

Fitness to Practise Committee, 23 May 2013

Investigating Committee decision review

Executive summary and recommendations

Introduction

At its meeting in February 2012, the Committee considered the third report on the review of Investigating Committee decisions between April 2011 and December 2011. The Committee has agreed that the Executive should provide a report on the review of decisions on a six monthly basis. However, in light of the implementation of the new Case Management System and the preparation for the “on boarding” of Social Workers, it was agreed that the fourth report could be presented to Committee at its meeting in May 2013. This paper is the fourth report and covers the period 1 October 2012 to 31 March 2013 (6 months).

In total, 390 decisions were made during the course of 69 Investigating Panel meetings. In 9 cases further information was requested and 3 cases were considered more than once within the audit period.

The case to answer rate for the period reviewed in this report was sixty two per cent. This is higher than the case to answer rate for the period covered in the previous report (47%). This may in part be explained by the “on boarding” of Social Workers. Forty nine per cent of the case to answer cases related to Social Workers (both GSCC legacy cases and new Social Worker cases received after 1 August 2012).

This audit report has highlighted some instances where information from complainants has been difficult to obtain or we have only received the requested information following repeated requests which in turn impacts on the length of time it takes to progress cases. Such cases are now being highlighted at monthly case progression conferences. These conferences were introduced in January 2012 and are a forum in which Case Managers can discuss ways in which older cases can be discussed with management input. At the case conference a review of the investigation to date takes place, 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.

Additionally, the Case Advancement Team (CAT) was created in May 2012 to provide a dedicated resource for the investigation and progression of complex

cases. The CAT uses a number of methods to support the progression of cases including a monthly case handling strategy meeting at which the CAT collectively considers cases where there are barriers to progression, to discuss, explore and evaluate different case management techniques, including the early identification of cases suitable for Registrant Assessor advice.

Decision

This paper is for discussion

Background information

In 2012-13, 666 cases were considered by panels of the Investigating Committee. Of this number, 123 were cases that had transferred over from the General Social Care Council (GSCC). From September 2012-March 2013, Investigating Committee Panels were scheduled to meet thirteen times a month, four of those days were dedicated Social Worker days to ensure the timely progression of GSCC legacy cases. In 2013-14, Panels are scheduled to take place nine times a month.

Resource implications

Until January 2013, the audits have been undertaken by the Policy Department and case support officers within the Fitness to Practise Department. As of January 2013, the audits are being undertaken by the Quality Compliance Officer within the Fitness to Practise Department.

Financial implications

None

Appendices

- Appendix 1 - Report on the review of Investigating Committee decisions October 2012-March 2013
- Appendix 2 - Audit form - decisions as to whether there is “Case to Answer” made by or on behalf of the Investigating Committee (approved by the Fitness to Practise Committee in February 2010)

Date of paper

3 May 2013

Review of Investigating Committee Decisions: October 2012-March 2013

1. Introduction

- 1.1. At its meeting in February 2012, the Committee considered the third report on the review of Investigating Committee decisions between April 2011 and December 2011. This is the fourth report and covers the period 1 October 2012 to 31 March 2013. Panels of the Investigating Committee met on 69 occasions between 1 October 2012 and 31 March 2013.
- 1.2. Three hundred and ninety decisions were made by Investigating Committee Panels relating to 387 cases (3 cases were considered twice). Of the 387 cases that were considered by Investigating Committee panels, 105 related to open Conduct cases that transferred over from the General Social Care Council (GSCC).
- 1.3. It should be noted that the way in which Investigating Committee Panel decisions are audited changed as of February 2013 as a result of the appointment of a Quality Compliance Officer within the Fitness to Practise Department. For the period 1 October 2012-31 January 2013, cases were audited using an audit form (a copy of which is set out in appendix two). The form itself was transferred to an Access database for ease of use and reporting on the outcome of the audit. From 1 February 2013, the audit is carried out using a spread sheet. The spread sheet contains the same information as the audit form, with the addition of fields to identify:
 - Individual and/or team learning points;
 - Where urgent case management action may be required;
 - Cases that may be suitable for disposal by consent;
 - Cases that may be suitable for discontinuance; and
 - The number of risk assessments completed on each case
- 1.4. This report divides analysis on the audit into the four sections set out in the audit form, i.e. investigation, decision, other considerations and policy issues. The additional areas covered within the spread sheet will be commented on within the four sections.

