

Fitness to Practise Committee - 22 October 2009

Consumer complaints

Executive summary and recommendations

Introduction

Subject to legislative approval, the Hearing Aid Council's (HAC) responsibility for regulating hearing aid dispensers in the private sector will be transferred to the Health Professions Council (HPC) on 1 April 2010.

The nature of hearing aid dispenser complaints means that the HPC is likely to receive an increased number of complaints that are outside our remit, such as the cost of equipment, faulty equipment, waiting periods and requests for refunds.

This paper explains the guidance available to HPC staff for dealing with complaints other than fitness to practise. It also outlines the types of complaints that are received by the HAC and provides examples of several external consumer complaints systems already in place and details of relevant consumer legislation.

Decision

The Committee is asked to discuss the attached paper.

Background information

None

Resource implications

None

Financial implications

None

Appendices

None

Date of paper

09 October 2009

Consumer complaints

Introduction

The Fitness to Practise department at times receives enquiries from complainants that do not fall within the remit of the HPC.

In such circumstances, good customer service dictates that we should endeavour, wherever possible, to direct the individuals to the relevant body or organisation or forward the correspondence to the body. The Fitness to Practise department has produced guidance to help staff direct complainants to the most appropriate body or organisation.

If an enquiry or complaint does not fall within the HPC's jurisdiction it will normally fall in one of the following categories: other regulators, professional bodies, non-governmental departments, voluntary or charitable organisations and government departments.

The Fitness to Practise department has an extensive list of bodies within each category and contact details for each organisation. That contact information is reviewed every three months to ensure that it is accurate and current.

The most common enquiries received by the HPC that are not about a registrant's fitness to practise are:

- complaints about a health professional who is not regulated by the HPC
- complaints about the standard of service received rather than the fitness to practice of a registrant

Enquiries might also be received about social care, non-regulated professionals, provision of services, legislation and Government policy. Where complaints relate to both health and social service provision, joint investigations can be carried out by the Parliamentary and Health Service Ombudsman.

Subject to legislative approval, the Hearing Aid Council's (HAC) responsibility for regulating hearing aid dispensers in the private sector will be transferred to the Health Professions Council (HPC) on 1 April 2010.

The nature of hearing aid dispenser complaints means that the HPC is likely to receive an increased number of complaints from consumers that are outside our remit, such as the cost of equipment, faulty equipment, waiting periods and requests for refunds. Some of these consumer complaints may also have fitness to practice implications and all complaints will need to be considered by the HPC in the first instance.

Hearing aid dispensers are the first profession to be regulated by the HPC exclusively in the private sector. Many of our current professions do include some private sector registrants, in particular chiropodists and

physiotherapists, and we do receive a small number of consumer complaints outside the remit of the HPC from these professions.

Complaints currently received by the HAC

Registered hearing aid dispensers must follow and demonstrate compliance with the HAC Code of Practice. The Code sets out the behaviour and standards which the HAC expects its registrants to follow.

The HAC considers allegations that relate directly to a breach of the Code of Practice. The following are common examples of allegations considered by the HAC:

- the quality of the hearing test which was conducted
- the advice given about hearing aids including:
 - the choice of aids available given the individual's hearing loss
 - the types of aid which would be suitable for each individual client
 - the functions of each aid
 - the likely benefit which can be expected from a hearing aid
 - the cost implications of the aids given individual budgets
- the follow up care provided by Hearing Aid Dispensers
- the sales techniques operated by Hearing Aid Dispensers

The HAC does not have any expressed powers to take action where the physical or mental health of a Hearing Aid Dispenser may be impairing their ability to act safely and effectively. They also do not have the power to issue an interim suspension order, which means that they must hold a full Disciplinary Committee hearing before action can be taken against a registrant.

If an allegation is proven, the Disciplinary Committee has the power to impose the following sanctions:

- No action
- Admonishment
- Fine (up to £5000 per breach)
- Suspension
- Erasure from the Register

The HAC does not have the power to award compensation to consumers affected by the poor practice of dispensers or their employers. Nor does it have the power to order that consumers are refunded the cost of inappropriate, faulty, damaged or unwanted hearing aids.

If the HAC receives a complaint that is not about a breach of the Code of Practice, they can choose to refer the complaint to another appropriate body (such as the police or the Office of Fair Trading) or take no further action.

Complaint sources, types and numbers

The vast majority of the complaints (80%) received by the HAC in 2008-09 were made by members of the public. Only 7% of complaints were received from other registered hearing aid dispensers or their employers.

This can be compared to the HPC, where in 2008-2009, 42% of HPC complaints were received from employers and only 23% of complaints were received from members of the public. There was some variation across professions, for example 45% of complaints against chiropodists and 39% of complaints against physiotherapists were made by the public.

