

Council 8 December 2016

Quality Assurance report on Investigating Panel Decisions: April 2015 to March 2016

Executive summary and recommendations

### **Introduction**

This report is a summary of the regular audit activity relating to the process of considering cases at the Investigating Committee Panel (ICP). It also is a summary of the learning from the decision making as well ongoing and planned work which is being undertaken in light of the audit findings.

### **Decision**

The Council is asked to discuss this paper

### **Background information**

In the period April 2015 to March 2016, 787 cases were considered by panels of the Investigating Committee. There were 123 Investigating Committee Panels scheduled across the audit period.

The case to answer rate for the period reviewed in this report was sixty three per cent. This represents an increase on the previous year when the case to answer rate was fifty three per cent.

### **Resource implications**

None. The audits are undertaken by the Quality Compliance Officers within the Fitness to Practise Department as a function of their role.

### **Financial implications**

None

## **Appendices**

Appendix 1 – Investigating Committee Panel Decisions Audit report - April 2015 to March 2016

Appendix 2 – Summary of audit results – April 2015 to March 2016

## **Date of paper**

9 November 2016

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## **Investigating Committee Panel Decisions Audit: April 2015 to March 2016**

### **1. Introduction**

- 1.1. This report provides a summary of the audits carried out by the Fitness to Practise Quality Compliance (QCT) Team of Investigating Committee Panel (ICP) decisions made between April 2015 and March 2016. The audit of ICP decisions is part of an ongoing programme of assurance and development work undertaken by the Fitness to Practise Department.
- 1.2. The report covers the period 1 April 2015 to 31 March 2016. During this period panels of the Investigating Committee met on 123 occasions. Due to the prioritisation of QCT resources, panels that sat in September 2015 were not included in the audit. Following the previous changes to the audit framework in Fitness to Practise the sampling approach has continued in this reporting period.
- 1.3. The sample of cases is selected by the Quality Compliance Officers who choose one case per Case Manager out of cases which went to the ICP meetings that had taken place in the preceding month. The officers, on average, audit approximately 22 cases per month. This approach is currently under review and we are in process of agreeing a revised process for sample selection including further criteria. It may also be worth noting that during the reporting period there was a change of personnel within the QCT.
- 1.4. 787 decisions were made by ICP in the audit period. Of the 787 cases considered by an ICP, 48 required further information to reach a decision. Of the 739 concluded cases, 467 (63%) were considered case to answer, and the remaining 272 (37%) concluded there was no case to answer.
- 1.5. The sample selected for the audit consisted of 264 cases (34% of the total ICP considerations). Of these, 162 cases were case to answer (35% of all case to answer decisions). A sample of 89 no case to answer decisions were reviewed (33% of those considered no case to answer). Thirteen of the audited cases were those in which the determination was not made in that they were either requests for further information; cases which were sent back for registrants' comments due to substantial amendments to the allegations or no decision was made as the case was referred to the Health Committee, for example. These 13 cases constituted 27% of the total

number of cases which were considered by the ICP but have not resulted in a case to answer or no case to answer outcome.

- 1.6. The audit is carried out using an audit framework (which takes the form of a spreadsheet) which is populated by the Quality Compliance Officers. Cases are reviewed retrospectively, after the ICP has concluded. The spreadsheet has fields to identify individual and/or team learning points, alternative mechanisms for disposal, and issues with case management including allegations and issues concerning case investigation report.
- 1.7. This report divides the analysis on the audit and further actions into four sections: Standards of Acceptance and investigation, decisions, other considerations, policy issues, and areas of ongoing work arising from the audit.

