

Background to the Disability Rights Commission's Formal Investigation into Fitness Standards in Social Work, Nursing and Teaching Professions

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Background to the Disability Rights Commission's formal investigation into fitness standards in social work, nursing and teaching professions

1. Introduction

Fitness standards comprise formal regulation, and the policies, practices and procedures operated by higher education institutions, employers, qualifications bodies and other organisations that affect an individual's ability to qualify, register and work in a number of public sector professional occupations.

The potential for systemic discrimination against disabled¹ people lies in the content of any such regulatory framework as well as how it is interpreted and implemented in daily practice. The Disability Rights Commission (DRC) became aware of this potential as a result of handling a number of legal cases from professional and associate professional occupations that point to the fact that certain types of discrimination cannot be tackled through individual enforcement action, therefore requiring strategic enforcement. The DRC's practice development function has also gathered information pointing to professional bodies, employers and higher education institutions not knowing how to fairly enforce the law requiring them to regulate entry into professional occupations.

An internal review of DRC cases handled by the casework and legal teams in the 12 months preceding January 2005 was conducted to identify all relevant cases within three particular occupational groups: social work, nursing and teaching. This was complemented by an approach to the Disability Law Service (DLS) for an assessment of relevant cases that they have handled within the same time period.

In addition, a rapid literature search and review was conducted to identify published material relating to the existence and impact of

¹ According to the Disability Discrimination Act (1995) and its 2005 amendment, a person is disabled if he or she has a physical or mental impairment which has a substantial and long-term adverse effect on their ability to carry out normal day-to-day activities.

fitness standards within the professions of social work, nursing and teaching.

2. Why these three professions?

The three professional groups were chosen as a result of the following reasons:

- they have very similar regulatory frameworks which all include fitness standards and a requirement for people to disclose medical conditions.
- they are often described as the 'caring' professions, with which disabled people are likely to have a higher degree of important contact as clients; a focus on disabled people in these professions is therefore helpful in tackling myths of disabled people as solely 'cared for' rather than contributing
- they are professions where anxieties about risk are high; professionals have regular, often unsupervised, contact with children, people who are unwell or in other ways deemed to be 'vulnerable'; there is an increased focus on regulation - at registration but increasingly in the form of re-validation
- by focusing this investigation on regulated professions within the public sector, we will be able to use the leverage of the Disability Equality Duty (DED) to add weight to the implementation of recommendations that arise out of the Formal Investigation.

While the focus is on these three public sector professions, there is an appreciation that findings and/or recommendations may be relevant to other public sector careers.

3. The three professions and country-specific contexts

Across Great Britain, nurses, teachers and social workers are required to register with regulatory bodies set up under legislation. Obtaining work as a nurse, teacher or social worker is dependent on registration, and for this reason these regulatory bodies are also considered to be qualifications bodies under the Disability Discrimination Act (DDA) (1995).

For nursing there is one regulatory body/qualifications body that regulates the profession across Great Britain: the Nursing and Midwifery Council (NMC). This body was set up under the Nursing and Midwifery Order 2001 and is required to ensure that all registrants are of 'good health and good character'.

For teaching and for social work there are separate regulatory/qualifications bodies in England, Scotland and Wales, with different regulations in operation.

The DRC is aware of the complex web of rights and responsibilities of disabled people as they go through the journey of studying, qualifying, registering and seeking employment and keeping employment within these professions. Their rights are covered by Parts 2 and 4 of the DDA; whilst they have responsibilities under regulation and various codes of practice to declare medical conditions to relevant institutions. This overall regulatory framework and the interactions between different legislation and regulations have never been comprehensively reviewed. Over the last three years, the regulations covering social work and teaching across England, Scotland and Wales have started to diverge, and there is a need for a comparative assessment of how these different frameworks operate in relation to the DDA.

4. DRC legal cases and casework experience

The DRC legal and casework teams were approached in January 2005 for information on any DRC cases they had on record involving disabled people in teaching, nursing, and social work in the preceding 12 months. The DRC website was also searched for all relevant cases brought under the DDA (1995) for all Part 2 cases.

