into disrepute.²⁸

B.10 The final bullet point reveals the rationale underlying the GTC's approach to suitability in that something bears upon it with reference to the standards expected of a member of the profession, as contained in the GTC's Code, and to public confidence in the profession. This demonstrates significant continuity in approach to character (or the equivalent consideration) across sectors, with similar considerations appearing central across the board.

B.11 Should something be flagged up, the GTC judges the impact of this on the applicant's character on the basis of two key variables. The first variable is the nature and seriousness of the offence and its relevance to registration as a teacher. This is judged on a case by case basis taking into account not just legal definitions, but also any 'relevant *guilty mind* component (such as

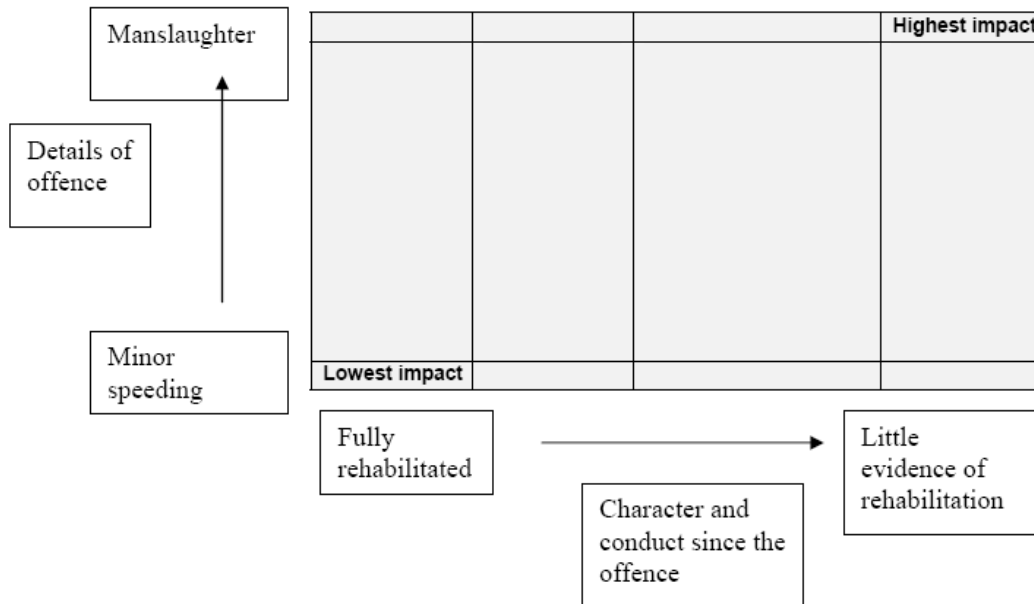
See Scottish Social Services Council *Registration Guide*, available at:

<http://www.sssc.uk.com/NR/rdonlyres/1FEA46AF-4580-4446-B876-3A123E63C0F2/0/SSSCRegistrationGuidev4.pdf> (accessed 3 November 2008)

²⁸ See General Teaching Council for England *Introducing Suitability to Register assessments: Guidance for ITT providers*, available at:

http://www.gtce.org.uk/shared/contentlibs/107419/104518/itt_guidance.pdf (accessed 3 November 2008)

dishonesty, intent or recklessness)', the circumstances of the particular offence including any mitigation offered at the time, and the sentencing remarks from the Court. The second variable is the applicant's conduct since the offence – as providing the GTC with a basis on which to see whether the offence is indicative of attitudes that are incompatible with registration as a teacher, as well as giving some indication to the risk of re-offending.²⁹ The GTC's approach is broadly illustrated by the figure below, which is published as part of its guidance on its suitability assessments:



Healthcare Support Workers in Scotland

B.12 The Healthcare Support Workers pilot of employer-led regulation in Scotland takes a slightly different approach to good character. It has a code of conduct that consists of 13 qualities all of which are grouped under the heading of good character. These are: accountability; awareness; integrity; advocacy; sensitivity; objectivity; consideration and respect; consent; confidentiality; co-operation; development; and alertness.³⁰ The code then develops each of these and explains what they mean to a support worker in practice.

B.13 This approach focuses on good character as something that is expressed through practice, by meeting these standards when working. In the employer-led model of regulation, where those leading the regulation can observe the practice of an individual, this appears a good way for the individual's character to be assessed. Good character is intentionally tied to qualities that can be expressed in practice and explicitly states that: "on a day-

²⁹ Ibid

³⁰ See Scottish Government Health Directorates *Code of conduct for Healthcare Support Workers*, available at: <http://www.healthworkerstandards.scot.nhs.uk/Documents/codeofConductHealthCareSupport.pdf> (accessed 3 November 2008)

to-day basis [the code] means that in your work, you should always be of 'good character'... you should always display the characteristics outlined".³¹ Although the approach is slightly different to that of the regulatory bodies, as good character is defined by standards of practice, this also demonstrates a strong similarity with the regulatory bodies as good character is approached in relation to an individual practising safely and effectively.

³¹ Ibid

Annex C: Current approaches to good character in other countries

C.1 Professional regulators in many other countries have equivalent requirements to 'good character' for registration, both in health and other professions.

Massachusetts Board of Registration in Medicine

C.2 In the United States, regulation of professions is largely a matter for the individual states and the respective regulatory bodies often have a 'good moral character' requirement. An example from the health sector is the Massachusetts Board of Registration in Medicine which is currently updating its good moral character requirement. The Board has proposed that good moral character be understood as:

those aspects of morality, attention to duty, forthrightness and self-restraint that are usually associated with the accepted definition of good moral character, as determined by the Committee. Any conduct, whether or not arising in the context of medical practice, which calls into question an applicant's or licensee's fitness or ability to practise medicine, or which is antithetical to the promotion of the public health, safety and welfare, as determined by the Committee, constitutes a lack of good moral character.³²

C.3 The inclusion of 'attention to duty, forthrightness and self-restraint' parallels the inclusion of honesty, integrity and/or trustworthiness and the ability to prioritise duty to patients/clients over the applicant's self-interest. The reference to conduct that calls into question fitness to practise shows the importance of meeting the standards expected of registered members of the profession. Finally, the importance of the health, safety and welfare is highlighted as central. This clearly shows that this definition shares some strong common themes with many of the approaches of regulators in the UK examined above.

Health Practitioners Competence Assurance Act 2003 (New Zealand)

C.4 Health professions in New Zealand are regulated within the framework specified by the Health Practitioners Competence Assurance Act.³³ Although there are different regulatory bodies across the different health professions they share a common requirement of 'fitness for registration'. This covers health and competence in communication, and also makes requirements that

³² Massachusetts Board of Registration in Medicine *Proposed Regulations* (p 3), available at: <http://www.massmedboard.org/public/pdf/BoardApprovedProposedRegulations3-15-04.pdf> (accessed 3 November 2008)

³³ The professions are: chiropractic; dental professions; dietetics; medical laboratory science; medical radiation technology; medicine; midwifery; nursing; occupational therapy; optometry and optical dispensing; osteopathy; pharmacy; physiotherapy; podiatry; and, psychology. Each profession has its own responsible authority. For more information see <http://www.moh.govt.nz/hpca> (accessed 3 November 2008)

pertain to issues of character. To register an applicant the particular regulatory body must be sure the applicant:

- has not been convicted of an offence punishable by imprisonment for a term of three months or longer, which the regulator determines that this reflects adversely on the applicant's fitness to practise
- is not the subject of professional disciplinary proceedings, which the regulator determines that those proceedings reflect adversely on the applicant's fitness to practise
- is not under investigation in respect of a matter that may be the subject of professional disciplinary proceedings, in New Zealand or another country, which the regulator determines that investigation reflects adversely on the applicant's fitness to practise
- is not subject to an order of a professional disciplinary tribunal in New Zealand or overseas or of an accredited education institution or similar body overseas, which the regulator determines that this reflects adversely on the applicant's fitness to practise
- there is reason for the regulatory body to believe that the applicant may endanger the health and safety of the public.³⁴

C.5 This approach is similar to that of the GMC in specifying a number of reasons on the basis of which the regulator can determine the applicant's fitness to practise is adversely affected, or in the GMC's language 'impaired'. However, it goes beyond the GMC's approach in specifically referring to the health and safety of the public as an additional reason for considerations in determining fitness.

Canadian Council of Professional Engineers

C.6 To be licensed to practise as an engineer in Canada an applicant must demonstrate 'good character and reputation'. The Canadian Council of Professional Engineers states that: 'the underlying objectives of this requirement are public protection, the maintenance of high professional standards, and the maintenance of public confidence in the engineering profession'.³⁵ The Council specifies that applicants may not meet the definition of good character if they:

- obtain or attempt to obtain a licence by fraudulent means
- have committed an act or acts that are inconsistent with the Code of Ethics and the applicant has not been rehabilitated or has not made adequate reparation

³⁴ See <http://www.moh.govt.nz/hpca> (accessed 3 November 2008)

³⁵ Canadian Council of Professional Engineers *Guideline on the Admission to the Practice of Engineering in Canada* (p 19), available at: http://www.engineerscanada.ca/e/files/guideline_admission_with.pdf (accessed 3 November 2008)

- have been convicted of a criminal offence or found to be at fault in a civil action, which may be construed as impacting on the applicant's ability to practise engineering in a professional manner.

C.7 Again this is an example that shows public protection and public confidence at the heart of a regulator's good character requirement, with the assessment of this specifically tied to the standards expected of someone practising the profession.

US State Supreme Courts

C.8 In the US the Supreme Courts of the individual states set the requirements for registration as a lawyer in that particular state. Part of the requirements the Courts set are 'character and fitness standards'. To this end the Minnesota Supreme Court has developed 'essential eligibility requirements' for registration. Additionally it lists factors that shall be treated as cause for further inquiry, and describes considerations in weighting these factors, for the purpose of determining whether a candidate meets its requirements. The eligibility requirements are expressed as abilities applicants must meet:

- the ability to reason, recall complex factual information, and integrate that information with complex legal theories
- the ability to communicate with clients, attorneys, courts, and others with a high degree of organization and clarity
- the ability to use good judgement on behalf of clients and in conducting one's professional business
- the ability to conduct oneself with respect for and in accordance with the law
- the ability to avoid acts which exhibit disregard for the rights or welfare of others
- the ability to comply with the requirements of the Rules of Professional Conduct, applicable state, local, and federal laws, regulations, statutes and any applicable order of a Court or tribunal
- the ability to act diligently and reliably in fulfilling one's obligations to clients, attorneys, courts, and others
- the ability to use honesty and good judgement in financial dealings on behalf of oneself, clients, and others
- the ability to comply with deadlines and time constraints.³⁶

C.9 This approach essentially defines character and fitness in terms of these abilities that must be met by applicants. Although there are a number which relate specifically to the legal profession, there is a similar core to the approach to character. The centrality of complying with regulatory and legal requirements and not causing harm to the public are stressed. By emphasising

³⁶ See Minnesota Supreme Court *Rules of the Minnesota Supreme Court and State Board of Law Examiners for Admission to the Bar*, available at: http://www.mncourts.gov/rules/ble_rules.html (accessed 3 November 2008)

the ability to use good judgement on behalf of clients and the ability to diligently and reliably fulfil obligations to clients, it suggests the prioritisation of the interests of clients is crucial to character. Additionally the importance of honesty is again highlighted.

C.10 The Montana Supreme Court defines good moral character as:

the qualities of fairness, discreetness, honesty, reasonableness, unquestionable integrity and ability and willingness to act in accordance with the standards set forth in the Montana Rules of Professional Conduct.

C.11 It further explains that this requires that the prior or present conduct of an applicant would 'cause a reasonable person to believe' that an applicant would act in accordance with that definition if admitted to practise, and that they would justify the trust of clients and others with respect to their professional duties.³⁷

C.12 This again contains many of the same common determinants of good character, in this case: honesty and integrity; abidance by regulatory requirements; and public confidence.

³⁷ See State Bar of Montana's *Rules of Procedure of the Commission on Character and Fitness of the Supreme Court of Montana*, available at: <http://www.montanabar.org/displaycommon.cfm?an=1&subarticlenbr=6> (accessed 3 November 2008)

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