## **2. Standard of Acceptance and Investigation**

- 2.1 The standard of acceptance is detailed in the policy, The Standard of Acceptance for Allegations. Any case being considered by the Investigating Committee should meet this standard. The Standard of Acceptance Policy was updated in December 2011, and has been further revised in May 2015 and July 2016 to provide further guidance around matters which may be closed without the need to be considered by a panel of the Investigating Committee. The key amendments included a further emphasis that the FTP process is not a general complaints process, further details about what credible evidence means and its relation to registrant's fitness to practise, information about factors taken into consideration to assess whether the matters have been dealt with locally, factors when the HCPC would intervene in relation to the professional decisions as well as information about internet social networks.
- 2.2 Refresher training in relation to the revised Standard of Acceptance Policy was also included in all panel training delivered by the HCPC in the audit period, including suitably redacted case studies based on examples of decisions. Additionally, specific workshops for HCPC Case Managers and Case Team Managers have been delivered on writing and evidencing allegations prior to consideration by panels. Training has been delivered to implement the changes in the Standard of Acceptance policy approved by Council in May 2015. Refresher sessions will continue to be included in the training planned for the year ahead.
- 2.3 Before a case is considered by the ICP, the Case Manager requests and collates information relating to the allegation. In cases where information is requested but is not provided, follow up letters are sent. If these techniques are not successful, it may be appropriate for the Case Manager to write to the party to invoke our statutory powers to require disclosure of information

under Article 25(1) of the Order. Most cases are reviewed at least every four weeks in the first two months and then every two weeks for cases that have been in the investigations process for more than two months. This helps to ensure that information is obtained in a timely manner, and where delays are occurring in the information being provided, more frequent contact is made with the individual from whom the information is being sought. In addition, relevant older cases are put to a Case Progression Conference where the case is discussed with senior managers and ways to progress it are explored. Before a case is put before the ICP, the registrant is given the opportunity to provide representations in relation to the allegations. All the information that has been gathered by the Case Manager is put before the ICP.

- 2.4 The Case Progression Conferences have been in place since January 2012, as a further tool to monitor and facilitate the timely progression of cases. Case Progression Conferences provide a forum in which Case Managers can discuss ways in which older cases can be progressed with management input. A selection of Pre-ICP cases that are four months old (or more) with no ICP date fixed are reviewed by Case Team Managers to determine whether the case is suitable for consideration at the case conference. Data from the case management system helps to identify these individual cases. At the case conference a review of the investigation to date takes place, as well as discussions about any reasons for delay and recommendations about the future progression of the case. The meetings also provide an opportunity for Case Managers to raise issues, ask questions and seek advice on the management of cases. The Case Progression Conferences are attended by the Operations Managers, the Case Team Manager for the Complex Case Team and the Case Managers with conduct of the cases being considered. The cases discussed are also considered for suitability for transfer to the Complex Case Team.
- 2.5 In total, 55 cases have been considered at the case progression conferences, in the audit period. The number of cases considered each month ranged from three to seven. The number of cases considered at the Case Progression Conference is lower than the last year's figure of 77 cases deliberated. During this reporting period we have established weekly legal assistance conferences with our external legal services provider. Therefore a number of issues which may have been considered at the Case Progression Conferences, may have been instead discussed at the weekly teleconferences.
- 2.6 Following the approval of the revised Standard of Acceptance Policy in 2015, we have started to categorise a group of cases using Rule 12 of the Registration and Fees Rules. This rule prevents the Registrar from removing a registrant's name from the register if the registrant is subject to an allegation, investigation or proceedings. Rule 12 provides for a category

of cases where we are awaiting the outcome of an evidence gathering process and cannot progress our investigation until that process is completed, for instance in the circumstances where a local employer or the Police are conducting their own investigations. We have developed a system where these cases can be categorised and monitored during the ongoing external investigations, but do not require as frequent chasing or updates to parties. This in turn allows us to concentrate on cases where progression is possible. We will be evaluating this approach in the coming year.

### 3. Decisions

3.1. In the April 2015 and March 2016 reporting period, 787 cases were considered by the ICP. The decisions are broken down as follows:

- Case to answer – 467 (63%);
- No case to answer – 272 (37%);
- Further information or no decision was made – 48 (6%).

The following table presents a comparison of the data between the previous and this reporting period.