2. Investigation

The first point the person reviewing the decision is asked to address is whether the case meets the standard of acceptance of allegations. Of the three hundred and ninety cases reviewed, six were assessed as not meeting the Council's standard of acceptance for allegations. All six of those cases received a 'no case to answer' decision at Investigating Committee stage. 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, to provide further guidance around matters which may be closed without the need to be considered by a panel of the Investigating Committee. An informal review of Investigating Committee decisions was undertaken in November 2012 to identify learning points and training needs. As a result of this review, further training on the provisions of the Standard of Acceptance Policy was provided to Case Team Managers to assist them in identifying cases that were suitable for closure within their teams. Further, Investigations Managers attended all Investigating Committee Panel days for the period November 2012-February 2013 to provide panels with a briefing on the provisions of the Standards of Acceptance Policy and the role of the Investigating Committee, with particular reference to the Case to Answer Determination Practice Note. Specific training in relation to the Standard of Acceptance Policy was also included in all Panel training delivered by the HCPC from November 2012, which included the nine cases identified above as case studies (suitably redacted). We continue to include this within the training planned for the year ahead.

- 2.1. For the period 1 October 2012 to 31 January 2013, 5 cases had previously been considered or an investigation started by another organisation. As of 1 February 2013, this is no longer reported on within the audit. However, it is noted that the HCPC received 217 open Conduct cases from the GSCC as at 1 August 2012.

The HCPC sought advice from a registrant assessor in relation to 2 cases. The HCPC sought advice from a registrant assessor for one of the cases reviewed in the last report. Training on the use of Registrant Assessors and the identification of suitable cases was provided to the case management team in May 2012. This is an important case management tool, which the case management team is encouraging greater use of in the investigation of fitness to practise concerns and the drafting of complex allegations. Further training on the appropriate use of Registrant Assessors for the case management team is planned for later in the year.

- 2.2. In 65 of the cases considered (17%), legal advice was sought before the case was considered by the Investigating Committee. In the previous review

of decisions this figure was 26%. The nature of legal advice requested at the early stage of the case can include:

- Article 22(6) advice which is required where the Council is making the allegation;
 - Advice on whether the case meets the standard of acceptance; and
 - Advice on evidential issues.
- 2.3. The number of requests for information made by the HCPC during the course of the investigation across the cases ranged from 0 to 45. In fifty per cent of cases, between 0-3 requests for information were made prior to progression to the Investigating Committee. These requests may have been made to one or a range of individuals and organisations, for example the registrant's employer, the police or the member of the public who made the allegation. In some cases there is enough information to proceed to an Investigating Committee without making any further requests for information. For example, in cases where an employer provides a full copy of their disciplinary investigation report.
- 2.4. In cases where information is requested but is not provided, follow up letters are sent and these are included in the numbers above. 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. Regular reports are provided to the Committee giving detail on the length of time cases take to proceed through the process. In addition, from January 2012, relevant older cases are put to a case progression conference where the case is discussed with management and ways to progress it explored.
- 2.5. In January 2012, the case management team introduced monthly case progression conferences 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. All 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 consideration at the case conference. At the case conference a review of the investigation to date takes place, 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 Investigations Managers, the Case Team Manager for the Case Advancement Team and the Case Managers with conduct of the

cases being considered. The cases discussed are also considered for suitability for transfer to the Case Advancement Team. The case management team is looking to extend the remit of case progression conferences to consider cases that have been to ICP and are awaiting listing for a Final Hearing.

- 2.6. 75 cases have been considered at the case progression conferences, since April 2012.. The number of cases considered each month ranged from 10 (in May 12) to 2 (in Jan 13).
- 2.7. Article 25(1) of the Health Professions Order 2001 enables the HCPC to demand information from any party, except the registrant who is the subject of the allegation. This power is used only where an individual or organisation refuses to provide information, or where there is no response to the requests that are made. In some instances an organisation may ask the Case Manager to quote the powers the HPC has to require information for their records or audit trail. This power was quoted in 22 of the cases considered by the Investigating Committee in the audit period. In the previous audit period this figure was similar at 16. The increased use of Article 25(1) powers may in part be explained by Local Authorities requiring confirmation of our power to compel the provision of information, as a result of the HCPC taking over regulatory responsibility for Social Workers in England in August 2012. Article 25 powers should only be used by Case Managers as a last resort in seeking information.