The Council received 68 complaints in 2008-9 and 40 cases went to a disciplinary hearing. Minor issues of clinical practice represented a large proportion of complaints. In 2008-9, eight cases (20% of the total) involved failure to give 'best advice' or failure to make the client aware that an aid may not be of use to them. Twelve cases involved poor ethical practice or failure of management action by a registered employer.

Examples of external complaints resolution processes

British Society of Hearing Aid Audiologists

The British Society of Hearing Aid Audiologists (BSHAA) is a professional body which represents and promotes the interests of the independent hearing aid profession within the UK. They currently have around 1100 members.

In August 2008, BSHAA introduced a new complaints resolution process which provides an avenue for addressing consumer complaints process about hearing aid dispensers that aren't regarding fitness to practise.

The complaints handling process requires members to have:

- A speedy, responsive, accessible and user-friendly procedure for customer complaints.
- A specific reasonable time limit for responding to complaints.
- A requirement that participating companies co-operate with local consumer advisers or any other intermediary acting on behalf of a consumer when making a complaint.
- A conciliation service directed at arranging a decision acceptable to both parties.
- A low-cost, speedy, responsive, accessible and user-friendly independent redress scheme to resolve customer complaints which are not resolved by conciliation.
- Decisions from such a scheme are binding on participating companies.

The Executive recently met with representatives from BSHAA to discuss the complaints resolution process. It is likely that after the transfer of register some complaints received by the HPC that do not involved the fitness to practise of a hearing aid dispenser can be signposted to BSHAA. We will

continue to keep in contact with BHSAA in the lead up to the transfer of register.

General Dental Council

The General Dental Council (GDC) is the statutory regulator for dental professionals in the United Kingdom. All dentists, dental nurses, dental technicians, clinical dental technicians, dental hygienists, dental therapists and orthodontic therapists must be registered with the GDC to work in the UK.

The GDC has four complaint routes available to service users depending on the nature of the complaint:

1. In-house complaints procedure - all dental practices are expected to have an in-house complaints procedure. Patients are expected to try to resolve problems through this process first.
2. NHS complaints procedure - patients using an NHS service need to use this process.
3. Dental Complaints Service – available for patients with a complaint about private dental treatment that cannot be resolved using the dental practice's own complaints process
4. Fitness to practise

Having different complaints processes allows the GDC to separate fitness to practise concerns from complaints about service and cost.

The following section focuses on the Dental Complaints Service, as this may be of interest to the Council when considering whether the HPC current systems for dealing with complaints are sufficient.

The Dental Complaints Service

The Dental Complaints Service ('the Service') is a department of the GDC, but runs operationally at arms length. The Service was launched in May 2006 and is funded and staffed by the GDC.

During the 12 month period to May 2009, the Service handled 1870 complaints, bringing the total number since its launch to 5102. More than two thirds of complaints were resolved in less than a week and the average resolution time for all complaints was 13 days.

There is limited information available regarding the costs and finances of the Service, however the GDC's 2009 business case allocates £2,944,299 to 'Associated Departments' which includes the Dental Complaints Service, Quality Assurance and Standards. This represents 11% of the GDC's total expenditure.

Complaint types

The Service looks into complaints about services provided by private dental practices in the UK. The Service expects patients to raise their complaint with the dental practice involved before approaching the Service.

Examples of the types of complaints the Service can look into include:

- receiving the wrong or poor treatment
- mistakes in diagnosis or treatment
- communication problems
- when it has not been clear how much the cost is
- significant mistakes over appointments
- a delay that could have been avoided
- faulty procedures, or failing to follow correct procedures
- unfairness, bias or prejudice
- giving advice which is misleading or inadequate
- rudeness and not apologising for mistakes
- not putting things right when something has gone wrong

The Service cannot look at complaints which are about NHS treatment.

For some cases, there may be another more appropriate organisation to deal with the complaint or it may only be resolved through the courts.

The Service refers complaints to the GDC if it concerns the ability or behaviour of clinical staff which raise questions as to whether or not a professional should continue to practise.

Dental Complaints Service powers

The Service works with both parties to try and resolve the problem. If the practice is unable to resolve the problem in the first instance, the Service will try to help the patient and dental professional come to a resolution. If an agreement cannot be reached, both parties can put their concerns before a local complaints panel, which will recommend how to resolve the complaint. The Service does not have any formal powers to enforce their recommendations, although they expect that they will almost always be followed.

The panel recommendations can include asking the dental professional to:

- explain or say sorry for what happened
- explain that there is no complaint to answer
- refund fees or a portion of them
- fund treatment that helps put things right

For complaints where there was an outcome, 57.8% refunded fees (totalling £106,811), 28.02% explained the treatment or cost, 7.97% contributed towards remedial treatment, and 6.43% apologised.

