hcpc health & care professions council

Agenda Item 9

Enclosure 9

Health and Care Professions Council
07 December 2017

Fitness to Practise Publication Policy

For discussion and approval

From Claire Baker, Tribunal Service Manager

Council, 07 December 2017

Review of Fitness to Practise Publication Policy

Executive summary and recommendations

Introduction

Jonathan Bracken has undertaken a review of the publication policy in response to the establishment of the HPCTS. This review was completed following difficulties the HCPTS were having explaining the policy to registrant's queries about publications on the HPCTS website despite the policy remaining under the HCPC.

The changes to the policy are as follows:

- The main change to the document is references to the HCPTS administrating the policy but the policy still remains under the HCPC.
- Under the Concluded cases heading, a paragraph has been added to reference how long to publish decisions where the outcome is 'impaired but no further action'.
- A separate heading has been added make it clear about the online register. This information was previously included under the Final hearings heading.
- Amendments have been made to the Consent Orders section. Information about level of detail in decision has been removed and instead added that hearings will be published in the same away as other fitness to practise decisions.
- Minor changes to the internet search engines mentioning the tribunal website.

Decision

The Council is asked to discuss and approve the proposed changes to the policy as outlined.

Resource implications

N/A

Financial implications

N/A

Appendices

Appendix One – Revised Fitness to Practise Publication Policy

Date of paper

23 October 2017

~~Fitness to Practise~~ Publication Policy: Fitness to Practise Proceedings

Introduction

1. The Health and Care Professions Council (**HCPC**) and its adjudication service, the Health and Care Professions Tribunal Service (the **Tribunal**)[1], seek~~s~~ to ~~regulate~~ perform their functions in an open, transparent and proportionate manner. The circumstances and outcome of fitness to practise (**FTP**) proceedings are matters of legitimate public interest and ~~we publish~~ information about most ~~of the~~ FTP decisions is published on the Tribunal's website and included in the online register on the HCPC website~~that are made about those we regulate~~.

2. ~~The HCPC has a statutory duty under~~ Article 22(9) of the Health and Social Work Professions Order 2001 (the **Order**) imposes a statutory duty on the HCPC to publish particulars of certain orders and decisions made by ~~Practice Committee Panels~~ the Tribunal. That Article also gives ~~us~~ the HCPC discretion to disclose any information about a person's fitness to practise where ~~we~~ it considers that disclosure ~~to be~~is in the public interest. The ~~HCPC is also subject to the~~ Data Protection Act 1998 and the Freedom of Information Act 2000 ~~which~~ also impose specific duties on the HCPC (including the Tribunal) in respect of the disclosure of information ~~disclosure~~.

3. The publication of FTP decisions provides valuable information about the standards expected of registrants, assists service users to make informed choices and helps to maintain public confidence in the professions ~~we regulate~~. It is consistent with ~~our~~ the HCPC's statutory function of setting and maintaining standards for those professions, with the over-arching objective of protecting the public. However a balance must be struck. Whilst the publication of FTP decisions will generally be in the public interest, the HCPC must take account of the rights of registrants and others involved in proceedings and the risk of harm that may arise from the disclosure or non-disclosure of information.

4. What ~~we~~ is published must be accurate, relevant and proportionate. Furthermore, the level of detail published and the length of time it remains publicly available must be proportionate, striking a ~~fair~~ reasonable balance between the public interest ~~objectives highlighted above~~ and fairness to all participants involved in the process. For that reason, FTP decisions that are published on the HCPC or Tribunal websites will normally be removed from the website within the timescales set out below. The published versions of FTP decisions are also likely to be

[1] The Health and Care Professions Tribunal is the collective name for the HCPC Practice Committees. The Tribunal is part of, but operates at arm's length from, the HCPC.

redacted or contain anonymised information. For example, ~~normally, we do not identify~~ witnesses are normally not identified by name in FTP decisions.

Fitness to Practise Allegations

5. If ~~a Panel of the HCPC~~ an Investigating Panel ~~Committee~~ determines that there is a 'case to answer'[2] in relation to an allegation, the HCPC will issue a notice of allegation to the registrant concerned.

