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Fitness to Practise Forum: 12<sup>th</sup> September 2007

Paper title: Review of Not Well Founded Cases

Executive summary and recommendations

### **Introduction**

The appendix attached to this paper provides the forum with a review of the decisions made by panels of the Health and Conduct and Competence Committee when the allegation was not well founded.

### **Decision**

The Forum is asked to discuss the review of the not well founded cases and make any recommendations it deems necessary. If further analysis felt necessary, the forum is asked to give guidance on the analysis it is looking for.

### **Background information**

Article 26(2) (d) of the Health Professions Order ('the 2001 Order'), requires panels of the Investigating Committee to determine whether, in respect of the allegation(s) made, there is a case to answer that the registrant's fitness to practise is impaired.

That decision must be made based solely upon the evidence put before the Panel and, in reaching its decision, the test which the Panel must apply is whether:

1. the information put before the Panel amounts to an allegation which is within Article 22 of 2001 Order; and
2. there is *prima facie* evidence which makes it probable that, if that evidence is not rebutted, the allegation will be determined to be well founded.

In considering whether an allegation is one which is within Article 22 (in other words, within HPC's remit), the Panel should have regard to HPC's duty to act in the public interest, which includes protecting patients and maintaining public confidence in both the professions that HPC regulates and the regulatory process itself.

In determining whether *prima facie* evidence exists, it is not the Panel's function to seek to resolve significant conflicts of evidence. Where such conflicts exist, that will be a matter for any Panel which may ultimately hear the case.

However, a case to answer should not be found in cases where there is no realistic prospect that HPC, which has the burden of proof, will establish that the registrant's fitness to practise is impaired.

The Panel **MUST** provide clear and detailed reasons for its decision. Those reasons must explain the Panel's rationale for its findings and **MUST NOT** simply be a repetition of the evidence or generalised comments about the nature of the allegation or to the effect that the Panel has considered all the evidence. Where the facts do not relate directly to professional practice, you must explain their relevance to fitness to practise

When considering allegations, panels of the Conduct and Competence Committee and Health Committee, must consider and weigh all of the admissible evidence arising from witnesses, statements, agreed facts and documents and other exhibits. The Panel must exclude from consideration:

- anything heard which is not admissible;
- personal views, opinions or prejudices;
- any inferences from the registrant deciding not to give evidence;
- the peripheral consequences of its decision.

### **The Facts**

To help sift the facts and link them to the elements of the allegation, the Panel should identify:

- the facts that are not in dispute;
- the facts that are in dispute;
- what the panel has been found to be fact based upon the evidence;
- the reasons for those findings.

### **Is there a case to answer?**

At the end of the Council's case the panel should consider whether there is a case to answer if the registrant makes a submission to that effect, the registrant is not present or represented or if the panel feels that there may not be a case to answer. No case to answer will usually be found where;

- the Council has not provided evidence on a relevant element of the allegation; or
- the relevant evidence is so unreliable or discredited that it cannot be relied upon.

### **The Human Rights Act**

Consider whether any issues have arisen which engage a Convention right and, if so, record the decision that the panel reached.

### **The Decision**

The decision which the panel has to reach is whether the allegation is well founded. The allegation will always be that the registrant's fitness to practise is impaired by reason of one of the broad grounds (e.g. misconduct) set out in Article 22 of the Health Professions Order 2001 and on the basis of facts as alleged. The decision should be reached by addressing these elements in reverse order, that is:

- Are the facts as alleged true?
- Do they amount to the broad ground set out in the allegation?
- Is the registrant's fitness to practise impaired as a consequence?

This can only be decided at the very end of all the evidence. The Council must have proved all elements of the allegation on the balance of probabilities.

The decision is a collective, majority decision. Dissenting opinions cannot be given and, in the event of a tie, the chairman's casting vote must be exercised in favour of the registrant.