Only eight complaints panels were held and the GDC attributes this low number to the willingness of dental professionals to work with the Service to resolve problems.

Relevant consumer legislation

Office of Fair Trading - Consumer Codes Approval Scheme

The Consumer Codes Approval Scheme is a government backed scheme that encourages effective self-regulation by giving official approval to voluntary consumer codes of practice which meet core criteria set by the Office of Fair Trading (OFT).

Where a code of practice achieves approval, businesses operating to that code qualify to be licensed to use and display a distinctive OFT Approved code logo – a benchmark for high quality service and a promoted brand that shoppers look out for when buying goods and services.

An OFT Approved code must satisfy a number of core criteria and commits businesses to offering a higher level of customer service than is required by law.

These core criteria include:

- a commitment to provide customers with adequate information about goods and services
- the use of clear and fair contracts
- user friendly and speedy procedures for dealing with customer complaints
- low cost, independent redress if a complaint is not dealt with satisfactorily.

As a general rule, codes will not be considered if:

- they are for business-to-business transactions
- a significant number of members operate outside the UK

Office of Fair Trading - Consumer Direct

Consumer Direct is the government-funded telephone and online service offering information and advice on consumer issues.

The service aims to provide clear, practical, impartial advice to help customers sort out problems and disagreements they may be having with suppliers of goods or services.

Examples of complaints include overcharging, faulty goods or poor workmanship.

Consumer Direct can provide information and advice about the rights of a consumer. It cannot recommend specific goods or services, complain to a

trader on a consumer's behalf, or provide advice on certain specific products and services.

Unfair Commercial Practices Directive

The Unfair Commercial Practices Directive (UCPD) was adopted on 11 May 2005. Consumer Protection from Unfair Trading Regulations (CPR) implementing the Directive in the UK came in to force on 26 May 2008.

The CPR introduces a general prohibition on traders in all sectors engaging in unfair commercial practices (mainly marketing and selling) against consumers. It includes a comprehensive framework for dealing with sharp practices and rogue traders who deliberately set out to exploit loopholes in existing legislation.

In particular, the Directive obliges businesses not to mislead consumers through acts or omissions; or subject them to aggressive commercial practices such as high pressure selling techniques. The Directive also provides additional protections for vulnerable consumers who are often the target of unscrupulous traders.

The Directive's broad scope means that it overlaps with many existing laws. The UCPD is a maximum harmonisation Directive, which means it sets out the maximum level of restriction permissible in respect of unfair commercial practices which harm consumers' economic interests. A supplementary objective in transposing the Directive was to achieve, where possible, some regulatory simplification.

The Directive is enforced by the Office of Fair Trading, Local Authority Trading Standards Services in Great Britain and the Department of Enterprise, Trade and Investment in Northern Ireland.

Conclusion

In 2008-09, the HAC received 68 complaints and 40 cases went to a disciplinary hearing. The Executive believes that once the register is transferred to the HPC, the numbers of complaints about hearing aid dispensers that go to a hearing panel will be significantly reduced. This is because the HPC looks at fitness to practise allegations, whereas the HAC deals with breaches of their Code of Practice. It is likely that some allegations that were considered to be a breach of the Code of Practice by the HAC will not be considered to impair fitness to practise by the HPC. The high number of complaints received by the public is also likely to make a difference, as complaints received from the public tend to differ from those received from employers and other types of complainants.

The Committee is invited to discuss this paper and consider the relative merits and disadvantages of the current systems in place, both within the HPC and the broader regulatory environment. In particular, the Committee is asked to

consider whether it would be appropriate for the HPC to deal with consumer complaints not relating to a registrant's fitness to practise.

The Executive's advice is that it is not necessary for the HPC to introduce its own complaints system to deal with enquiries other than fitness to practise at this time. The guidance available allows members of the Fitness to Practise department to identify who the appropriate body is for different types of complaints and provide correct and helpful advice to complainants.

In addition, the number of hearing aid dispensers transferring to the HPC register is relatively low. Therefore even if the addition of hearing aid dispensers does result in an increase of complaints other than fitness to practise, this number will not be significant.

If a new complaints system was introduced, an increase in registration fees would be needed to fund the system. As many of our registrants are employed within the NHS, we would need to consider that some of our registrants would be funding a system that was not applicable to them. The NHS has its own complaints system in place and there are several support services available to people who need assistance or advice.

This paper highlights the range of options already available to consumers and the Executive believes that a service similar to the GDC is not necessary for our professions. It is likely that the functions of such a service would overlap with systems that are already in place.