Financial year	2014/2015	2015/2016
Number of cases considered by ICP	849	787
Number of cases concluded	810	739
% were case to answer out of concluded cases	53%	63%
% were no case to answer out of concluded cases	47%	37%
% required further information or no decision was made	4.6%	6%

3.2. The case to answer rate for the period reviewed is 63% out of the concluded cases. This figure is 10% higher compared to the previous reporting period. This may be explained by two factors:

3.2.1 The revised Standard of Acceptance policy has contributed to a more accurate assessment of information in the cases so that

more cases which had the necessary information were progressed to the ICP stage. This has consequently reduced the number of no case to answer decisions. For the audit period, 1661 cases were closed pre-ICP compared to 1042 in the last audit period. This constitutes 59% increase in Pre ICP closure rate.

3.2.2 Continuing and focused training on the application of the Standard of Acceptance Policy was provided to the case management team in each year since, including the reporting period. As a result, cases that may in the past have been put before an Investigating Committee Panel are now being closed at the initial stages.

- 3.3. Of the thirteen cases reviewed where no determination was made, three were in relation to substantial amendments to the allegations, one was referred to the Health Committee, and nine were where the panels requested further information. Out of these nine, in two cases the auditor was not clear from the decision what information the panel was lacking. This has been included in feedback to inform future training for case managers and panel members.
- 3.4. In April 2012, the ICP Co-ordinator role was formalised. This is performed by the Hearings Team Managers, having previously been performed by a Case Manager on rotation. This focusing of the role ensures a more consistent approach, and the ability to build effective working relationships with the panels.
- 3.5. The role of the ICP Co-ordinator is to ensure the smooth running of ICP days, directing panels to guidance relating to the realistic prospect test and its role in respect of amending allegations, where appropriate. It is important to note that the ICP Co-ordinator plays no role in the actual decision making process. Changes have also been made to the way in which ICP decisions are drafted, with the ICP decision template being amended to include discrete sections on each of the elements of the allegation that panels must apply the realistic prospect test to. Decisions are drafted using a projector so that panels can read and review the decision as it is being drafted.
- 3.6. In 60 cases (23% of the cases audited), the ICP made amendments to the allegation before either making a case to answer decision or referring the case back for further information. This number is similar to the previous reporting period when 24% of the cases audited had allegations amended by the panel. While the necessity to amend allegations can be a reflection on the quality of the initial allegations drafting, this is an important role of the panel as it is responsible for the cases referred to a final hearing and the

final drafting of the allegations. This was a particular focus in the panel training provided to HCPC panel members in 2014-15 and now is being addressed in the refresher training sessions on ongoing basis. This issue has also been a focus of allegation training sessions for Case Managers.

3.7. The type of amendments panels have made include:

- amending minor inaccuracies, for example an incorrect date, numbering, formatting or typographical errors;
- rewording or adding additional clarity to some particulars of the allegation;
- splitting or combining elements of the allegation;
- removing some particulars due to no evidence including some allegations relating to dishonesty;
- amending more material particulars of the allegations or particularising the motive for example whether the actions were sexually, financially or dishonestly motivated (in those cases panel did not make a decision).

3.8. There was some variation across the audit period in the numbers of amended allegations. While the percentage of amended allegations was in the region of 20-38% between April-December 2015, the percentage has gone down to 7-8% in January-March 2016 within the audited sample. This could be a result of the allegations training workshop in August 2015 and other case management training delivered for the case managers in the second part of the year 2015. We will, however, monitor that there is no impact at the Post IC stages due to the issues concerning quality of allegations.

3.9. Previous development work was based around the desire to support panels to amend allegations where they felt this was necessary, so any amendments or any variation across the audit period can be positively received. The feedback is, however, passed onto the case management team to provide continuous improvement initiatives including training. Early amendments support the preparation of the case for final hearing by our external solicitors, and reduces the need to have preliminary hearings to consider amendments to allegations. Furthermore, it reduces the impact on the conclusion of the final hearing as it avoids time spent making amendments at the start of a public hearing. Limiting allegation amendments at the start of a hearing also allows the time to engage with and prepare for the hearing.