4.1 Cases relating to social work

There has been one case dealt with by DRC's legal team and one by the casework team. Both involved health and safety concerns about disabled social workers and are described below.

A social work student with dyslexia was removed from a Diploma in Social Work course part way through his work placement in the second year. The university's stated reason for removing him from the course was the severity of his

dyslexia which, it was alleged, would mean he could not safely practise as a social worker.

A social worker with a past history of depression (from which she had made a full recovery) was removed from her post following an occupational health assessment. She had been working in the post as a residential social worker in a children's unit for two months. The post had been offered subject to medical clearance. The social worker claimed that the doctor was very negative about her previous condition during the assessment. Following the assessment the agency that appointed her issued her with a month's notice. She was further advised to serve out her notice on full pay without going into work. The stated reason for such decisions was the concern around child protection.

4.2 Cases relating to nursing

The DRC legal and casework teams dealt with eight cases relating to nursing. The main theme arising from these cases is the issue of fitness to practise, arising either at the point of someone wishing to gain admission to a university course or at the point of taking up a work placement. Three cases are described below.

An individual applied to be on a Diploma in Nursing course at a university. She was invited for an interview which, she felt, went well. The interview was immediately followed by an occupational health assessment in which she discussed her asthma for which she was on a high dosage of medication. She was informed by the occupational health assessor that her asthma could go against her application. She was later turned down from the course with no explanation.

An individual with a long-term shoulder injury, working as an operating theatre assistant, applied to do a nursing course. The occupational health assessment opined that she would struggle with the practical side of nursing because of her injury. The university turned down her application on the basis of this assessment. The individual appealed against the decision and was given a second occupational health assessment. The conclusion of the second medical report was non-specific and no examples were given of what the individual would not be able to do. There was no attempt by the university to explore adjustments.

An individual diagnosed as being HIV positive applied for a nursing course at a university. His application was turned down as it was claimed that he would have to undertake 'exposure prone procedures' and his own health could be at risk from infectious disease. The university claimed that it could not adjust the course because it was certified by Nursing Education Scotland (NES). NES claimed that the issue was one of fitness to practise and should be referred to the NMC as the NMC requires all nurses to have been certified as of 'good health and good character'.

4.3 Cases relating to teaching

The DRC dealt with four casework cases covering teaching or teacher training. Two of the cases involved reasonable adjustments, and the timeliness of these, to enable disabled graduate trainee teachers to carry out their roles in the classroom.

The other two cases involved issues relating to fitness to practise:

An individual taking a degree at a university wanted to enter a scheme whereby students could do a teaching placement at a secondary school while taking their first degree, prior to doing a PGCE. He was refused access to this placement, on health and safety grounds, because he had previously had seizures. It is not clear from the case notes whose health and safety policy this was. There was no record of reasonable adjustments being considered. The case was resolved after DRC casework intervention.

A student wanting to take a primary teaching course had her place withdrawn after disclosure of epilepsy. The university claimed that she did not meet the fitness to teach guidelines for primary teaching. This case was not resolved as the student decided she did not want to pursue a career in teaching following this experience.

5. Cases from the Disability Law Service

To complement the evidence originated from internal DRC cases, the Disability Law Service (DLS) was approached in January 2005 to look through their case files for records of cases supported or advice offered to disabled people in relation to employment in nursing, teaching or social work for the year prior to January 2005. Relevant cases are presented in summary form below².

5.1 Cases relating to social work

The DLS did not have any cases in the 12 months prior to January 2005 involving disabled social workers.

5.2 Cases relating to nursing

The DLS have records of 24 enquiries and cases relating to disabled nurses that fell within the time period. These cases covered all stages of work including work placements, recruitment, ill-health retirement and problems arising for existing employees³. Nine of the cases revealed an explicit question of fitness being raised either by an employer or an occupational health adviser.

