

**Health Professions Council
HPC Council 1st March 2006**

Partner Complaints Procedure

Executive Summary

Introduction

Further to presenting the draft Partner Complaints Procedure to Council on 6th December 2005, a number of changes were requested - details of which can be found at appendix 1. The legal rationale for these changes can be found at appendix 4.

The revised draft at was sent electronically to all Council Members on 5th January 2005, inviting them to make comments or suggested improvements. Only one comment was received and is detailed at appendix 1.

Both the Complaints and Appeals procedures have been devised in conjunction with HPC's HR Lawyers, Kingsley Napley, and approved by EMT. Please note that as Partners are not Employees, they are not entitled to statutory grievance or disciplinary processes. However this process is recommended to ensure that the HPC adopts a fair and consistent method of handling complaints and, where necessary, terminating contracts.

Decision

Council is asked to approve the Partner Complaints and Appeals System.

Background Information

None

Resource Implications

Incorporated in the 2005/6 budget

Financial Implications

Incorporated in the 2005/6 budget

Background Papers

None

Appendices

- Appendix 1 Action Points from Dec 2005 Council
- Appendix 2 Revised Complaints Procedure
- Appendix 3 Appeals Procedure
- Appendix 4 Legal Advice from Kingsley Napley

Appendix 1
Partner Manager Action notes from December 2005 Council

Enclosure 19/HPC19/06

11.4 The Council agreed that the relationship between the informal and the formal system needed to be stronger and that there was a need to clarify the relationship between the complaints system and the appraisal system.

Kingsley Napley, HPC's HR Lawyers, have revised the document to further clarify the distinction between the informal and formal aspects of the procedure. A rationale for these amendments can be found in the legal advice at Appendix 4.

Kingsley Napley has also advised against cross referencing the appraisal system in the complaints process, stating that there should be no official 'relationship' between them.

11.6 The Council agreed that the word complainer should be amended to read complainant.

This change has been made, as requested.

11.7 The Council agreed that the document should be circulated to members electronically for comment and that a revised document which should include the amendments suggested at the meeting and by email should be included on the agenda for the March 2006 meeting of Council.

A revised draft was emailed to Council Members on 5th January 2006, asking for comments and suggested amendments to be submitted by 20th January 2006. One comment was received, suggesting that an appeal might be better made to a panel of three convened by the President, possibly to include a relevant professional, and a lay member. It was thought that this might reduce the exposure of the President. This suggestion was passed to Kingsley Napley, who advised that the current proposed Appeals Procedure fulfils HPC's requirements and does not in any way personally expose the President. They also advised against a panel, as this could result in split decisions which could give the Partner another opportunity to seek re-dress

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2006-02-02	a	HRD	PPR	Revised Partner Compalints Procedure - March Committee	Final DD: None	Public RD: None

HPC Partner Complaints Procedure

The objective of the HPC's Partner Complaints Procedure is to provide a fair and non-discriminatory process through which allegations of poor performance, misconduct or unprofessional behaviour can be considered.

The aim of the Complaints Procedure is to help and encourage Partners to achieve and maintain appropriate standards of conduct and performance. The Complaints Procedure is designed to ensure that the standards expected of HPC Partners are adhered to and that Partners are dealt with fairly and consistently should a complaint about their conduct or performance be received.

The HPC, as a statutory body, has a responsibility to advise Partners if their conduct or competence falls below the standard expected of them.

The HPC may implement the Complaints Procedure at either the informal or formal stage, as appropriate. Minor incidents or irregularities in performance or conduct will usually be dealt with informally, but where the matter is more serious or previous complaints are repeated, the formal procedure will be used.

The Complaints Procedure is intended only as a statement of HPC policy and it does not form part of your Partner Agreement with HPC or otherwise have contractual effect.

Informal Procedure

The Partner Manager will be notified of any performance concerns in respect of the HPC's Partners.