3.10. We will continue to monitor number of amended allegations by the ICP panel as well as the number of allegations amended at the Post ICP stage especially those which could have been picked at the earlier stage. We will



continue with the following actions to ensure quality of the allegations going to hearing stage:

- Continued focus through partner training on the responsibility of the panel to amend allegations based on the information provided to them; Continued presence and confidence of the ICP Co-ordinator role, in reminding panels of their responsibilities in respect of approving allegations and making changes where necessary;
- Enhanced training on allegation drafting.

3.11. If a panel wishes to make material changes to the allegation or add additional heads of allegation that the registrant has not had the opportunity to respond to, the case must be sent back for the allegations to be re-drafted and the registrant provided with a further opportunity to respond. We have observed this approach in the audited period, where three cases out of the audited sample were sent back.

3.12. The test applied at the ICP stage is the 'realistic prospect' test. The practice note, "Case to Answer" Determinations, sets out how this should be applied. The test applies to the whole of the allegation, that is:

1. the facts set out in the allegation;
2. whether those facts amount to the "ground" of the allegation (e.g. misconduct or lack of competence); and
3. in consequence, whether fitness to practise is impaired.

3.13. In the audit period, in twelve cases (4% of the audited sample) the auditors did not observe that the panel demonstrated they had addressed the realistic prospect test on either facts, grounds or impairment in their deliberations in relation to case to answer or no case to answer decisions.

3.14. The auditors noted that in 227 cases out of the sample (86% of the decisions that were audited), that the decisions were well reasoned as set out in our panel guidance. There were some variances in the proportion of the cases that were considered well-reasoned across the audit period. In the first quarter of the audit period 81-87% were considered by the auditors as well reasoned, this has gone down a bit in the second quarter and then went up to 92-96% in the last quarter (Jan-Mar 2016).

3.15. There is a range of factors that may affect this. These include the changes in experience of panel members as terms of office end and new panellists are trained and inducted, as well as the greater number of amendments to allegations by the panel. It should be noted that the auditor would normally review the wording of the decision, rather than making judgements on the decisions of the panel. The improving trend in reasons between January - March 2016 may be a result of a number of refresher and new member

panel training sessions that was delivered in the second part of the year 2015. In addition the structure of panel member trainings is continuously improved and refreshed. For example we now include case studies, and group work scenario analysis. We will continue to roll out and make improvements to these training sessions on ongoing basis.

- 3.16. The ICP also has a role in deciding if a case may be suitable for mediation. We are currently running a pilot to determine if this option is useful as an alternate method of disposal for cases. During the pilot period, ICPs are asked to consider whether they should offer the registrant and complainant the opportunity to meet with a mediator to discuss and resolve the matter rather than refer the matter for a final hearing. We have provided training and guidance to panels on the criteria for suitability, and are evaluating the cases. In the last reporting period, we reported that we had one case that had been to mediation, and one that was awaiting mediation. In this reporting period, between April 2015 and March 2016, there were eight cases that were identified as possibly being suitable for mediation but in all cases either the complainant or the registrant did not agree to proceed.
- 3.17. Our Quality Compliance Officers consider whether the cases they review would be suitable for mediation. During the audit of this reporting period, one case was identified as possibly being suitable for mediation.