Out of these nine, there were several cases where the employer and the occupational health adviser differed in their conclusions about the suitability of the caller for employment. There was one case that concerned a pre-employment health questionnaire that asked applicants to reveal any medical conditions. This had implications for the caller who was concerned that declaring her non-symptomatic condition would jeopardise her chance of gaining employment. In another case a nurse was labelled as a 'health hazard' following an occupational health assessment and was refused employment.

The remainder of cases related to issues of ill-health retirement,

² Cases have been summarised as part of the DRC's agreement with the DLS in relation to the reporting of information provided by the latter.

³ The geographical spread was not specified in most of the files looked at but there was at least one case identified as originating from Scotland.

pensions, reasonable adjustments, sickness absence and dismissal. Cases are often difficult to classify, and often have aspects relating to more than one issue.

5.3 Cases relating to teaching

The DLS dealt with 12 enquiries relating to disabled teachers in the 12 months preceding January 2005. These enquiries covered the issues of fitness, health and safety, sickness absence, pensions and reasonable adjustments. In one case an experienced teacher with a history of depression was refused employment because of the employer's concern about child protection. In another case there were health and safety concerns about a teacher with a mobility impairment.

6. Literature search

A rapid literature search and review was conducted in Spring 2005 and updated in March 2006. The objective of the search was to identify published evidence in relation to the experience of disabled people in the three professions from the stage at which they take the relevant courses to qualify, through to employment, promotion and retention issues.

The initial search sought to identify evidence from Britain on:

- disabled people's careers aspirations
- the careers advice that disabled people receive
- selecting courses to obtain qualifications
- completing a course
- professional registration
- obtaining a job
- promotion
- job retention
- public attitudes towards disabled people in these careers

The initial search was not restricted to fitness standards as the intention was to gain an overview of the wider evidence base

around disabled people's career paths within the three identified professions in order to identify key barriers.

A further stage in the review process then involved identifying and reviewing material exploring one or more of the above issues in direct relation to fitness standards.

Both the initial and updated searches were run across the following databases:

- British Library Inside Web
- Ingenta
- DRC Electronic Library Catalogue
- British Humanities Index
- Applied Social Sciences Index and Abstracts
- Medline
- Web of Science

The combined searches were conducted to include any publications between 1987 and 2006, including published academic peer-reviewed journals; professional publications; practitioner journals and official reports.

A total of 42 items were identified via the electronic searches as being relevant. Assessment for relevance was based on the following criteria:

- the item must deal with the British context
- the item must not solely be a guidance document
- the item must deal with the specific experience of disabled people as students in higher education or as professionals in the three occupational groups in relation to fitness to practice regulations and practices
- the item must have a sociological focus (i.e. not written from a medical and/or technical perspective)
- items relating to diversity issues, in general, were included as

contextual material.

Most of the identified items were from the last 10 years.

7. Findings from literature review

7.1 Qualification and employment

Disabled people are half as likely as non-disabled people to be qualified to degree level and are twice as likely as non-disabled people to have no qualifications at all: a pattern that has not changed since 1998. A report by the Department for Work and Pensions (DWP) (Grewal et al 2002) showed that 68 per cent of disabled people have less than NVQ level 2 qualifications (i.e. no qualifications or level 1). The corresponding figure for non-disabled people is 42 per cent (Grewal et al 2002).

The National Audit Office (2002), reviewing studies by the Department for Education and Skills, reported that disabled people are less likely to enter higher education in comparison to their non-disabled counterparts. A disabled 18 year old is 40 per cent as likely to enter higher education as a non-disabled 18 year old (NAO 2002).

An NOP survey commissioned by the DRC (2003a) suggested that this may be due to barriers in relation to disability. Around a third of young disabled people who participated in the survey indicated that they did not progress to higher or further education because they felt they were prevented from doing so due to a reason relating to their disability (DRC 2003a). The challenges faced by disabled young people in terms of educational and career opportunities is replicated in other studies (Shah, Arnold and Travers 2004; Shah 2005).