In the first instance, the Partner Manager will address these concerns by communicating verbally with the Partner. The Partner Manager will take into account any factors that could be affecting the Partner's performance and, as appropriate, offer assistance such as training or clarification of their role and the function of the HPC.

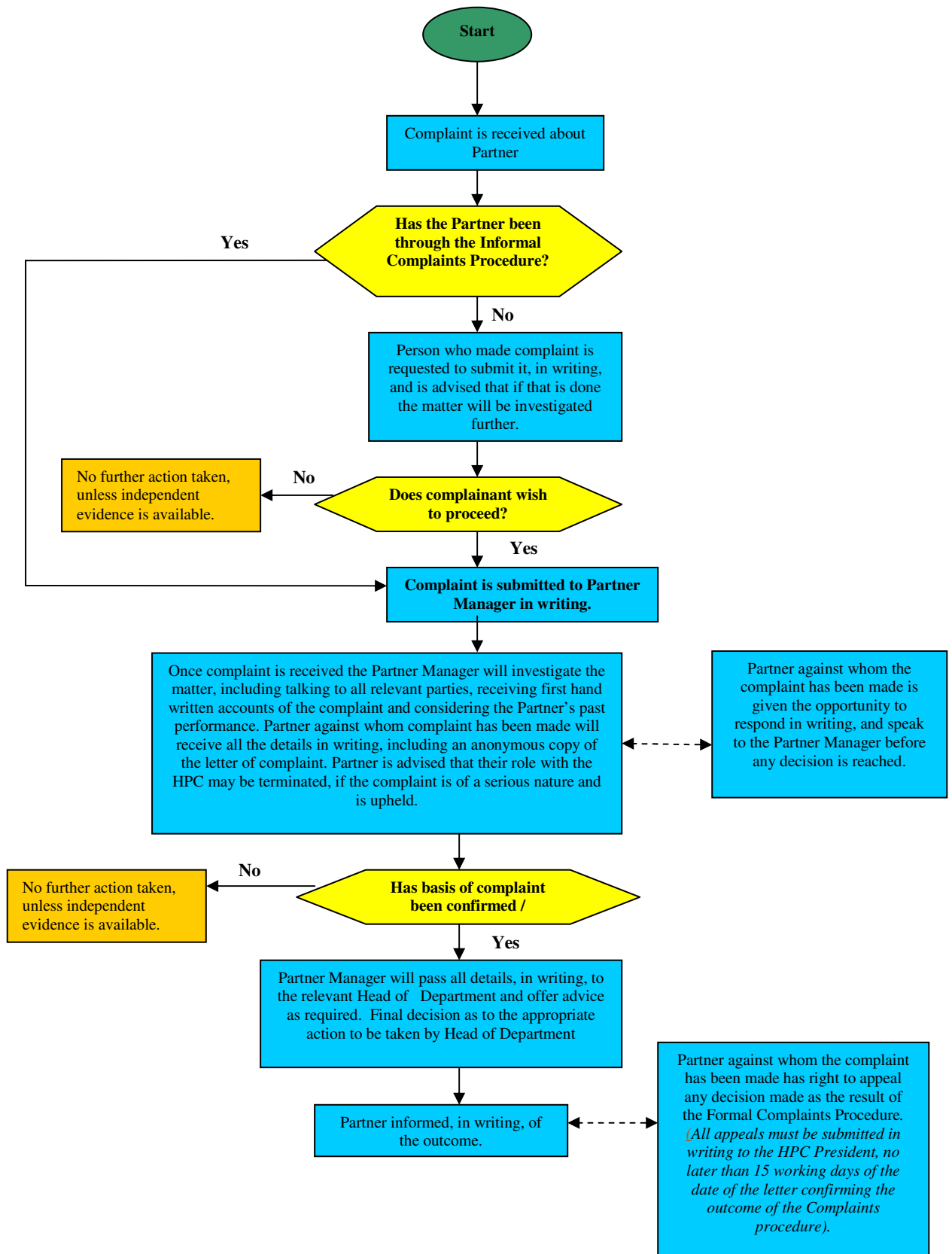
The Partner Manager will liaise with the Department concerned. A note of performance or conduct issues will be retained on the Partner's file.

