

Health Professions Council
6 July 2006

HEALTH PROFESSIONS COUNCIL ELECTIONS 2006

Executive Summary and Recommendations

Introduction

The Returning Officer has received a protest against the outcome of the 2006 Health Professions Council election for the Physiotherapy part of the register. The protest is in accordance with Rule 16 (1) of the Health Professions Council Election Scheme Rules 2004. The protest is on the grounds that 'the election of that person was not in accordance with the requirements of these Rules'. It has been signed by 25 electors registered in the Physiotherapy part of the register.

Rule 17 of the Health Professions Council (Election Scheme) Rules 2004 lays down the procedure to be followed by Council where a protest is received and provides that the Council:

- (i) must afford the person concerned (i.e. the person elected for that part of the register) an opportunity of making a reply in writing to the protest;* and
- (ii) may, if it thinks fit, hear oral statements from representatives of those signing the protest, the Returning Officer and the person concerned.

***the winning candidate has been invited to reply in writing. Any reply will be tabled at the Council meeting.**

If the Council is satisfied that the election is not in accordance with the requirements of the Rules, then, unless it appears to the Council that the election was conducted substantially in accordance with those Rules and that any non-compliance did not effect the result, the Council may declare that election invalid and the resulting election must be filled by a further election.

Further information, which sets out the background to the protest and the legal advice received in relation to this, is attached at appendix 1 and 2.

Decision

The Council is asked to consider the protest and to instruct the Returning Officer of the action it wishes to take in relation to this.

Background information

See appendix 1 and 2

The Health Professions Council (Election Scheme) Rules 2004 are available at www.hpc-uk.org

Resource implications

None

Financial implications

The Executive is currently in negotiations with the Electoral Reform Services

Appendices

Appendix 1 – Report from Returning Officer outlining the background to the protest

Appendix 2 – Memorandum to the Returning Officer from Jonathan Bracken, HPC Solicitor and Parliamentary Agent

Date of paper

22 June 2006

Appendix 1

REPORT FROM RETURNING OFFICER OUTLINING THE BACKGROUND TO THE PROTEST

As I reported at the May 2006 Council Meeting Electoral Reform Services (ERS) the organisation which conducts elections on HPC's behalf, has advised me, in my capacity of Returning Officer, that during the recent elections a number of duplicate ballot papers were sent out to electors.

The additional ballot papers were largely sent to registrants who had changed their address and therefore, most were sent to their previous addresses and the majority were returned undelivered. Given that this was an administrative error which would not have favoured any particular candidate we have no reason to doubt that the registrants who took part in this election did so in the fundamentally honest, proper and ethical manner we expect of health professionals.

ERS's assessment is that, in relation to the election for the physiotherapy part of the register, there are an estimated 1200 ballot packs unaccounted for, but that most of those will have been delivered to old addresses and, therefore, that the registrants concerned will not have actually received the duplicate pack. On the basis that the turnout for this election was 13.9%, ERS's view is that even if all 1200 had been received by registrants, then at most 167 duplicate ballots could have been cast. I stress that this is a hypothesis and that there is no evidence to suggest that duplicate ballots were cast.

The legislation under which HPC elections are conducted (The Health Professions Council (Election Scheme) Rules Order of Council 2004 (SI 2004/3318)) sets out the procedure by which electors can "protest" the outcome of the election.

Rule 16 of the rules requires a written notice of protest, signed by not less than twenty-five electors from the relevant part of the register, to be received by the Returning Officer within twenty-eight days of the results of the election being presented to the Council. The deadline for receipt of protests is 30 June 2006.

Rule 17 of the rules requires the Council to meet and consider the protest and, at that meeting, the Council should consider any reply in writing from the person elected from the part of the register to which the protest relates and may hear oral statements from those who have signed the protest, the Returning Officer and the candidate whose election is being challenged. If the Council is satisfied that the election was not conducted in accordance with the requirements of the Election Rules it may declare the election invalid, unless, it appears to the Council that the election was conducted substantially in accordance with those Rules and that any non-compliance did not affect the result.

Appendix 2

MEMORANDUM

6th June 2006

To: Marc Seale, HPC
Niamh O'Sullivan, HPC

From: Jonathan Bracken, BDB

HPC Elections 2006

Marc,

We spoke earlier today about the report from the Independent Scrutineer, Electoral Reform Services (ERS) concerning the outcome of the 2006 HPC elections and their analysis of the impact of duplicate ballot papers being sent to some registrants.

As you will recall, when ERS first indicated to you that some duplicate ballots had been issued, my advice was that the Council should be informed that this had occurred but that the election should be allowed to run its course and then appropriate steps taken, if needs be, once the outcomes of the elections were known. My reasons for giving that advice were that:

- it is a well established practice that, where irregular activity is alleged or even known to have occurred in the course of an election - including activities which go far beyond the administrative error which occurred here - the election should be allowed to run its course and candidates may only then challenge the outcome, as the irregular activity may not have had any bearing on the result; and
- in your capacity as Returning Officer you can only intervene in the election process to the extent permitted by law and it is rare for election legislation to provide the returning officer with the power to cancel or abandon an election. The Health Professions Council (Election Scheme) Rules Order of Council 2004 ('the HPC Election Rules') certainly do not provide you (or the Independent Scrutineer) with such a power and, therefore, it would have been unlawful for you to intervene in the conduct of the election in that manner.

As the information in the report from ERS shows, the established practice is entirely sensible as, although duplicate ballot papers were issued in relation to all three of the elections which were conducted this year, the Independent Scrutineer's assessment is that the result for the Occupational Therapy part of the Register is safe, that the result for the Radiography part may be regarded by some as borderline and that it is only the result for the Physiotherapy part which may be unsafe.

It is clear from the information provided by ERS that the duplicate ballots were issued mainly because of address changes and, therefore, it was an error which is unlikely to have favoured any particular candidate. Further, there is no evidence to suggest that registrants have acted other than in the honest and ethical manner we expect of health professionals. Therefore, on an objective analysis, it is likely that the election was fair but, in a situation like this, objective analysis may not be enough. Faith in the democratic process could be harmed merely by the perception that the outcome of the elections may have been affected by the error.

As HPC is in possession of information which suggests that the results of the elections for the Radiography and Physiotherapy parts may have been affected by this error, in the interests of transparency, fairness and democracy that information should be shared with the candidates in those elections so that they may, if they choose, trigger a “protest” under the HPC Election Rules.

Election Protests

The effect of Rule 16 of the HPC Election Rules is that the election results certificate which you presented to the Council on 2nd June is regarded as conclusive evidence of the outcome of the elections unless a “written notice of protest”, signed by at least 25 electors from the relevant part of the register, is received by you as Returning Officer at HPC’s offices by 5.00 pm on 30th June 2006. If that happens the candidate who won the election and thus is the subject of the protest (‘the person concerned’) cannot take office until and unless the protest is resolved in his or her favour by the Council.

A protest must be made on one or more of the four grounds set out in Rule 16(2) and for the present purpose, given that some electors were provided with the opportunity to vote more than once, the relevant ground would be that “the election of the person concerned was not in accordance with the requirements of [the Election] Rules”.

Rule 17 lays down the procedure to be followed by the Council where a protest is received and provides that the Council:

- must afford the person concerned an opportunity of making a reply in writing to the protest; and
- may, if it thinks fit, hear oral statements from representatives of those signing the protest, the Returning Officer and the person concerned.

If the Council is satisfied that the election was not in accordance with the requirements of the Rules then, unless, it appears to the Council that the election was conducted substantially in accordance with those Rules and that any non-compliance did not affect the result, the Council may declare that election invalid, and the resulting vacancy must be filled by a further election.

Filling any vacancy

Where a protest is upheld, the vacancy is filled using the expedited election process which applies when a candidate dies or resigns during the course of an election.

Your appointment as Returning Officer would extend to that election without the need for the Council to further appoint you and, although you would still need to fix and publish another nomination day, another polling day, and proceed with a further election, you would be required to do so “as soon as practicable” and may conduct the election “such modifications [to the Rules] as the circumstances may require”. In addition, all of the candidates validly nominated first time round would automatically be nominated for the vacancy (unless they give notice that they do not wish to stand again).

Obviously, other candidates would also be entitled to stand and, therefore, a mailshot would need to go to registrants from the relevant part of the register explaining what was taking place, but that mailshot could also include details of the nomination process and set a deadline for nominations to be received. Both existing and new candidates would be entitled to circulate a candidate’s statement in the usual way.

Under normal circumstances I would argue that for any re-run of an election a timetable which would enable the vacant seat to be filled in a little over six weeks would be reasonable in the circumstances. However, given that there will be no “lead in” time to the nomination period and that we are about to enter the main holiday period, I would suggest that the following timetable (of 10 weeks) is both fairer and more realistic:

Date for qualification as an elector:	the date on which the Council meeting upholding the protest was held;
Nomination period:	42 days beginning with the date on which the mailshot is sent to electors;
Deadline for candidates’ statements:	Same date as the close of nominations;
Voting packs to be sent out:	14 days after nominations close;
Polling day:	14 days after the voting packs are sent out.

Health Professions Council

6 July 2006

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Rule 17 of the Health Professions Council (Election Scheme) Rules 2004 lays down the procedure to be followed by Council where a protest is received against the outcome of an election to the Council and provides that the Council:

(i) must afford the person concerned (i.e. the person elected for that part of the register) an opportunity of making a reply in writing to the protest.

The attached letter has been received from the winning candidate in the election for the Physiotherapy part of the Health Professions Council register.

Decision

The Council is asked to consider this letter in conjunction with agenda item 8 (enclosure 5) of the Council papers.

Background information

As set out at agenda item 8.

Resource implications

As set out at agenda item 8.

Financial implications

As set out at agenda item 8

Appendices

As set out at agenda item 8

Date of paper

4 July 2006

**56A Beverley Gardens
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Herts.
AL4 9BJ**

Mr Marc Seale
Chief Executive and Registrar HPC
Park House
184 Kennington Park Road
London
SE11 4BU

Received
04 JUL 2006 3 July 2006
Health Professions Council

Dear Marc

The Physiotherapists Election

Further to your letter of 22 June, this is my formal response to the protest, for consideration by the Council at their meeting on 6 July.

I was disappointed to learn that there had been a protest - not only on a personal level, but also for the physiotherapists who voted for me in good faith. I do not believe that registrants who received a second ballot paper would have submitted a further vote. However I am concerned at the implication that registrants would act in this way. In the unlikely event that a physiotherapist did behave in such an unethical manner, it is highly unlikely that they would have voted for only one candidate and therefore significantly alter the outcome of the election.

Finally add to this the cost of a new election and I would urge the Council to declare the result of the original election valid.

If however the Council declares the election null and void and decides to proceed with a further ballot, I shall again put myself forward as a candidate, and hope to be elected to serve the Council and represent physiotherapist registrants.

Yours sincerely



Pen Robinson