For those moving from education into the labour market, there are not only disparities in employment rates as compared with non-disabled people but also differences in distribution across occupational groups. A report from the Association of Graduate Careers Advisory Services (AGCAS 2005) explored first career destinations of disabled graduates in 2002 and found differences in the employment and unemployment rates of disabled and non-disabled graduates. Differences were also found to be more marked for certain groups of disabled people. Individuals with mental health or mobility problems were found to be least likely to

enter full-time employment upon graduation (30.7 per cent and 37.8 per cent respectively, compared with 48.4 per cent for all disabled).

Data from the Labour Force Survey demonstrate that while disabled people's employment rates have been improving, from 43 per cent in 1998 to 50 per cent in Spring 2005 (DRC 2006), there is considerable variability within this group. People with mental health problems, for instance, have one of the lowest employment rates at only 20 per cent.

Within the public sector, there has been a steady rise in the number of disabled people employed. However disabled people are still less likely than non-disabled people to be employed in this sector. Disabled employees are also less likely than non-disabled employees to be managers and senior officials (5 per cent disabled compared to 7 per cent non-disabled); to be in professional occupations (19 per cent disabled compared to 24 per cent non-disabled) or associate professional or technical positions (20 per cent compared to 24 per cent) (DRC 2004).

One item was identified via the literature search that provided some assessment of the potential impact of professional standards on disabled people. This study, which reported on a survey of 116 qualifications and standard setting bodies was carried out a time when the DDA was in the process of being extended to cover qualifications bodies under Part 2. Only one fifth had reviewed their standards to assess the impact they might be having on disabled people. Health and safety concerns were often raised in relation to the perceived incompatibility between certain types of impairment and particular professions (Hurstfield et al 2004).

In-depth research with a sub-sample of 10 case studies found that while there is a paucity of monitoring data on disability in most sectors, there is nonetheless a widespread view that disabled people are under-represented amongst candidates for qualification and hence in employment. A major reason put forward to explain this under-representation is the definition and impact of core competences within the trade or profession (Hurstfield et al 2004).

7.2 Social work

There are many claims in the literature reviewed that disabled people are under-represented in social work. There is, however,

limited empirical evidence put forward to support these claims. There is a paucity of monitoring data on disability and an acknowledgement from some organisations that existing data are based on individuals who self-declare and may therefore understate the incidence of disability (Hurstfield et al 2004). Most studies focus instead on exploring the barriers that disabled social work students face (Sapey, Turner and Orton 2004; Wray et al 2005).

Cases of disabled social workers appealing against registration decisions made by the General Social Care Council (GSCC) have received some attention. One particular case in the public domain relates to the social worker, Peter Van der Gucht, who had declared a range of conditions in the GSCC application form leading to problems with his registration. The GSCC referred to Section 58 of the Care Standards Act – which demands that registrants must be “physically and mentally fit to perform whole or part of the work” as justification for decisions made in relation to his registration, although it backed down after a successful appeal to the Care Standards Tribunal (Samuel 2005). The GSCC reported being ‘uneasy’ about health requirements for social workers under the Care Standards Act and said it would advise the Government if it gathered sufficient evidence that the current framework is discriminatory (Community Care, 3 November 2005).

7.2.1 Material specific to England

A report from SWAPItSn Social Policy and Social Work (Sapey, Turner and Orton 2004) looked at regulations for the Diploma in Social Work (DipSW) and drew attention to attitudinal barriers within social work. In particular, it claimed that “disabled people are at times expected to remain in the position of being helped, rather than becoming a helper” (Sapey, Turner and Orton 2004, p.15)

The SWAPItSn report goes on to question two requirements of social work training providers in England which can be problematic for disabled social workers. These relate to the requirements that:

- all social work students can understand and make use of written material and are able to communicate clearly and accurately in spoken and written English (laid down by the Department of Health); and

- social work students have to pass a health check.