The decision must be supported by reasons, whether or not the panel has decided that the allegation is well founded and those reasons should include:

- Findings of fact;
  - a statement of what evidence was not disputed,
  - a statement of what evidence was disputed,
  - what facts the panel found from the evidence including reasons why one version was preferred to another.
- Findings of law;
  - a statement of the legal submissions made and how the panel dealt with them.

### **Resource implications**

Please see Case Report paper for resource implications

### **Financial implications**

Please see Case Report paper for costs of fitness to practise hearings.

### **Appendices**

Not Well Founded Review

Pages 42-44 of 2007 Fitness to Practise Annual Report

### **Date of paper**

28<sup>th</sup> August 2007

## Appendix One – Not Well Founded Cases

Between 9<sup>th</sup> July 2003 (when HPC began operating under its new rules) and 25<sup>th</sup> August 2007, panels determined in 30 cases that the allegation was not well founded.

**Table 1.1: Not Well Founded by Profession**

The breakdown by profession and year is set out in the table below.

<b>Profession</b>	<b>2004-2005</b>	<b>2005-2006</b>	<b>2006-2007</b>	<b>2007-YTD</b>	<b>Total</b>
<b>Biomedical Scientist</b>	0	0	1	0	1
<b>Chiropodist/Podiatrist</b>	1	0	3	2	6
<b>Operating Department Practitioner</b>	0	0	1	1	2
<b>Occupational Therapist</b>	0	0	3	2	5
<b>Paramedic</b>	1	0	2	2	5
<b>Physiotherapist</b>	1	1	3	0	5
<b>Prosthetist and Orthotist</b>	0	0	1	0	1
<b>Radiographer</b>	0	0	1	1	2
<b>Speech and Language Therapist</b>	0	0	3	0	3
<b>Total</b>	3	1	18	8	30

**Table 1.2: Type of Complainant and Profession**

This table sets out who made the complaint when the allegation was not well founded.

<b>Profession</b>	<b>22(6)</b>	<b>Employer</b>	<b>Public</b>	<b>Other Professional</b>	<b>Police</b>
<b>Biomedical Scientist</b>	0	1	0	0	0
<b>Chiropodist/Podiatrist</b>	0	0	5	1	0
<b>Operating Department Practitioner</b>	0	2	0	0	0
<b>Occupational Therapist</b>	0	4	0	1	0
<b>Paramedic</b>	2	3	1	0	0
<b>Physiotherapist</b>	1	4	0	0	1
<b>Prosthetist and Orthotist</b>	0	1	0	0	0
<b>Radiographer</b>	0	2	0	0	0
<b>Speech and Language Therapist</b>	0	2	1	0	0
<b>Total</b>	3	17	7	2	1

**Table 1.3: Profession and Representation**

This table shows what representation was received when allegations were not well founded

<b>Profession</b>	<b>Represented</b>	<b>Represented Self</b>	<b>No Representation</b>
<b>Biomedical Scientist</b>	1	0	0
<b>Chiropodist/Podiatrist</b>	6	0	0
<b>Operating Department Practitioner</b>	1	0	1
<b>Occupational Therapist</b>	4	0	1
<b>Paramedic</b>	3	2	0
<b>Physiotherapist</b>	3	1	1
<b>Prosthetist and Orthotist</b>	1	0	0
<b>Radiographer</b>	2	0	0
<b>Speech and Language Therapist</b>	3	0	0
<b>Total</b>	24	3	3

## Cases Considered

The table below displays how many cases were concluded between 1<sup>st</sup> April 2004 and 25<sup>th</sup> August 2007 and the number of not well founded cases.

<b>Year</b>	<b>Number of Concluded Cases</b>	<b>Not Well Founded</b>	<b>Percentage of Cases Not Well Founded</b>
<b>2004-2005</b>	45	3	7%
<b>2005-2006</b>	57	1	2%
<b>2006-2007</b>	101	18	18%
<b>2007-25<sup>th</sup> August 2007</b>	78	8	10%

Please see the 2007 Fitness to Practise Annual Report for the types of cases considered in 2006-2007.