2.7.1. The HCPC does not provide the registrant's response to the person who made the allegation. Clarification is sought on a case by case basis where there are points raised by the registrant that require clarification. From the audit of cases, there were 6 instances where the Case Manager went back to the complainant for clarification following the registrant's response. This is an increase from the last review, which identified that further clarification was not sought in any of the cases for that period. The audit identified a further twelve cases where further clarification should have been sought prior to the matter being put before the Investigating Committee Panel. Of those cases:

- six received a no case to answer decision,
- four received a case to answer decision; and
- two the panel determined that further information needed to be sought by the HCPC.

Further training on case investigation and requesting further information prior to putting cases before Investigating Committee Panels has been planned for June 2013. Case Managers will continue to be reminded of the need to request clarification were

appropriate. As outlined earlier, sections on the role and remit of the Investigating Committee continues to be included in the panel training planned for the year ahead, with particular focus on the Standard of Acceptance Policy and the Case to Answer Determination Practice Note. The cases identified in the course of Investigating Committee Audits are periodically reviewed for suitability for inclusion as case studies within the training delivered to panels.

3. Decision

3.1. The 390 decisions made by the Investigating Committee are broken down as follows:

- case to answer – 240 (62%)
- no case to answer – 141 (36%)
- further information – 9 (2%)

3.2. The case to answer rate for the period reviewed is higher than the period reviewed in the previous report (47% case to answer rate). This may be explained by two factors:

3.2.1 The impact of Social Worker cases. One hundred and eighteen (49%) cases of the two hundred and forty case to answer cases related to Social Workers (both GSCC legacy cases and new cases received after 1 August 2012). This may be indicative of the learning involved with the “on boarding” of a new profession both in terms of Panel Chairs and Lay Panel members becoming familiar with the issues raised by Social Worker cases and Social Worker Panel members becoming familiar with the HCPC’s Fitness to Practise model of regulation (as opposed to the Conduct model operated by the GSCC). It is also noted that a number of legacy cases transferred over from the GSCC were at an advanced stage in the GSCC’s process at the time of transfer. These cases contained detailed information and witness statements, providing credible evidence to support the allegations made; and

3.2.2 the greater number of cases that are being closed prior to being considered by the Investigating Committee on the basis that they do not meet the HCPC’s Standard of Acceptance for Allegations Policy. For the period 1 October 2012-31 March 2013, 575 cases were closed pre-ICP. The policy was updated and rolled out to the Fitness to Practise Department in December 2011. Focused training on the application of the Standard of Acceptance Policy

was provided to the case management team in November 2012. As a result, cases that may in the past have been put before an Investigating Committee Panel are now being closed.

- 3.3. Of the nine cases where further information was requested, there was one case highlighted where the need for the further information could have been identified and sought prior to the panel meeting. The information that could have been identified was surrounding the drafting of the particulars of allegation.
- 3.4. In 76 (19%) of the cases audited, the Investigating Committee made amendments to the allegation before either making a case to answer decision or referring the case back for further information. This is compared to the last review where the Investigating Committee amended allegations in relation to 11% of cases considered. 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 has been a particular focus in the panel training provided to HCPC panel members in 2012-13. The Investigations Managers also provided pre-panel briefings to Investigating Committee Panels for the period November 2012-February 2013, providing a refresher on the role and remit of the Investigating Committee Panel. The type of amendments the panel made include:
 - amending minor inaccuracies, for example an incorrect date
 - rewording or adding additional clarity to some particulars of the allegation;
 - redrafting particulars relating to profession specific competency allegations; and
 - splitting or combining elements of the allegation.
- 3.5. 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.
- 3.6. The test applied at the Investigating Committee 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.

- 3.7. There were 4 cases where the panel did not refer to the realistic prospect test in relation to all the elements of the allegation as set out above. This doesn't necessarily mean that the panel did not apply the test, but it is not evident from their decision that they did so. In 2 of the 4 cases the panel found there was a case to answer, and in 2 cases they found there was no case to answer.

In the last report provided to the committee in February 2012, the number of cases where the Investigating Committee did not apply the realistic prospect test to all elements of the allegation was 14. Since the last review, further refresher training has been provided to panel members on the realistic prospect test and the importance of producing well-reasoned decisions. The Case to Answer Determination Practice Note was also updated in December 2011 to include further guidance on the role of the Investigating Committee.