While there is some evidence of good practice, there is nonetheless a pervasive lack of understanding of disability discrimination within the profession. The SWAPIts report described one such example:

“Wayne is a social worker in his late 20s who has restricted growth syndrome...and uses crutches to get around. He works with older people living in the community. Wayne was assigned to Mrs Joiner and on his first home visit he was refused access to her house because Mrs Joiner refused to let a ‘cripple’ into the house. Mrs Joiner also yelled abuse through the letter box at Wayne saying that someone as small as him couldn’t possibly be a real social worker anyway and that she wanted a ‘proper’ social worker. Wayne reported this disablist abuse to his team leader but nothing was done – Mrs Joiner was not told that such behaviour was unacceptable and Wayne was expected to continue as Mrs Joiner’s social worker...” (Sapey, Turner and Orton 2004, p.38)

Another project, published by the University of Hull (Wray et al 2005), looking at social work students with ‘unseen disabilities’ reported its findings on an exploratory qualitative study which sought to examine the experiences of disabled students and professionals within the context of professional education and placement learning. The students participating in the study were either currently undertaking a full or part-time, undergraduate or postgraduate course leading to a professional qualification in social work, or had graduated in 2000. Students needed to have completed at least one practice learning experience (or be part-way through the first).

A total of 50 students recruited from 20 university social work departments and higher education institutions (HEI) disability support services across England participated in the study. Three-quarters of the students interviewed for this project believed that their disability would affect their future employment prospects. Their concerns included “the likelihood of experiencing stigma, the fear of being considered a risk or a burden, and a concern that they would be seen as less attractive to an employer than a non-disabled candidate” (p.61). Many of the students interviewed said that because of these concerns they would not disclose their

disability on a job application form.

The study also found that less than one-third of the students interviewed knew about their rights in higher education under the DDA. Most felt that social work staff needed more training on disability in order to support disabled people on practice placements.

On the other hand, placement co-ordinators and practice assessors who were interviewed for the same project raised concerns about disability and its effect on competence. They were also concerned about health and safety issues. In addition, the view that disabled students have a responsibility to disclose their disability was widely articulated by this group of respondents (Wray et al 2005).

7.2.2 Material specific to Wales

None identified through literature search.

7.2.3 Material specific to Scotland

None identified through literature search.

7.3 Nursing

The literature search revealed very little published material on disabled nurses and other health workers. There were no country-specific studies identified through the literature search. The few studies in this area suggest a number of possible reasons for this. Disability has only recently appeared on the equal opportunities agenda within health and it has also been suggested that within the health professions disability is viewed as a medical phenomenon, “synonymous with illness, deviation or dependence” (Scullion 2000a, p.9) rather than an equalities issue (see Clinton, Robinson and Murrells 2004).

Brothers, Scullion and Eathorne (2002) suggest that healthcare staff view disability in the same way they view illness. This results in patronising behaviour with an emphasis on the need for medical and nursing care rather than regarding disabled people as fully functioning citizens who are capable of becoming healthcare practitioners themselves. Disabled people may therefore be seen as ‘unfit’ for entry into the healthcare professions (Wright and Eathorne 2003).

A piece of rapid research reported by Wright (2000) generated a sample via the Council of Deans (CoD) in England using email contact with a range of heads of UK faculties, departments and schools of nursing, midwifery and health visiting in England, Scotland and Wales. Based on responses from 28 members of the CoD email list (40 per cent of the total number of facilities offering nursing and midwifery education), this study looked at nursing education for students with dyslexia and concluded that disabled nursing students were not receiving enough support and that there was a belief amongst practitioners that such students on clinical placements might pose a risk (Wright 2000).

This finding was reiterated in a small scale qualitative study exploring the clinical experiences of nursing students with dyslexia conducted by Morris and Turnbull (2006). Looking at a sample of 18 dyslexic students enrolled on pre-registration nursing programmes at one UK university, the study reported that disclosure was an issue for all concerned despite the widely reported range of tangible benefits arising from disclosing about dyslexic conditions. Disclosure was not found, in the context of this study, to lead to greater support being provided in all instances. All respondents described dyslexia using negative terminology.

