

Fitness to Practise Committee 21 October 2010

Investigating Committee update

Executive summary and recommendations

Introduction

Since April 2010, work has been undertaken in relation to some of the standard documents, reports and processes involved in the Investigating Committee stage of the fitness to practise process.

In February 2010, the Committee agreed a number of recommendations as a result of a paper on the review of not well founded decisions, the CHRE report into handling complaints and the expectations of complaints work. Some of the recommendations involved updating and developing some Investigating Committee documents and processes.

The Fitness to Practise Department work plan for 2010-11 also set out that a review would take place to consider whether panels should provide “learning points” when they no case to answer an allegation.

Furthermore, as part of the on-going review and improvement of documents used within the department, other material relating to the Investigating Committee process has also been updated.

The attached paper sets out the progress made in the areas outlined above.

Decision

The Committee is asked to note the paper.

Background information

The role of the Investigating Committee is to determine whether there is a case to answer in relation to a fitness to practise allegation. A practice note sets out in more detail the test that is applied by the Committee and can be found at www.hpc-uk.org/publications/practicenotes/index.asp?id=173.

In 2009/10, 499 cases were considered by the Investigating Committee. In 58% of cases considered, the Committee found there was a case to answer. Between April 2010 and August 2010, the case to answer percentage was 57%. Cases which do not meet the standard of acceptance are closed before they reach the Investigating Committee. When these cases are taken into account, the percentage of cases that are referred for a hearing is 36% for the financial year to date.

Resource implications

Some additional Case Manager time will be required when acting as the ICP co-ordinator and being present at the Investigating Committee Panel for the duration of the meeting. The completion of the new case investigation report may take longer in some cases, and may require more Case Manager time in complex cases.

Financial implications

None

Appendices

Investigating Committee update paper
Case Investigation Report
Information for Registrants – Investigating Committee stage
Investigating Committee Record of Decision

Date of paper

4 October 2010

Investigating Committee update

1. Introduction

- 1.1. This paper provides the Committee with information on the areas of the Investigating Committee process that have been reviewed and the developments have been implemented. We will review the developments set out below in the coming months to ensure they are effective and continue to improve the process as anticipated.

2. Information for Registrants

- 2.1. At its meeting on 28 February 2010, the Committee considered HPC's response to the Council for Healthcare Regulatory Excellence (CHRE) report on 'Handling complaints: Sharing the registrant's response with the complainant.' CHRE's report stated that:

"Regulators ought to provide clear guidance to registrants on what is expected of them, and what should be included in their response, when a complaint is made against them"

- 2.2. It was agreed by the Committee that this point would be addressed. Since that meeting information provided to registrants at the time they are notified of the allegation against them has been developed. The information now includes further details about the decision the Investigating Committee will be making, and the type of information the registrant may want to consider including in their response.

3. Case investigation report

- 3.1. The Case Manager responsible for a case produces an investigation report for all cases being considered by an Investigating Committee Panel (ICP). This document has been reviewed and amendments made to ensure it provides the ICP with relevant information to aid them in their decision making.
- 3.2. A table has been added to the report which sets out the key evidence relating to each particular of the allegation, and the policy on impairment which is relevant to the case. This is divided into evidence gathered by the HPC and evidence provided by the registrant in their response. The aim of this table is to highlight to panel members the key evidence available and draw their attention to policy on impairment.

3.3. Training has been provided to Case Managers in completing the new form and it has been in use since mid August 2010. Panel members have been introduced to the new document at the beginning of all ICPs since the beginning of September 2010. The cases in which this form has been used began to be considered by ICP's in late September 2010.

4. Investigating Committee record of decision

4.1. The template used by panels to draft their decision has been revised and the following changes made:

- More detailed guidance has been added to remind the panel of the test they should apply when making their decision;
- The layout and structure of the form has been amended to make the decision clearer; and
- More detailed examples have been included to ensure consistency.

4.2. The form has been in use by panels since September 2010 and a copy is attached to this paper.

5. Learning points

5.1. The Fitness to Practise Department work plan 2010-11 set out that the use of learning points at Investigating Committee stage would be explored as part of the alternative mechanisms to resolve complaints work that was to be undertaken.

5.2. A process has now been implemented to allow for this. Where appropriate, panels considering cases at Investigating Committee stage are now including learning points in their decision where they find there is no case to answer. This only applies in cases where there is a realistic prospect of proving the facts and statutory ground, but not impairment.