6. The HCPC does not publish the details of allegations at the 'case to answer' stage but, in order to give public notice of forthcoming hearings, the Tribunal will publish allegations ~~will be published~~ on its ~~the HCPC~~ website 28 days before the date on which the hearing is due to take place. The website listing will include ~~details of~~ the date, time and venue of the hearing.

7. Sometimes it may be necessary for an allegation to be amended after it has been referred for hearing. Any amendment would need to be approved by the ~~Practice Committee~~Panel hearing the case and, if that approval is not given until the day of the hearing, the allegation published on the ~~HCPC~~ Tribunal website will be the original, rather than the amended, allegation.

8. In order to ensure that an allegation is sufficiently specific, it is often necessary to include information about the registrant's interaction with service users. In such cases, the published allegation will be anonymised so that the identity of service users is not disclosed. Allegations may also be redacted to remove the identity of complainants, colleagues or other parties involved in the case.

~~Final hearings~~Concluded cases

9. In cases where a registrant's fitness to practise is found to be impaired ~~at a final hearing~~, the Panel's decision and any sanction it imposed ~~outcome~~ will be published on the ~~HCPC~~ Tribunal website ~~at~~ once the proceedings have concluded~~the conclusion of the hearing~~. ~~The Panel's decision and the sanction it imposed will be published on the HCPC website~~. That decision will provide details of the background to the case, the evidence that was heard, ~~the~~ any order which the ~~panel~~ Panel ~~imposed~~ made and the reasons for ~~the Panel's~~its decision.

10. If a Panel decides that an allegation is not well founded, the outcome will not be published on the ~~HCPC~~ Tribunal website unless the registrant concerned requests that the information is published. In the absence of such a request, ~~the~~ any information about the hearing on the Tribunal website will be removed from ~~the HCPC~~that website once the proceedings have concluded~~at the conclusion of that hearing~~.

11. In cases where the Panel finds fitness to practise is impaired but decides to take no further action, the decision will remain on the Tribunal website for one year from the date that the decision takes effect.

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[2] for more information please see the ~~HCPC~~ HCPTS Practice Note on case to answer determinations

12. In cases where the Panel imposes a caution, the published decision will remain on the ~~hearings page of the HCPC~~Tribunal website for one year from the date that the order takes effect, regardless of ~~the of~~ the length of the caution period. However, if the caution is for more than one year, details of the caution will remain ~~accessible through the advanced search function~~available as part of the online register on the HCPC website for the duration of the sanction (see below).

13. In cases where a conditions of practice order or suspension order are imposed, the published decision will remain on the ~~hearings page of the HCPC~~Tribunal website for so long as the order has effect. Where such an order is reviewed and extended (or varied or replaced with another conditions of practice order or suspension order), the original decision and any subsequent review decisions will be published on the ~~HCPC~~ Tribunal website for so long as an order remains in effect.

~~Conditions of practice orders and suspension orders will appear as an annotation to a registrant's online register entry for so long as an order has effect and the annotation will include a link to the Panel's decision and order. Information about the original decision and order and any review decisions will be removed from the HCPC website, and the annotation and associated link will be removed from the online register, when the sanction is revoked.~~

14. In cases where a striking off order is imposed, the published decision will remain on the ~~HCPC~~ Tribunal website for a period of five years from the date that the order takes effect. This includes striking off orders that are imposed at a review hearing to replace a conditions of practice order or suspension order. The name of a person who has been struck off will not appear in the online register on the HCPC website.

The online register

15. The register entries of registrants who are subject to caution orders, conditions of practice orders or suspension orders will include that information for so long as ~~the~~ an order has effect, and the register annotation will include a link to the relevant decision and order. Where a conditions of practice or suspension order has been reviewed and varied or replaced, the annotation will include information about both the original decision and order and any decision and order made following a review. ~~The a~~Annotations and associated links will be removed from the online register when ~~the caution~~an order expires or is revoked.

Restoration

16. A person who has been struck off the HCPC register may, after five years have elapsed, apply for 'restoration' in accordance with Article 33 of the Order. Details of restoration hearings (including the date, time and venue) will be published on the ~~HCPC~~ Tribunal website 28 days before ~~the date on which~~ the hearing is due to take place.

17. All decisions and orders made by Panels under Article 33 will be published on the ~~HCPC~~ Tribunal website at the conclusion of the ~~hearing~~ proceedings and, except where the Panel has made a direction under Article 33(9) of the Order (indefinite suspension of a person's right to make further applications) they will remain on the website for a period of five years. In cases where an Article 33(9) direction has been made, the decision will remain on the ~~HCPC~~ Tribunal website for so long as such a direction (including any continuation of that direction following a review under Article 33(10) of the Order) has effect.

18. In cases where restoration is granted subject to the imposition of a conditions of practice order under Article 33(7)(b) of the Order, that ~~conditions of practice~~ order will be subject to the same publication requirements that apply to any other conditions of practice order, ~~(~~as set out ~~above) that apply when such an order is imposed at a final FTP hearing~~in paragraphs 13 and 15..

Interim Orders

19. Under Article 31 of the Order an interim conditions of practice order or interim suspension order may be imposed upon a registrant whilst FTP proceedings are pending. A Panel may do so where it is satisfied that, based upon the nature and severity of the allegation, the registrant may pose a risk to the public or to himself or herself if permitted to remain in unrestricted practice or that, for wider public interest reasons, the registrant's freedom to practise should be restricted.

20. Interim order hearings are usually held in public and the ~~HCPC will publish~~ the time, date and venue of the hearing will be published on the Tribunal ~~on its~~ website. Interim order applications (and review applications) are often heard at short notice and details of the hearing will be published as soon as a hearing is arranged. Details of hearings for the periodic review of interim orders will normally be published on the ~~HCPC~~ Tribunal website 28 days before ~~the date on which~~ the hearing is due to take place.

21. If an interim order is imposed, ~~made (or an order remains in place following a review hearing) the HCPC will publish on its website the outcome of the hearing and~~ the terms of ~~any order made by~~ the Panel's order will be published on the Tribunal website for so long as the order has effect and will be removed once the case in respect of the allegation to which it relates has been concluded.

~~Information about an interim order will only be published on the HCPC website for as long as the order has effect and, in any event, will be removed from the HCPC website when the case in respect of the allegation to which it relates has been concluded.~~

Consent Orders

22. The ~~HCPC's~~ consent process is a means by which the HCPC and ~~the Registrant~~ a registrant~~concerned~~ may seek to ~~conclude a case~~resolve an allegation without the need for a contested hearing~~. In such cases, the HCPC and the registrant consent to conclude the case~~, by agreeing to the imposition of an order of the

kind which a Panel would have been likely to make had the matter proceeded to such a ~~fully contested~~ hearing.[3] ~~For more information about consent orders see the HCPC Practice Note; 'Consent Orders'.~~

23. Cases can only be disposed of in this manner with the agreement of a ~~Practice Committee~~ Panel, which will be sought at a hearing. Consent order hearings are normally held in public and the ~~HCPC~~ Tribunal will publish the time, date and venue of a consent hearing on its website, in ~~line with~~ the same way as ~~all other HCPC final~~any other substantive hearing~~s~~. The ~~website entry~~published information will ~~will also~~ include the ~~full~~ allegations to which the consent order relates.

24. If a consent order is ~~accepted~~ approved by ~~the~~ a Panel, its ~~written~~ decision will be published in the same way as any other fitness to practise decision.~~should explain why the case was considered to be suitable for disposal in this manner. As the Panel will not have conducted a substantive inquiry into the allegations, the decision does not need to contain the same level of detail as a decision produced at a contested hearing. However, it does need to provide sufficient background detail to enable readers to understand what the registrant was accused of and why the Panel considered that the outcome to which the registrant consented was appropriate. The Panel's decision will be published on the HCPC website at the conclusion of the hearing and will be subject to the same publication requirements (as set out above) that apply when such an order is imposed at a contested hearing~~

Public and private hearings

25. Most FTP proceedings are conducted in public. This is consistent with the ~~principle of~~ 'open justice' principle and ~~with~~ Article 6(1) of the European Convention on Human Rights (**ECHR**), which restricts the circumstances in which hearings may be held in private. Based upon Article 6(1) ECHR, the Tribunal's procedural rules ~~for HCPC Practice Committee Panels~~ provide that:

"At any hearing... the proceedings shall be held in public unless the ~~Committee~~ [Panel] is satisfied that, in the interests of justice or for the protection of the private life of the registrant, the complainant, any person giving evidence or of any patient or client, the public should be excluded from all or part of the hearing;..."