The study noted that while 'fitness for practice' is a requirement, the exact interpretation of this "has been devolved to the local level" and there is as yet no "definitive statement on support for dyslexic nurses in practice" (p.243). The lack of national standards may lead to confusion over what is required in assessing new applicants as being 'fit for practice' (Wright and Eathorne 2003). Clear guidance is thus called for to minimise the need for self-initiated management strategies.

Prejudice and a lack of understanding can give rise to a range of health and safety concerns in relation to disabled people. Anecdotal studies reported that dyslexic nursing students could be viewed as a danger on a ward (Green 1994; Nganasurian 1994). Similar issues were encountered in relation to deaf nurses and student nurses where attitudinal barriers, often leading to unfavourable health and safety assessments, were found to persist despite the publicity around disability discrimination (Wright 1999).

Wright and Eathorne (2003) reported, however, that students who were rejected on health or health and safety grounds by one trust may be accepted by another, thus demonstrating that there is

variance nationally in such assessments.

7.3.1 Material specific to England

None identified through literature search.

7.3.2 Material specific to Wales

None identified through literature search.

7.3.3 Material specific to Scotland

None identified through literature search.

7.4 Teaching

None of the material identified in the literature search offered any data on the number of disabled teachers. Nonetheless, there are frequent claims, including from the Teaching Training Agency (TTA), (now Teacher Development Agency) that there is an under-representation of disabled people in teaching (National Disabled Teacher Taskforce 2005). Data collected by Initial Teacher Training (ITT) providers on new entrants to ITT show that 4 per cent of the cohort in 2003 were disabled. Between 2000 and 2003, there had been an increase in numbers of disabled new entrants from 611 to 1,216 (Hurstfield et al 2004).

The Government's drive to increase the number of classroom teachers has prompted the TTA to widen the recruitment pool for the profession and to explore alternative entry routes, such as 'on the job' training. It has set a target of 4 per cent for the recruitment of disabled people to teacher training. Working with the DRC and other organisations the TTA (2004) recently published **Able to Teach**, a guide for ITT providers to help them make decisions on 'fitness to teach', and at the same time meet their obligations under the DDA.

In general, few published items were identified in relation to disabled people in the teaching professions. Those that exist focus on recruitment and not retention. The limitations of monitoring data based on self-declaration have been highlighted. A seminar on disabled people and ITT, hosted by the General Teaching Council of England (GTCE) in October 2002, raised the issue that "it is the case that disabled people do not always declare their disability at the point of applications for a job or a programme of study, in case

they are subsequently discriminated against. This presents challenges in accurately describing the degree of discrimination that occurs in teacher training and therefore in setting targets or instigating other policy interventions” (Hurstfield et al 2004, p.44).

Despite the paucity of a rigorous evidence base, there is sufficient concern amongst teaching bodies about the barriers that disabled teachers face, to prompt the recent setting up of a National Disabled Teacher Taskforce to address the under-representation of disabled people in the profession (National Disabled Teacher Taskforce 2005).

In the education sector in England, the ‘fitness to teach’ criteria are set by the Secretary of State and cover both physical and mental fitness. They are closely related to child safety concerns. The GTCE opined that “An individual’s fitness is evaluated at the stage of application to the ITT and then again at the stage of applying for a job, where it will be done by the occupational health specialist. No impairments are completely precluded” (Hurstfield et al 2004, p.46). The TTA felt that the standards are problematic for disabled people “because they are expressed in quite broad terms, and [the TTA] think there is no reason why people with disabilities should not be able to meet the standards with adjustments where necessary” (Hurstfield et al 2004, p.46). Nonetheless the GTCE recognised that there may be perceptions by disabled people that they are not going to pass the fitness to teach criteria and this may prevent them from applying to be teachers.

Guidance was produced by the TTA in response to the difficulties that some ITT providers experienced in determining what constitutes a reasonable adjustment. Both the TTA and the GTC stressed that the intention was to provide examples to enable ITT providers to judge what is reasonable in the individual case, not to establish blanket rules (Hurstfield et al 2004, p.49 and p.56).