5.3. Clear guidance has been provided to panels setting out when it might be appropriate to include learning points in a decision and providing sample wording. The guidance includes the following points:

- The panel should only include learning points in their decision where they are satisfied that:
 - a realistic prospect of proving the statutory ground (misconduct etc) exists; and
 - there are matters which need to be brought to the attention of the registrant but which fall short of establishing that the registrant's fitness to practise is impaired.
- If the Panel is considering providing guidance on a range of issues then panel should reflect upon whether the need for such broad guidance suggests that their decision on impairment may be incorrect.

- The comments made should be limited and must only be guidance. They cannot take the form of conditions of practice or any other mandatory requirement.

5.4. Training has been provided to all panel members involved in ICP's since the beginning of September 2010, and will continue to December 2010 to ensure that all panels members are familiar with the way in which learning points should be used. The training is being undertaken by the Director for Fitness to Practise, the Head of Case Management and the Investigations Manager.

6. Development of the Investigating Committee Panel (ICP) co-ordinator

6.1. The way in which cases are considered at ICP means that Case Managers attend the meeting for the cases they are responsible for, and therefore a number of Case Managers attend the meeting over the course of the day. The role of ICP co-ordinator has been in place for a number of years and Case Managers take it in turns to act as the co-ordinator on ICP days. The co-ordinator is responsible for being the point of contact for the panel, compiling the case list and order in which they will be considered and ensuring the day runs smoothly.

6.2. From September 2010 we extended the scope of ICP co-ordinator role to include the presence of the ICP co-ordinator in the panel room for the duration of the meeting. This will provide support to their colleagues who are attending the meeting throughout the day and help to ensure consistency in the guidance provided to panels. Only those Case Managers who have passed their probation and are signed off as competent by a Lead Case Manager to undertake the role do so.

FITNESS TO PRACTISE
Investigating Committee – Case Investigation Report

Case details

Case reference	FTP
Case Manager	

Registrant details

Name	
Registration number	
Profession	

Complainant details

Name	
Category	

Allegation

Ground of allegation	
Allegation	

Background / Investigation

<p><i>Brief summary of the investigation undertaken</i></p>

Documents and other materials(full copies attached)			
	Material	Date	Page Number
1.			
2.			
3.			
4.			
5.			
6.			
7.			
8.			
9.			
10.			
11.			
12.			
13.			
14.			
15.			
16.			
17.			
18.			
19.			
20.			

(Page numbers refer to the numbers at the bottom centre of the page)

Summary of documents and materials relevant to the allegation

The table below highlights the documents that relate to the particulars of the allegation. This is not exhaustive but highlights the key information within the material available.

Allegation particular	Relevant documents/Comments - Contained in the evidence gathered by HPC	Page number	Relevant documents/Comments - Contained in the Registrant's response to the HPC's allegation	Page number
Facts				
1. [Insert Facts]	[Where are the facts found, what do the documents say]		[Admitted In dispute No comment Where does the registrant admit/rebut the facts]	
2.	[Where are the facts found, what do the documents say]		[Admitted In dispute No comment Where does the registrant admit/rebut the facts]	
3.	[Where are the facts found, what do the documents say]		[Admitted In dispute No comment]	

Allegation particular	Relevant documents/Comments - Contained in the evidence gathered by HPC	Page number	Relevant documents/Comments - Contained in the Registrant's response to the HPC's allegation	Page number
			Where does the registrant admit/rebut the facts]	
Statutory Ground				
[Insert Statutory Ground]	[What evidence goes to the ground of allegation. Only required if there is particular evidence]		[Where does the registrant admit/rebut. Only required if there is particular evidence]	
Impairment				
	[Apply HPC policy on impairment to the allegation, referring to the Case Investigation Report FOG]			

(Page numbers refer to the numbers at the bottom centre of the page)

Findings

In making this report I confirm that, in accordance with Rule 4(3)(b) of the Health Professions Council (Investigating Committee) Procedure Rules 2003 the Registrant has been given the opportunity to comment upon the documents and other materials referred to above, other than those which were provided by the Registrant or the Registrant's representative.

Case Manager:

Date:

The Investigating Committee Stage Information for Registrants

Introduction

This document sets out further information about how panels of the Investigating Committee consider fitness to practise cases. It also provides information about what you might want to consider including in any response you may make to the allegation that has been made against you.

You may find it helpful to refer to the brochure 'What happens if a concern is raised about me?'. You can also contact the Case Manager responsible for dealing with your case. You can find their details at the bottom of the letters that have been sent to you.

Investigation

The Case Manager responsible for this case has investigated the matter and gathered relevant information. All the information has now been sent to you and the allegation has been set out in the enclosed letter.