Formal Procedure

If a complaint of a more serious nature is made against a Partner, or if performance or conduct has not improved sufficiently through the informal procedure, the formal procedure will be followed.

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FORMAL PARTNER COMPLAINTS PROCEDURE



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19/HPC18/06

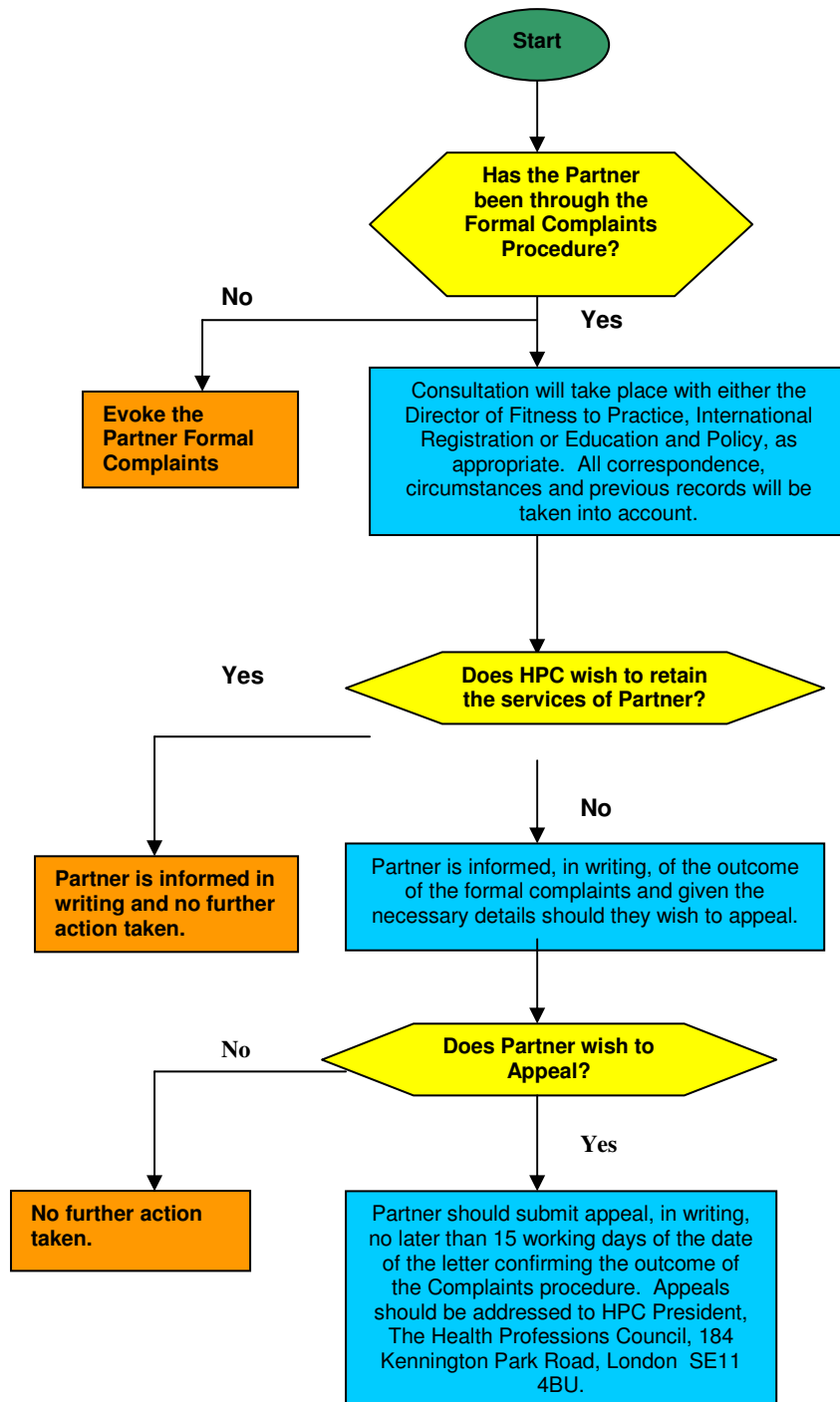
Appendix 3

HPC Partner Appeals Procedure

1. Any appeal against a decision reached as a result of the Formal Partner Complaints Procedure must be made in writing to the HPC's President within fifteen working days of the date of the letter confirming the action to be taken.
2. All appeals will be heard by the HPC President.
3. An appeal hearing will usually be held within fifteen working days of the receipt of a letter from the Partner notifying the grounds of appeal. In exceptional circumstances the appeal hearing may be delayed, in which case the Partner will be advised accordingly.
4. The appeal will be a re-hearing of the matter on which there was a finding against the Partner. The Partner will start the process by presenting the case for appeal. The relevant Department Director/Manager will then present the management case in defence of the original finding. Both sides will be able to question each other.
5. The Partner has the right to be accompanied by a colleague, other HPC Partner or any other representative at the appeal. If it is the Partner's intention to be accompanied, the HPC must be informed in writing no less than five working days prior to the date of the hearing and should also confirm the identity of their companion.
6. If the Partner intends to refer to documents at the appeal hearing, copies of those documents must be provided to the HPC President no less than five working days prior to the date of the hearing. HPC will provide to the Partner, no less than five working days prior to the date of the hearing, any documents upon which it intends to rely at the appeal hearing.
7. These documents may be submitted to an external agency (such as the Police, Inland Revenue or as required by law).
8. Within fifteen working days of the date of the appeal hearing the Partner will be informed in writing of the outcome of the appeal process.
9. All stages of the appeals procedure will be dealt with as speedily as possible and time limits are set for each stage in the procedure above. However, there may be good reasons why, occasionally, time limits may be extended. For example, where the Partner has difficulty in obtaining a companion to accompany them, or where an adjournment of a meeting to enable reconsideration is desirable. Where time limits are extended, the HPC will notify the Partner and keep the Partner informed of the progress of the procedure.