7.4.1 Material specific to England

A pilot project was set up in 2002 at Manchester Metropolitan University (MMU) and funded by the European Social Fund, with the aim of giving disabled trainee teachers practical support and mentoring, covering the whole process of studying, qualifying, work placements and registration. This pilot offered support relating to reasonable adjustments and other issues. The mentoring aspect helped people deal with fitness issues and the

disclosure of disability (MMU 2003).

7.4.2 Material specific to Wales

A report by the General Teaching Council for Wales (GTCW) (2003) demonstrated that disabled students made up 4 per cent of students on initial teacher education and training (ITET) courses in 2000/01. The report pointed to course requirements for ITET and Qualified Teacher Status acting as potential barriers. The council recommended that those involved with recruitment promoted role models of disabled teachers. They also called on the Wales Assembly Government to undertake further research on making the teaching profession more accessible. The final recommendation called on recruitment authorities to work with disability organisations to promote teaching as a career choice amongst disabled people.

A report published by the University of Wales (TADW 2003) looked at the barriers faced by young disabled people entering teaching in Wales and found that young disabled people in Wales are unlikely to choose teaching as a career. From a survey of ITET providers in Wales the report found that these institutions often have a limited view of what disabled teaching students could do.

The University of Wales report is critical of the 'fitness to teach' framework, applied to trainee teachers and at the point of registration. A recommendation of the report is that the General GTCW adopts the Scottish model.

7.4.3 Material specific to Scotland

In Scotland, fitness to teach criteria have recently been abandoned following a Scottish Executive consultation (2004). This recommended that the requirement that a person must satisfy the medical officer of the relevant institution that (s)he is medically fit to teach, (a) before being admitted to a course of Initial Teaching Education, and (b) before being recommended by the relevant institution for registration as a teacher by the General Teaching Council for Scotland, be abandoned. The Scottish Executive (2004) cited the following reasons for reviewing the fitness to teach criteria:

- The organisation and administration of the medical examination process is inconsistent across the seven Scottish universities that offer initial teacher education

courses.

- Initially these medical standards were introduced mainly for the protection of children; classically, from infectious diseases such as tuberculosis. This is now very rare and full medical examinations are really only helpful in very advanced cases.
- Where there was concern that a psychiatric problem could arise which could endanger the children, medical examinations were not very helpful in this respect and cannot predict with any degree of certainty the possibility of a dangerous candidate.
- The medical profession and employers should be trying to assist all those who have an illness or disability to achieve their ambition as best they can rather than acting as a barrier.
- It seems anomalous that no other students at the relevant universities are required to have medical examinations carried out.
- The 'medical model' of fitness criteria is not compatible with the 'social model' of the DDA and the work of higher education Disability Coordinators.
- Many other professionals working with children are not subject to these requirements.
- If it were deemed necessary that teachers undergo a medical examination, it would be more appropriate that this was considered to be an employment related issue rather than a registration issue.

8. Conclusion: emerging themes across the three professions and the case for a Formal Investigation

8.1 Disabled people seen as 'clients' and not 'professionals'

The review of evidence reveals a severe paucity of relevant material. Disabled people's experiences are more usually looked at from the perspective of them as 'clients' and not the 'professionals' (Sapey, Turner and Orton 2004).

Where disabled people are in professional training, there is evidence that they are pigeon-holed into particular areas of that career. Disabled nurses, for instance, may be thought of as being capable of answering phones at NHS Direct but not capable of working on wards (Morrell et al 2002). Negative attitudes from clients towards disabled people are sometimes not challenged or are used as an excuse to discriminate against disabled employees.