#### **4. Other Considerations**

- 4.1. Since 1 September 2010, panels have had the option of including learning points in their decisions. This is applicable where it is decided that there is a realistic prospect that HCPC will be able to prove the facts and the ground of allegation, but they have determined a finding of impairment is unlikely.
- 4.2. In the reporting period the IC panels have issued 56 learning points in total (over 7% out of total considerations). This is an increase from 50 cases in 2014–15 (less than 6% out of total considerations). In the audited sample there were twelve cases in which the panel included learning points. As the learning points are related directly to the cases, it is not possible to determine an expected rate at which learning points are made. We will continue to monitor this rate in future audits, but it is consistent with the emphasis in panel training, and the effectiveness of the ICP Coordinator role across the audit period. The individual learning points are reviewed and where appropriate used in the training sessions.
- 4.3. Some of the areas referred to in the learning points included in those decisions were similar to previous years and include:

- Maintaining high standards of personal conduct at all times and maintain professional standards (consistent with last year);
- Respecting confidentiality of service users including data protection (consistent with last year);
- Keeping accurate records (consistent with last year);
- The need to communicate appropriately and effectively (consistent with last year);
- Being honest and trustworthy, the need to behave with honesty and integrity in order to maintain public confidence in the profession (consistent with last year);
- Working within the limits of their knowledge and skills;
- Managing their health and managing risks (the importance of taking action in the future if the physical or mental health could affect their ability to practise);
- Communicating with service users (the need to explain the procedures and actions involved in the treatments).

As mentioned above the first five points were consistent with last year's findings. We will monitor these areas in particular and potentially work with Policy and Education departments on exploring improvements in these fields. We will also monitor the impact of the revised code of conduct on the range of allegations and the range of learning points. We will explore ways of highlighting to the panel members the importance of issuing the learning points where appropriate.

## **5. Policy issues**

5.1 The analysis of the cases shows that there continue to be a range of allegations relating to:

- safeguarding;
- informed consent;
- professional boundaries;
- multi-agency failures;
- communication;
- information security;
- health;
- financial fraud;
- record keeping;
- theft of medications;
- convictions and cautions.

5.2 Some of the above issues (for example safeguarding) continue to be a direct result of the types of cases that we receive, in particular in relation to the Social Workers. Many of these issues have been considered in the

updating of our Standard of Acceptance Policy.

- 5.3 We recently have commissioned a team at the University of Surrey to carry out research into the reasons for high number of referrals in relation to the Social Workers and Paramedics. The team will look at the published literature, fitness to practise data and interview a sample of different parts of external stakeholders including the registrants. We hope that the findings will enable the HCPC to identify ways of improvements in the way that different stakeholders can work together to improve the outcomes for the public. We will continue to monitor the areas of complaints and think about how to roll out this approach in relation to other groups of registrants. We will continue to address the findings in our continuous development program.
- 5.4 During this audit period, the auditors have noted one complaint about the decision regarding the cases they have looked at. In the previous reporting period, the audited sample included twelve complaints (2% of the sample) which were made after the ICP decision. This year's findings may be a result of a small percentage of complaints in the audited sample. However, it may also be a result of a smaller sample having been audited this year (this year audited 34% of the total ICP decisions while we audited 63% last year). The complaints log maintained by the Assurance and Development (A&D) team has noted 11 complaints about the ICP decision in this reporting period. Similar to last year, the complaints were mostly in relation to whether the decision was case to answer or not, and that those relating to case to answer came from registrants, and those relating to no case to answer came from the complainants. We will continue to review this rate in future audits. We will also continue to analyse all our complaints including those relating to ICP decisions. In addition, the A&D team is reviewing the Complaints Process. It may include being able to draw further data in relation to IC panel decisions which will further support our analysis of the ICP decisions in the future.

## **6 Areas of ongoing work arising from the audit**

- 6.1 Following the Fitness to Practice realignment to be completed in November 2016, we will continue to carry out a review of operational activities which support the ICP decision making. We will continue to review standard correspondence to reflect the processes, operational guidance, practice notes and policies, particularly those affected by the department restructure. We will include the areas identified in the audit in our review. This will be particularly in relation to those used by the Investigations Team as well as the Case Reception and Triage team. We will evaluate the FTP realignment, identify any training or resourcing needs in the relevant sections assessed and address them accordingly.

6.2 We will continue to carry out our Decision Review Group meetings. At these meetings we consider developments at final hearings leading to adjournments in advance or hearing cancellations, analyse not well founded cases and review panel decisions. The learning points from these meetings will continue to apply to the ICP process so that improvements can be implemented as appropriate.