Allegation

The allegation is made up of three elements, which Panels are required to consider in turn. They are:

1. the **facts** of the allegation which set out what is alleged to have happened;
2. the **ground** on which the allegation is based, which will be one or more of the following:
 - lack of competence;
 - misconduct;
 - conviction or caution;
 - physical or mental health;
 - a determination by another regulator; or
 - a barring decision.
3. in consequence, whether the your **fitness to practise is impaired**.

Impairment

The test of impairment is expressed in the present tense; that fitness to practice "is impaired", not was impaired at the time of the incident. A Panel will consider:

- the events that are alleged to have taken place;

- your present circumstances including what you have done since the incident; and
- your future safe and effective practice.

Although the Panel's task is not to punish you, it does need to take account of past acts or omissions in determining whether your present fitness to practice is impaired.

More information about what impairment means and what factors panels will take into account is set out in the brochure 'What happens if a concern is raised about me?'.

Your response

You have 28 days to respond to the allegation that has been made against you if you wish. Should you require additional time to respond, you should contact your Case Manager to discuss this. When we have received your response, we may need to ask the complainant to clarify particular points raised by you.

You may wish to seek advice from your union, professional body or a legal representative before responding to the allegation.

Although we cannot advise you on what you should include in your response or what information you should provide, below are some points you may wish to consider.

- You will notice that each particular of the allegation is numbered. It can be helpful to the panel if you address each particular in turn, and clearly reference your response as you address each point.
- When responding to the factual elements of the allegation, you may want to provide information such as:
 - your version of events;
 - why the incident happened;
 - what you dispute; or
 - what you agree happened.
- When responding to the ground of allegation (eg lack of competence, misconduct etc) you may want to explain why you agree or do not agree that the facts set out amount to that ground.
- As well as addressing the facts and ground of the allegation, you might want to think about providing your comments on whether your fitness to practise is impaired. Information about impairment and what factors panels take into account when considering impairment are set out above and in the brochure, 'What happens if a concern is raised about me?'.

- You may have information about steps you have taken since the alleged incident which demonstrates your insight into the concerns raised. For example, attending a training course or adjustments you have made to the way you practise.
- You may wish to provide references to support your response. If you do so, more weight can be attached to this by the panel if the referee makes clear that they are aware of the allegation at the time the reference was written.
- If you are able to support any points you raise with documents you should provide copies with your response.

Outcomes

A copy of the Investigating Committee Panel's decision will be provided to both you and the complainant. The possible outcomes are:

- **Further information requested** – the panel can ask for more information or clarification before making its decision. We can demand information is provided from any sources, except from you.
- **Case to answer** – the case is referred to either the Conduct and Competence Committee or the Health Committee for a full hearing.

We will instruct solicitors at this stage who will prepare the case for a final hearing. There is no right of appeal at this stage. Further information will be sent to you if the case is referred for a hearing.

- **No case to answer** – the case is closed.

