

Council, 11 February 2010

Hearing Aid Council Case Transfer

Executive summary and recommendations

Introduction

Article 6(3) of the Health Professions (Hearing Aid Dispensers) Order 2010 provides that:

“If on 31st March 2010, a persons name is included in the HAD register, the person shall be registered in the part of the HPC register which relates to hearing aid dispensers with effect from 1st April 2010.”.

In turn, paragraph (7)(a) and (7)(b) of that Article provides that:

“(7) If on 31st March 2010, a persons name is included in the HAC register but –

- (a) a penalty has been imposed on that person and no appeal is made within 28 days of the notification of that penalty; or
- (b) the person is the subject of, or is being investigated with a view to the issue of, proceedings which could lead to the imposition of a penalty,

the HPC shall dispose of the matter (including any proceedings) in such a manner as it considers just.”.

Thus, a Hearing Aid Dispenser who is subject to ongoing proceedings is not denied automatic transfer to the HPC register.

1. Complaints which have not been pursued

As Article 22(3) of the Health Professions Order 2001 (the “2001 Order”) enables the HPC to pursue allegations relating to events which arose before a person was on the register, it will be open to HPC to pursue complaints as an allegation which have not been considered by the HAC once the person concerned has been transferred to the HPC register. In doing so, care must be taken to ensure that, if the complaint is about a specific breach of HAC standards, the underlying issues also represent a potential fitness to practise issue which is within HPC’s remit.

2. Disposal of outstanding cases

In order to dispose of cases ‘justly’ a case by case approach will need to be adopted in which cases are analysed to identify the nature of allegation and the applicable standards, and to formulate a means of hearing and disposing of the

case in a manner which accords with the principles which would have applied had the HAC disposed of the case.

3. Suspension

In considering cases where the dispenser has been suspended by the HAC, Panels will need to adopt a reviewing role and give appropriate deference to the decision of the HAC Disciplinary Committee (the original fact-finding body), in the same way that the courts would do on appeal from the decision of an HPC Panel. HAC suspension cases should be treated in the same way that HPC applies the provisions of Article 30 to cases where a registrant is suspended or subject to a conditions of practice order.

In summary, the arrangements for dealing with the 'transitional' cases should be:

A person who is suspended from the HAC Register:	The case is referred to an FTP Panel and is dealt with in accordance with Article 30 of the Health Professions Order
A person who is subject to an ongoing complaint by the HAC and the complaint has not yet been concluded:	<p>Where no "case to answer" decision has been made by the HAC, the case is referred to the Investigating Committee to determine whether there is a case to answer.</p> <p>Where the HAC made a case to answer decision, the case is referred to and heard by the appropriate Practice Committee.</p>

Decision

The Council is asked to agree the following resolutions:

1. In the case of a person whose registration was suspended or subject to conditions of practice by the HAC (whether temporarily or permanently), the matter shall be referred to the appropriate Practice Committee which shall review the decision and the circumstances which led to it in accordance with Article 30 of the Health Professions Order 2001.
2. In the case of a person who was the subject of proceedings which could have led to the imposition of a penalty:
 - (1) If no "case to answer" decision has been made by the HAC, the matter shall be referred to the Investigating Committee; and if it determines that there is a case to answer, it shall refer the matter to the appropriate Practice Committee for disposal as if it was an allegation made under Part V of the Health Profession Order 2001; and

- (2) If a “case to answer” decision has been made by the HAC, the matter shall be referred to the appropriate Practice Committee, which shall dispose of the matter as if it was an allegation made under Part V of the Health Profession Order 2001.
3. In dealing with any matter put before it in accordance with these resolutions, a Committee shall act as if the matter was an allegation made under Part V of the Health Profession Order 2001 but making such modifications to the procedures as it considers to be necessary.

The Council is also asked to resolve that:

4. The Director of Fitness to Practise be given delegated authority to exercise the powers of the Council under Article 6(7) of the Health Professions (Hearing Aid Dispensers) Order 2010.

Resource implications

Accounted for in 2010-2011 Fitness to Practise budget and forecast model.

Financial implications

Accounted for in 2010-2011 Fitness to Practise budget

Appendices

None

Date of paper

25 January 2010