

The use of Council Members as Fitness to Practise Panel Chairmen

Executive Summary and Recommendations

Introduction

Following the Council Away-Day held on 6th and 7th October 2004, the Executive was asked to prepare a paper for Council approval on ceasing to use Council Members as Fitness to Practise panel Chairmen.

The Conduct and Competence Committee has already agreed that partners should sit as Chairmen, having passed the following resolution at its June 2004 meeting:

Because of the increasing number of panels required the Committee agreed that partners should also sit as Chairmen. They would need training to enable them to do this. This would alleviate any shortage of Chairmen.

This paper takes that resolution one step further and, in line with the Away Day decision, asks the Council to recommend that use of Council Members as panel Chairmen is gradually phased out and HPC partners are identified and trained to act as Fitness to Practise panel Chairmen.

Background information

The Health Professions Order 2001 does not require panel chairs to be Council members. Paragraph 19(6) of Schedule 1 to the 2001 Order provides that:

(d) subject to sub-paragraph (f), the panel shall comprise both registrant and lay members none of whom is a Council member and the number of registrant members may exceed the number of lay members but may not exceed them by more than one.

(f) the person presiding may, but need not be a member of Council.

Members of the three Practice Committees perform a key audit function involving review the arrangements that are set up to protect the public from people whose fitness to practise is impaired. This involves looking at the work of the panels, approving practice notes and reviewing the processes which the panels operate.

A clear division is required between that strategic policy making role, which is exercised by Council members, and the partners who implement the policy set by the Council. A key element of good corporate governance is that the audit role of Council and its Committees is separated from the implementation of the policy set by the Council.

Further, Article 6 of the European Convention on Human Rights requires tribunals to be “independent and impartial” and the Council has an obligation to ensure that, so far as possible in the context of professional self-regulation, that impartiality and

independence is achieved and seen to be achieved; in order to avoid any suggestion of bias.

The European Court of Human Rights has held¹ that, in determining whether a tribunal is independent and impartial, regard must be had, among other things, to

- the manner of appointment of its members and their terms of office;
- the existence of guarantees against outside pressure; and
- the question whether the body presents an appearance of independence;

The question of impartiality is not a subjective test – in the sense of whether a tribunal is personally biased in a given case – but an objective test, aimed at ascertaining whether guarantees are offered which are sufficient to exclude any legitimate doubt in respect of the impartiality of the tribunal.

It is therefore vital that Council considers whether Members sitting as panel Chairmen may present an appearance of bias.

On this point it is worth noting that the new rules for the General Medical Council and Nursing and Midwifery Council specifically exclude Council Members from sitting as fitness to practise panel Chairmen.

The proposed change would not affect Council members acting as the Chairmen of registration appeals panels as Article 37(5)(d) of the 2001 Order provides that the Chairman of a registration appeals panel must be a Council member.

Decision

The Council is asked to agree:

1. That the use of Council members as fitness to practise panel Chairmen is to be phased out within the next twelve months;
2. That panel members who are not Council members and have appropriate experience be appointed to a List of Panel Chairmen;
3. That those persons on the List of Panel Chairmen be permitted to Chairmen fitness to practise panels once they have received appropriate training.

Resource implications

Panel Members from existing partners to be identified and trained to act as panel Chairmen.

¹ Langborger v Sweden; 22nd June 1989. Findlay v United Kingdom; 7th November 2000

Financial implications

Cost of training partners

Fee that should be paid to partners who act as panel Chairmen.

Background papers

None

Appendices

None