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1. PARTNER APPEALS PROCEDURE



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Appendix 4 - 1. Legal Advice – Changes to the Complaints Procedure

Dear Liz

Further to our telephone conversation this week, I have now had an opportunity to consider the Council's comments made in respect of the Complaints Procedure.

Please see annexed a revised Complaints Procedure, which I have amended in line with the Council's comments. The amendments are indicated using "track changes" for ease of reference.

You will appreciate that there is some difficulty in trying to prepare procedures that take into account all possible eventualities. If the informal procedure became any more robust, it would then be akin to the formal procedure, with little to distinguish between them.

I believe it is crucially important that the HPC has discretion to deal with complaints of a "minor" nature without becoming embroiled in a more formal procedure, which, as we know, can become quite time consuming for all involved.

I have therefore taken a "step back" and reduced the formality of the informal procedure. In the first instance, you should contact the partner by telephone to discuss any issues of concern. Of course, if the partner asked you to confirm those concerns in writing it is open to you to do so as part of the informal procedure. A note should be retained on the Partner's file detailing concerns and action taken by way of the informal procedure. Such note will be necessary should the informal procedure fail to resolve the problem and a decision is made to commence the formal procedure to achieve resolution.

I envisage that the informal procedure should be used when a Partner has, for example, perhaps been on occasion a little tardy in returning paperwork to HPC. It would be inappropriate to commence the formal procedure for a minor issue such as this. I am sure you agree the informal procedure would be appropriate and far more suited to resolving minor issues of concern amicably whenever possible. However, in situations where a problem has not been resolved via the informal procedure, it would then be appropriate to commence the formal procedure.

Should the HPC receive complaints that are obviously about more serious issues, it is open to the HPC to commence the formal procedure immediately.