The changes to the document are set out below:

- the inclusion of information to assist Investigating Committee Panels when conflicts in evidence arise; and
- further guidance on the review and amendment of allegations before the Investigating Committee – to ensure that adequate scrutiny is undertaken and that the allegations referred are a fair and proper representation of the HPC's case

In April 2012, the ICP Co-ordinator role was formalised. This is performed by the Lead Hearings Officer (it was previously performed by Case Managers on a rota basis). The role of the ICP Co-ordinator is to ensure the smooth running of ICP days, providing guidance to the Panel on the realistic prospect test and amending allegations, where appropriate. 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 now drafted using a projector so that panels can read and review the decision as it is being drafted.

- 3.8. The reduction in the number of cases where the realistic prospect test has not been applied is a good indication that the refresher training given to ICP panel members and changes to the process rolled out in November 2012 are continuing to have an impact.
- 3.9. The audit found that all of the decisions covered in this period were well reasoned. However, it is noted that three cases were identified where the realistic prospect test was not explicitly applied to all three elements of the allegation. It is noted that there has been an improvement in the quality of decisions produced by the Investigating Committee since the last review,

which found that in 13 cases, it was felt by the auditor that the decision was not well reasoned.

3.10. Panels can make reference to the HCPC standards in the course of their decision and did so in 162 of the cases audited. The vast majority of the references were made in relation to the standards of conduct, performance and ethics (SCPE). An allegation cannot be made to the effect that a registrant has breached the SCPE, but panels can refer to the standard(s) that are relevant to a particular case in the course of their decision. The graph below shows the number of times each SCPE was referred to. In most cases more than one standard was referred to.

3.11. The most commonly referenced standards were:

- 1 - You must act in the best interests of service users (53 cases);
- 3 - You must keep high standards of personal conduct (66 cases); and
- 13 - You must behave with honesty and integrity and make sure that your behaviour does not damage the public's confidence in you or your profession (65 cases).

This is consistent with the previous report.

3.12. 27 cases referenced the standards of proficiency for the particular profession. This is an increase from the last review where the Standards of Proficiency were cited in ten of the cases reviewed. Some of these cases also had references to the SCPE. It is noted that 42 cases relating to Social Workers referenced the General Social Care Council's (GSCC) Code of Practice, which is evidence that the Investigating Committee Panels applied the standards in place at the time of the incident(s) giving rise to the allegations.

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 not that fitness to practise is impaired. The auditors were asked to consider, in cases where a no case to answer decision had been made, if it might have been appropriate for the panel to provide the registrant with any learning points, and in addition whether then panel did include learning points.

4.2. There were three cases where it was felt that the panel could have provided learning points but did not do so. This is compared with the previous report where forty six cases were identified as suitable for issuing learning points. Some of the areas in which panels could have provided further guidance to registrants were:

- Communication skills; and
 - Incident reporting
- 4.3. There were 7 cases in which the panel did include learning points in its decision. This amounts to 0.05% of the 141 cases where a no case to answer decision was made. This represents a significant drop in the number of learning points issued by Investigating Committee Panels when compared with the last review, at which it was found that learning points were issued in 17% of cases where a no case to answer decision was made. This may in part be explained by amendments made to the Standard of Acceptance Policy, resulting in enhanced guidance in relation to cases that can be closed without the need to be put before an Investigating Committee Panel (for example, cases that have been satisfactorily resolved at a local level or where the HCPC is satisfied that the incident complained of was isolated). Learning points are only applicable in cases where there is a realistic prospect that HCPC will be able to prove the facts and the ground of allegation, but not that fitness to practise is impaired. The reduction in the use of learning points since the last report is an indication that Investigating Committee Panels may need to be reminded of this useful tool which can be considered one of the methods of alternative dispute resolution that the HCPC utilises.
- 4.4. Some of the areas referred to in the learning points included in those 7 decisions were:
- Use of appropriate language
 - Maintaining high standards of personal conduct at all times
 - The need to maintain professional standards
 - Refreshing knowledge of child safeguarding policies
 - Refreshing knowledge of when to notify parents of their right to seek legal advice
 - Ensuring patient confidentiality
 - The need to maintain accurate records
 - The need to be open and honest with employers
 - Appropriate communication with patients
- 4.5. In 25 cases, it was felt by the auditors that consideration could have been given to resolving the cases in another way, had the option been available. Comment was made that of those, 16 cases could have been suitable for mediation. These cases are being fed into the mediation pilot project that is currently being run within the Fitness to Practise Department.