6.3 Following a successful pilot project run between January to April 2015, since February 2016 we have been obtaining feedback from registrants and complainants after the cases have been concluded at ICP or final hearing. Feedback from the panel members, witnesses or representative groups is also being gathered and analysed on regular basis. Any learning points are passed on to the relevant sections and actioned as We will continue the refresher training to Case Managers in areas including:

- revisions to HCPC documentation to support assessment of whether information meets our Standard of Acceptance, better drafting of allegations for consideration by the ICP, case planning and risk assessment;
- review and continuation of focussed workshops for existing team members to consider approaches to information assessment, allegation drafting and case progression. Induction programmes for new HCPC team members to have a revised section on ICP preparation;
- review of the themes and trends in data for ICP cases, that can inform our approach to applications for discontinuance of allegations, mediation, consensual disposal, or complaints about ICP decisions;
- the need to request clarification from the complainants on receipt of the registrant's response where appropriate;
- ensuring all relevant information, including patient notes and relevant dates are requested in advance of the Investigating Committee where necessary, and the use of our Article 25 powers to request information;
- the impact of Rule 12 designation prior to presenting the case to the Investigating Committee;
- allegation drafting, continuing to use the input of HCPC Special Counsel to ensure the focus on evidencing the allegations is maintained, and through the existing HCPC legal advice authorisation process.

- 6.4 Revised training will continue to be provided on an ongoing basis to Panel Chairs and Members to ensure continued improvement in areas including:
- the ongoing need to provide reasons for their decision that can be easily understood by all;
  - the application of the realistic prospect test;
  - the identification and use of suitably anonymised learning points where appropriate in no case to answer decisions;
  - amending allegations;
  - review of Partner training sessions to make explicit the role of the panel in assessing and amending the allegations at ICP, and the role of the ICP Co-ordinator in supporting the production of consistently high quality decisions;
  - reinforce key skills and knowledge about best practice when writing fitness to practise determinations;
  - providing adequate reasoning and the issues to take into account when selecting sanctions at final hearing;
  - discussions regarding scheduling of hearings and the role of the scheduling officer.
- 6.5 Review of the Quality Assurance Framework to ensure that it continues to be fit for purpose following the FTP realignment and to support the ICP decision making further is currently under way. The review will include the approach for auditing in response to risks, identifying examples that can be used in future training with both HCPC team members and Partners and process for feeding back the results of audit findings to the relevant sections or individuals within the FTP department. This review will include a review of the sampling mechanism as part of the wider FTP compliance audit activities for other areas such as closed cases, risk assessment, length of time to completion and general management and operational statistics. ICP activity remains a key closure point, and the proportion of audit resource needs to continue to reflect the outcomes and learning opportunities.
- 6.6 Review of the role of the A&D team in response to the audit findings, approach to process improvement in relation to the identified risks and the impact on the regulatory outcomes.
- 6.7 Review of the complaints process which A&D team is responsible for managing to reflect the FTP realignment and capturing data in relation to complaints about ICP decisions.
- 6.8 All learning points from the audit for both case management and Panel Members will continue to be addressed with the FTP Training Advisor. This will be done in conjunction to the training provided to the respective teams within the new FTP structure. We will consider any resource requirements

associated with this in our resource planning discussions later this year. We have introduced, and continue to develop, training evaluation systems for all training delivered.

- 6.9 Any learning points received from the Professional Standards Authority in relation to our panels' decisions will continue to be analysed and any feedback relating to the ICP decisions addressed in the relevant improvement work. We will continue to ensure that that our ICP decisions and the relevant processes are in line with the PSA Standards of Good Regulation for Fitness to Practise, in particular its Standard 8: "All fitness to practise decisions made at the initial and final stages of the process are well reasoned, consistent, protect the public and maintain confidence in the profession". At its most recent annual review of performance 2015/2016, the PSA has concluded that we have met this standard.