From experience, it is unfortunately the case that certain Partners with whom you have a need to speak either informally or formally will insist that the relevant procedure is followed to the letter. It is for this reason that it is preferable to provide as little detail as possible in respect of the informal procedure to ensure that the HPC can use its discretion when appropriate, with only each step of the formal procedure being particularised. The latter is necessary because it is by way of the formal procedure that a Partner Agreement is likely to be terminated. Please do let me know should you have any questions in respect of the revised procedure.

Kind regards - Karen
Karen Hostick
Solicitor

Direct Dial : +44 (0)20 7369 3709
Direct Fax : +44 (0)20 7702 5180

Kingsley Napley

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Knights Quarter
14 St John's Lane

2. Legal Advice – Relationship between the Complaints and Performance Appraisal processes

Dear Liz

I write further to our telephone conversation on Wednesday in respect of the Partner complaints and appraisal procedures.

I understand the Council Members have queried whether it would be appropriate for each procedure to cross-refer to the other.

On giving the matter some thought, and having considered both procedures, I believe it is unnecessary to make such cross-referrals.

Appraisals focus on the way in which Partners conduct themselves during hearings and will generally be undertaken by a Partner's peers and the Chair of the relevant committee. As I understand it, neither would be aware if a complaint had been made about the Partner whom they have been asked to appraise, particularly if such complaint was minor and resolved via the informal complaints procedure. Consequently, complaints are somewhat irrelevant to the normal appraisal process.

When an appraisal indicates that a Partner consistently and repeatedly falls below the performance standard required might be asked to meet with you to discuss areas of concern and address improvement. This meeting will be a consequence of a poor appraisal, not because a complaint has been made under the complaints procedure.

Turning to the complaints procedure, potentially the only time a complaint would be relevant as part of an appraisal is where an appraisal identifies a failure to meet the standard required AND a complaint has been previously upheld against the Partner in any given year, but such complaint was not sufficiently serious to terminate the Partner's appointment.

For example, a complaint is made by a Partner's peer that a Partner consistently underperforms, and a similar complaint had been received (via the complaints procedure) from a registrant following a hearing in which the Partner was involved. The complaint was investigated and the Partner given additional training to remedy such underperformance. As part of the appraisal process the Partner might be invited to attend a meeting with you to discuss underperformance. At such meeting you might want to make reference to the registrant's complaint, but I suspect only to identify any concerns held by the HPC, ask the Partner if they had any ongoing concerns or if they required further training. No doubt the Partner would refer to the complaint to establish whether his performance had improved during the year and was now satisfactory to the HPC.

I believe the above situation would arise in respect of only a very small number of Partners in any given year.

In addition, the Appraisal procedure makes clear that any complaints should be made via the complaints procedure, not as part of the appraisal process.

These are clearly two separate procedures with very different objectives.

The objectives of the appraisal procedure is to ensure that the HPC provides a high quality service, that the public is protected in respect of decisions reached, identify areas for improvement in performance, ensure best practice, and identify areas for improvement in HPC's training.

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In contrast, the objective of the Complaints procedure is to provide a fair and non-discriminatory process through which allegations of a Partner's poor performance, misconduct or unprofessional behaviour can be investigated.

Of course, Partners are not employees of the HPC therefore it is sufficient that Partners be made aware of the procedures applicable to their appointments, that those procedures are fair and open, and are applied consistently to all.

Ergo, I do not believe cross-referral between the appraisal and complaints procedures is necessary.

Do let me know if you would like to discuss this further.

Kind regards - Karen
Karen Hostick
Solicitor

Direct Dial : +44 (0)20 7369 3709
Direct Fax : +44 (0)20 7702 5180

Kingsley Napley
Knights Quarter
14 St John's Lane
London EC1M 4AJ
Tel : +44 (0)20 7814 1200
Fax: +44 (0)20 7490 2288
www.kingsleynapley.co.uk

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