There is a lack of role models for disabled people working in these professions (Wright and Eathorne 2003). The importance of these is summed up by Nicky Heazell, a disabled nurse, in her interview with DRC: "I have a false arm but it is more comfortable for me not to wear it. During my training, one ward manager made me wear it as she said that my scar was unsightly . . . On one occasion, I was treating a teenage girl who had recently had her arm amputated. Later, she told another member of staff that I had inspired her. I didn't realise that I had helped her in any way, as she was just coming out of anaesthetic and was quite groggy -and I was just getting on with my nursing." (DRC 2003b)

Disabled people can have much to offer as professionals. For example, Eathorne (1990) and Carol (2003) amongst others, contend that disabled nurses bring personal insight into what it is like to be ill, hospitalised and disabled, and can offer special skills.

8.2 Recruitment and retention

There are periodic recruitment and retention problems in all three professional groups (Buchan and Seccombe 2002; Social Care and Health Workforce Group 2004; Stubbings and Scott 2004). For

example, there is a shortfall of 34,000 teachers in England and Wales (Chevalier, Dolton and McIntosh 2002). By 2007, Scotland wants to increase the number of teachers to 53,000 and reduce class sizes in Maths and English – to 20 pupils in secondary schools, and 25 pupils in year one of Primary Education⁴. The need to recruit from a wider base and the raised awareness of disability equality issues are factors that have led to some recent initiatives to look at disabled people's entry into teaching, social work and the health professions (NHS 2000a, NHS 2000b). As yet, there is little evidence of initiatives to address retention (Dench, Meager and Morris 1996; Pearson, Buckroyd and Dickenson 2000; Manos 2004).

8.3 Disclosure of disability

A concern arising from evidence in all the occupations examined is disabled people's reluctance to disclose their impairment or long-term health condition. This issue has been presented from the perspective of disabled students/employees (e.g. Morris and Turnbull 2006) as well as the perspective of training providers/employers (e.g. Hurstfield et al 2004; Wray et al 2005). There are a range of concerns expressed by disabled people around the real and perceived discriminations against them as a result of disclosure. The implications of non-disclosure, however, are that support may not be rendered or that discrimination cannot be tackled effectively. Interventions may therefore not be timely.

8.4 Professional regulation, fitness standards and occupational health

Over the last 10 years or so, regulation of nursing and other health professions, teaching and social work has increased and there are now registers and fitness standards across all three professional groups. This has partly been in response to high-profile criminal cases, which continue to trigger further reviews of regulation (Wray et al 2005) and an increasingly risk-averse culture within many occupations, with disabled people automatically perceived to be a

⁴ Taken from the 'Teach in Scotland' website. Available at: http://www.teachinginscotland.com/tis/tis_displayGeneralPages.jsp?pContentID=106&p_applic=CCC&p_service=Content.show& Accessed 3 May 2006.

problem (Scullion 2000b; Wray et al 2005).

There is acknowledgement within social work and teaching that the statutory requirements for fitness to practise can present barriers for disabled people. In response, the TTA (now TDA) and GSCC have been working with the DRC to try to reconcile the DDA with other statutory requirements.

In conclusion, there is an issue over how fitness standards operate on the ground in relation to decision-making that can have a real impact on disabled people's opportunities for, and experiences of, qualifying, registering and working in these professional occupations. While there is some anecdotal evidence available, there is a severe paucity of published material that has subjected this topic to scrutiny in a robust manner. Where available, coverage is patchy and focuses primarily on particular sub-groups or on an individual stage in the qualification and employment trajectory. No coherent overview emerges.

The way in which fitness regulations and procedures impact on disabled people makes it very difficult for cases to be dealt with on an individual basis. This is partly due to the number of agencies involved, including employers, qualification bodies, educational institutions and others. The complexity of the legal and regulatory frameworks (consisting of the DDA, professional regulations, health and safety legislation etc) and its operation in practice also makes it difficult for disability discrimination to be tackled through individual cases.

The DRC therefore concludes that strategic enforcement, in the form of a general formal investigation is an appropriate tool for looking at fitness issues within professions. By carrying out a general formal investigation the DRC can use a combination of research and legal analyses to explore an under-researched area and promote positive change.

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