- 4.6. Of the cases audited in February 2013 and March 2013, three cases were identified as being suitable for disposal by consent. The Fitness to Practise Department updated its operational guidance on the disposal of cases by consent to provide further guidance around identifying suitable cases for disposal in this manner. Training on the HCPC's arrangements for disposal of cases by consent was provided to the case management team in March 2013. Early identification of cases suitable for disposal by consent allows the HCPC to make efficiency savings in relation to the number of days required for final hearings and the number of hours we are required to instruct solicitors to prepare and present cases at final hearings (consent cases are generally presented in-house by Case Managers).
- 4.7. No cases audited were identified as being suitable for discontinuance. Updated training on the discontinuance process for the case management team has been planned for later in the year.

5. Policy issues

5.1 Some policy issues were identified from the cases including:

- expert witness matters
- safeguarding;
- informed consent
- use of social media
- professional boundaries
- multi-agency failures
- communication
- information security
- Health

5.2 Some of the above issues (for example, expert witness matters, safeguarding and professional boundaries) have arisen as a result of the types of cases that we are dealing with following the “on boarding” of Social Workers and Psychologists. The HCPC has updated its Standard of Acceptance Policy to include better guidance around matters relating to Social Media and Expert Witnesses.

5.3 The policy issues identified above coincide with broader developments in the field of regulation, in response to recommendations stemming from public enquiries (i.e. the Francis Report) and in response to technological developments and the changing way in which health and social care is delivered as a result of new technologies. The Fitness to Practise Department has commissioned research into public expectations of professional regulators and understanding of “public protection”. This research is also being used to inform work the Department is doing around improving the Fitness to Practise Experience. The various strands of work and individual cases will be reviewed in more detail to determine whether

there is anything further that the HCPC needs to consider and whether any additional guidance can be offered to registrants and/or the public in any of these areas.

6 Areas of on-going work arising from the audit

- 6.1 Further refresher training will be provided to Case Managers in areas including:
- Application of the HCPC’s Standard of Acceptance Policy
 - 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.
 - The use of Registrant Assessors in cases where this may assist the Investigating Committee.
 - Allegation Drafting
 - Risk assessments
 - Discontinuance.
- 6.2 Training will be provided on an on-going basis to panels to ensure continued improvement in areas including:
- The need to provide reasons for their decision that can be easily understood by all.
 - The application of the realistic prospect test.
 - The use of learning points where appropriate in no case to answer decisions.
 - Amending allegations
- 6.3 Information will be fed into the on-going work on alternative mechanisms to resolve disputes.
- 6.4 The policy areas identified will be reviewed in individual cases where identified.

Audit Form
**Decisions as to whether there is “Case to Answer” made by
or on behalf of the Investigating Committee**

Case details

| | |
|-------------------------|--|
| Case name | |
| Case reference | |
| Date of Decision | |
| Complainant Type | |
| Decision by | |

1. Investigation

| | |
|--|---|
| Allegation meets the Standard of Acceptance? | Yes/No [Identify the registrant/Identify complainant/provide allegation in sufficient detail/is it about fitness to practice] |
| Has the case previously been considered by another organisation (e.g. BPS/HAC)? | Yes/No |
| Expert or Clinical Advice sought? | Yes/No/Reasons |
| Legal Advice sought? | Yes/No/Reasons |
| Number of requests for information made | |
| Article 25 powers used? | Yes/No |
| Further clarification requested on receipt of registrants observation from complainant or another third party? | Yes/No |
| Should further clarification have been sought? | Yes/No/Reasons |

2. Decision

| | |
|---|--|
| What was the decision? | Case to Answer/No Case to Answer/Further Information |
| If further information was sought, was this a decision that could have been reached before the Investigating Committee met? | Yes/No/Reasons |
| Was the allegation amended? | Yes/No/Reasons |
| Has the realistic prospect test been applied to the whole of the allegation? | Yes/No |

| | |
|--|-----------------|
| Facts | Yes/No |
| Ground | Yes/No |
| Impairment | Yes/No |
| Is this the decision clearly reasoned? | Yes/No/Comments |

3. Other Considerations

| | |
|---|-----------------|
| If the decision was “no case to answer” is it appropriate to provide the registrant with any learning points? | Yes/No |
| If Yes, what is that learning | Comments |
| If it were possible, should consideration have been given to resolving this case in another way? | Yes/No/Comments |

4. Policy issues

| |
|---------------------------------------|
| Are there any emerging policy issues? |
|---------------------------------------|

Audited by:

Date: