Position Statement

Royal College of Surgeons
FACULTY OF DENTAL SURGERY

English language testing of healthcare staff and the EU

Introduction

The NHS employs large numbers of medical, dental and nursing professionals, as well as support staff such as technicians, cleaners, and porters from outside the UK. They are a vital part of the healthcare workforce. Without them the NHS would struggle to provide care in hospitals and clinics. Following Brexit, it is essential that we can continue to attract the best staff to work in the NHS, regardless of their nationality. Nevertheless, it is important that such staff can communicate to patients in clear English. While professional regulators such as the General Medical Council (GMC), General Dental Council (GDC), and the Nursing and Midwifery Council (NMC) can test non-European Economic Area (EEA) applicants' English language skills, testing EEA applicants has proved more difficult due to current EU rules. General language capability can be assessed, but English language skills in a clinical context cannot be systematically tested. Unlike professionals from the rest of the world, EEA doctors and dentists can only have their clinical language skills tested if it is deemed a reasonable and proportionate response under EU legislation.

In this paper the Faculty of Dental Surgery (FDS) at the Royal College of Surgeons sets out the issues and argues that, with Brexit, there is now an opportunity to apply the same language testing rules to staff from the EU and the rest of the world to benefit patient safety.

What is the issue?

Regulators of healthcare professionals have had long standing powers to check the language skills of professionals who qualified outside Europe. Following changes to UK law[1] introduced in 2014, they have also been able to make new checks on EEA professionals' language skills. The GMC, GDC and NMC now have checks in place. Since these changes, the GMC says a quarter of doctors from the EEA (over 1,000) have not satisfied their English language requirements.[2] Some of these doctors subsequently provided evidence of sufficient language knowledge.

Despite these changes, the FDS is concerned that the current testing remains insufficient and risks patient safety. The current regulators are able to ask EEA applicants to demonstrate their general English language skills but EU rules prevent them from systematically testing their clinical language skills.

[1] The Medical Act 1983 (Amendment) (Knowledge of English) Order 2014

[2] http://www.dailymail.co.uk/news/article-3696583/Quarter-EU-doctors-applying-work-Britain-turned-away-failing-English-tests.html

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10.9% of doctors[3], 16.6% of dentists[4], and 15.6% of nurses[5] registered in the UK are from EEA countries or Switzerland. In surgery this is higher still with 22% of surgeons having qualified in EEA countries or Switzerland – only ophthalmology has more EEA doctors.[6]

Under EU legislation regulators of healthcare professionals can assess English language skills but cannot insist on how this is done.

The most common means by which applicants demonstrate their English language proficiency is through the widely recognised International English Language Testing System (IELTS). IELTS assesses the four components of communication: reading, writing, listening and speaking. However, IELTS questions only pertain to everyday living or academic but not clinical questions. There are two versions of IELTS and the GMC uses the academic version. In addition different levels of proficiency are required by each regulator and for different categories of healthcare workers. The GMC requires an overall score of 7.5 out of 9 which they say is between a 'good' and 'very good' competency of English. However, other regulators require lower scores which differ even within the professions they regulate. For example the GDC allows dental hygienists to score lower than general dental practitioners even though patients have direct access to hygienist care. The required score for dentists (7) is lower than for doctors (7.5).

Examples from the 'Official IELTS Practice Materials' include:

- Relaying the candidate's own experience about the importance of maintaining old buildings (academic writing test example).
- Describing the town or city where you grew up (speaking test example).
- Answering questions about sporting events (speaking test example).

IELTS does not test English language skills required in an NHS setting such as preoperative or pre-treatment assessment, consent, or describing a course of treatment and possible side-effects.

We are concerned that relying on IELTS alone disadvantages patients as a dentist or doctor with poor clinically relevant communication skills may not fully understand the symptoms reported by the patient, adequately explain the risks of a procedure, or be able to obtain informed consent. The Faculty strongly believes that any language assessment should focus on the language used in a clinical setting rather than only testing everyday English.

Is this an issue for overseas non-EU dentists and doctors as well?

No. Non-EU doctors and dentists are already required to demonstrate their English language skills in a clinical setting (unlike those from EU countries). For example, non-EEA doctors are usually required to take the Professional and Linguistic Assessments Board (PLAB) test. This is not permitted as a requirement for doctors from the EU. For doctors, the PLAB test focuses on common, important or acute conditions (common in emergency departments) and long term conditions seen in primary care.[7] Questions can include a description of a series of symptoms in a patient and ask for a candidate's assessment of the likely diagnosis and treatment options.[8] The PLAB test will be

[3] Private correspondence under FOI with the GMC received 4 April 2016. Available upon request.
[4] Private correspondence under FOI with the GDC received 18 May 2016.
[5] Private correspondence under FOI with the NMC received 21 March 2016. Available upon request.
[6] http://www.gmc-uk.org/Reference_tables_about_the_register_of_medical_practitioners.pdf_63506694.pdf

[7] http://www.gmc-uk.org/doctors/plab/Blueprint.asp
[8] Example questions are available here: http://www.gmc-uk.org/doctors/plab/23451.asp

expanded to include an assessment of wider ethical and professional values and principles. This will involve a more thorough practical assessment to reflect real life consultations.

In dentistry, the GDC often requires overseas dentists to pass the Overseas Registration Exam (ORE) in order to register, alongside the IELTS.[9] This tests clinically relevant communication skills and knowledge in a similar way to the PLAB test.

Furthermore, many health professionals applying to the UK from outside the EU are also from English-speaking countries such as Australia, New Zealand, Canada, or the United States so they may be less likely to have poor English language.

Why can the regulators require testing of clinical language skills of applicants from outside the EEA but not those from within?

Based on conversations with the regulators our understanding is that under EU law the professional regulators can require applicants from the EEA to demonstrate they can communicate proficiently in English but they are not allowed to specify *how*. This is because, under the EU Recognition of Professional Qualifications Directive, regulators are not allowed to put requirements on EU health professionals over and above what UK professionals must achieve. The Recognition of Professional Qualifications Directive requires a practitioner to have the necessary knowledge of English to practise medicine in the UK (article 53 states that the professional, "shall have a knowledge of languages necessary for practising the profession in the host Member State"). The threshold is therefore whether the doctor has the knowledge of English to practise medicine safely in the UK. This article also introduces a proportionality test - it requires that “any language controls shall be proportionate to the activity to be pursued".

Because the EU requires language controls to be ‘proportionate’, regulators are unable to systematically require the testing of language skills in a clinical setting. Regulators cannot even insist on using the IELTS test as the means of testing language proficiency although in practice the academic version of IELTS is the most common option among applicants from EEA countries.

It is also possible that the UK Government has been gold-plating EU legislation. For example, UK trained foundation dentists have communication skills as part of their curriculum; EU dentists who do not face an equivalent assessment are therefore the odd ones out.

What about employers?

Employers should carry out English language checks on who they are employing and assure themselves that applicants speak adequate English. However, they face similar problems to the professional regulators. According to NHS Employers, employers are not allowed to systematically test EEA applicants’ English language skills and they are required to accept a range of evidence that someone may be able to speak adequate English.[10] In other words, they cannot insist applicants sit a clinical language skills examination.

Is there evidence of harm being caused?

Doctors

[9] http://www.gdc-uk.org/Dentalprofessionals/ORE/Pages/default.aspx

[10] NHS Employers (2014) *Language competency good practice guidance for employers*

For doctors, a recent Freedom of Information request submitted by the Royal College of Surgeons to the GMC reveals during 2014-15[11]:

- 29 doctors from the EEA (excluding the UK) have faced allegations relating to 'inadequate knowledge of English language'. 10 doctors from non-EEA countries have faced such allegations.
- Four doctors, all from the EEA (excluding the UK) have been suspended or faced restrictions on their practice following a fitness to practise panel relating to 'inadequate knowledge of English language'. Zero non-EEA doctors have been suspended or faced restrictions on their practice. These figures only relate to fitness to practise panels which have closed; some investigations are ongoing.
- Doctors from the EEA only represent 10.9% of registered doctors in the UK compared with 25.9% of doctors from the rest of the world.[12] **EEA doctors are therefore disproportionately likely to face fitness to practise allegations, be suspended, or have restrictions on their practice as a result of inadequate English language knowledge.**

Inevitably allegations and/or a fitness to practise hearing may come too late to avoid harm to patients.

While these figures are concerning, it should be noted these numbers are small. There are 29,883 doctors from the EEA registered in the UK, and 70,011 from outside the EEA. It should also be noted that since the regulators were able to start requiring applicants from the EEA to demonstrate English language proficiency in 2014 the GMC has prevented over 1,000 doctors with poor English from practising in the UK.[13] Some of the above statistics may be the result of a 'historical hangover' of doctors practising in the UK who haven't been through the new testing arrangements.

Dentists

For dentists, statistics[14] from the Department of Health show that one dentist from the EEA has been struck off the dental register for not being fluent in English. However, further language control requirements by the GDC were only introduced in April 2016. These may bring further allegations and require more fitness to practise panels.

A recent study[15] also found evidence that during 2008-2013 dentists from the EU were disproportionately likely to have an allegation against them relating to communication skills. For example, 34% of allegations relating to verbal communication skills (35 out of 103) were made against EU (excluding UK) dentists even though they only represented 16% of dentists on the GDC register at the time. This compares with 12% for non-EU dentists who represented 11% of the register. Communication related issues are a particular concern in dentistry as they were among the most common allegations heard

[11] Private correspondence under FOI with the GMC received 4 May 2016. Available upon request.

[12] Private correspondence under FOI with the GMC received 4 April 2016. Available upon request.

[13] http://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2016-02-02/25540/

[14] http://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2016-02-02/25540/

[15] Tonge, K., Gill, DS. and Hunt, NP. (2015) *A review of cases appearing before the General Dental Council's Professional Conduct Committees over a 6-year period. MClinDent dissertation, UCL Eastman Dental Institute .*

in fitness to practise cases before the GDC during 2008-2013.[16]

More recently the GDC have told us that during 2014-15 25.2% of allegations (145 out of 575) made against dentists due to poor communication were from EEA countries.[17] 4.7% of allegations were against dentists from the rest of the world (27 out of 575). At the end of 2015 16.6% of registered dentists were from the EEA and 11.5% from the rest of the world again showing EEA dentists were disproportionately likely to face allegations due to poor communication. 2 EEA dentists have faced restrictions on their practice or been struck off as a result of poor communication skills as opposed to 0 dentists from the rest of the world.

Nurses

The NMC has only begun coding 'English language skills' as a reason for suspending a nurse since January 2016 so it is unclear how many nurses have been suspended due to poor English.

What is the FDS calling for?

Following the Brexit vote, it is unclear what sort of arrangement the UK will have with the European Economic Area and therefore whether language testing rules will continue to apply. The FDS wishes to see the UK Government prioritise this area for change in negotiations or new legislation to improve patient safety. **In our view the regulators must be able to apply the same tests to staff from the EU as the rest of the world on the basis of English language capability in a medical setting.** This would be consistent with other non-EU English speaking countries such as Canada and Australia who have moved away from generic English assessments to medically specific ones. In Canada they have developed the Canadian Language Benchmarks (CLBs) and in Australia a report commissioned by the Australian Research Council Linkage and the Occupational English Test Centre found that a more rigorous assessment which looked at the type of language that would be used in a medical setting would provide for better quality healthcare.[18]

While we remain a member of the EU or in the event the rules continue to apply, regulators should explore ways to encourage (albeit they are unable to require) applicants from the EEA to demonstrate their language skills in a clinical setting which would be compatible with EU rules. For example, they could better advertise the availability of tests that would demonstrate proficiency. We also believe the regulators should not be setting different standards for different healthcare professionals. We would like to see the GDC and NMC conform with the standard required by the GMC.

FDS is also now developing its own test of clinical communication skills. In response to the GDC's recent consultation on improving English language testing, the regulator is considering whether the FDS's suggestion of a two-stage language control (the IELTS test followed by a language test in a clinical setting such as the FDS test) will meet a proportionality test under the Recognition of Professional Qualifications (RPQ) Directive that states "any language controls shall be proportionate to the activity to be pursued".

We would like to see the UK Government ensure any post-Brexit negotiations with the EU permit the UK flexibility to test EEA applicants' language skills in the same way as non-EEA applicants.

[16] *Ibid.*

[17] Private correspondence under FOI with the GDC received 18 May 2016.

[18] Edler, C et al. (2013). Towards improved healthcare communication: Development and validation of language proficiency standards for non-native English speaking health professionals