26. Although the rules provide Panels with a discretion to hear part or all of a case in private~~,~~[4], Article 6(1) ~~ECHR~~ requires all decisions "to be pronounced publicly". Consequently, at the conclusion of a case that has been heard wholly or partly in private, the Panel will need to consider what, if any, 'public pronouncement' it will make. Clearly, this will also have an impact upon what information the ~~HCPC~~ Tribunal publishes about that case.

[3] for more information please see the HCPTS Practice Note on consent orders.

[4] for more information please see the ~~HCPC~~ HCPTS Practice Note on conducting hearings in private

27. The ECHR case law make clear that the 'public pronouncement' obligation should not be interpreted literally, as doing so may frustrate the purpose of hearing that case in private and undermine the primary aim of Article 6(1), which is to secure a fair hearing.

28. Where a Panel has proper grounds for hearing a case in private, it is not obliged to pronounce its full decision in public, but must consider the extent to which the evidence it has heard, its decision and the reasons for that decision can and should be made public. In doing so the Panel should take account of:

- the nature of the case and reasons why it was heard in private;
- the 'fair administration of justice' objective of Article 6(1); and
- the HCPC's objective under Article 3(4) the Order to protect the public.

29. If proceedings were held in private in order to protect the identity of, or sensitive information relating to, particular individuals then it may be that the Panel's decision can be delivered and published subject to appropriate redaction or in an anonymised form.

30. In cases where delivery or publication of a redacted or anonymised decision may frustrate the purpose of hearing the case in private, the ~~panel~~ Panel is expected to deliver a brief decision:

- stating whether or not any allegation was well founded and the sanction (if any) it has imposed (and directing the Registrar to amend the HCPC register accordingly); and
- recording that the Panel's decision has been provided to the Registrar who has the discretion to make it available (in an appropriately anonymised or redacted form) to any person who has good grounds for seeking the information.

Press Releases

31. The HCPC's Media & PR team normally issues a press release when a registrant is suspended or struck off, as part of obligation under Article 22 of the Order to publish orders and decisions made by Practice Committee Panels. Press releases contain information which has been set out in the notice of decision and order document and include a link to that document which is listed on the HCPC website. Press releases are sent out to relevant media and will appear on the HCPC website. The relevant section of the HCPC website is regularly reviewed and press releases are removed in line with the requirements for each sanction as set out above. If journalists attend hearings which are held in public, they may publish reports about hearings over which the HCPC has no control.

Deciding not to publish

32. The ~~obligation imposed upon the~~ HCPC's obligation under~~by~~ Article 22 of the Order is to publish "particulars" of the Tribunal's decisions and orders ~~and decisions made by Practice Committee Panels.~~. This provides the HCPC with the

discretion to decide exactly what is published and ~~it is a discretion which~~ the HCPC will consider exercising that discretion if, in all the circumstances, the impact of publishing certain information would be disproportionate. This may arise where, for example, publication would:

- disclose confidential information about a person's health;
- disclose legally privileged or confidential information;
- create a significant risk of breaching the Article 8 ECHR right to privacy and family life;
- prejudice another investigation or other legal proceedings; or
- disclose information which may hinder the performance of the HCPC's functions.

Internet search engines

33. ~~Publications are~~Information will be ~~–~~removed from the HCPC and Tribunal websites in accordance with this policy. However, many internet search engines, such as Google, manage information by 'caching' webpages ~~, which involves~~ (storing a snapshot of ~~a webpage~~them in a database) and ~~then refreshing that snapshot~~ periodically refreshing those cached pages. ~~In consequence, historical HCPC webpages~~As a result, historic version of pages from the HCPC and Tribunal websites may remain available on internet search engines (over which ~~are not with~~ the ~~HCPC's~~ HCPC has no control) ~~after they have~~ and which contain information which has ~~-~~been removed from ~~the HCPC~~those websites.

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