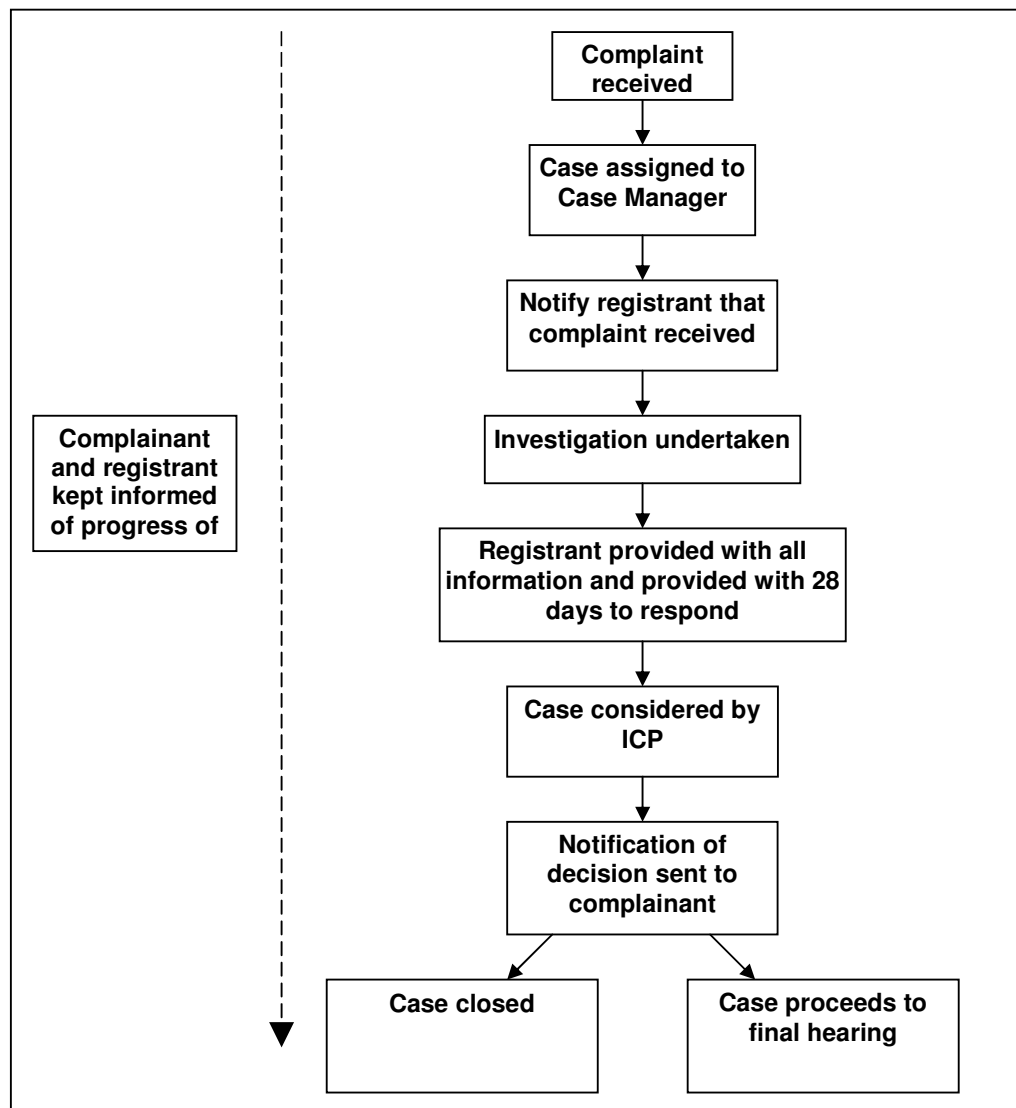
The matter is kept on record for three years from the date the complaint is received, and can be taken into account if we receive a further complaint of a similar nature within that time.

Further information

A number of documents are available from HPC's website (www.hpc-uk.org/complaints) including:

- "What happens if a concern is raised about me?" brochure
- "Managing your fitness to practise" brochure
- Documents called practice notes explaining various elements of the fitness to practise process
- Fitness to practise – what does it mean?

Flow diagram investigations process



**INVESTIGATING COMMITTEE
NOTICE OF DECISION**

Panel chair:	
Registrant partner:	
Lay partner:	
Date:	
Case Manager:	

INVESTIGATING COMMITTEE NOTICE OF DECISION

Case No.:	
Registrant:	
Registration No.:	
Date:	

Allegation

On [date] the Investigating Committee considered whether the Registrant has a case to answer in respect of following allegation(s):

1.
 - a.
 - b.
2.
 - a.
 - b.
3. constitute [statutory ground];
4. By reason of that [statutory ground], your fitness to practice is impaired.

Decision

IF CASE TO ANSWER:

The decision of the Committee is that there is a case to answer in respect of [paragraphs X, Y and Z of] the allegation(s) [as amended below]. Accordingly, the [amended] allegation(s) will now be referred to the Conduct and Competence/Health Committee.

[IF NECESSARY, SET OUT ANY AMENDED ALLEGATION(S)]

Reasons

The reasons for the Committee's decision are as follows:

[SET OUT REASONS FOR THE DECISION, ADDRESSING FINDINGS ON

1. FACTS;
2. STATUTORY GROUND; AND
3. IMPAIRMENT.]

For example:

The facts set out in paragraphs 1(a) to (d) are admitted by the registrant. In relation to 1(e) and (f), there are conflicting versions of events but the evidence put forward by the HPC, [e.g. in the form of patient report form dated X/ witness statement of Mr X] is credible and is sufficient for it to have a realistic prospect of proving those facts.

The Panel is satisfied that the facts alleged are sufficient to provide a realistic prospect that the HPC will be able to prove [INSERT STATUTORY GROUND].

Taking account of the allegation as a whole, there is a realistic prospect of establishing that the registrant's fitness to practise is impaired.

IF NO CASE TO ANSWER:

The decision of the Committee is that there is no case to answer. Accordingly, no further action will be taken by the HPC in respect of the allegation(s).

Reasons

The reasons for the Committee's decision are as follows:

[SET OUT REASONS FOR THE DECISION, ADDRESSING FINDINGS ON

1. FACTS;
2. STATUTORY GROUND; AND
3. IMPAIRMENT.]

For example:

Whilst there is evidence to support the facts set out in paragraphs 1-3, the Panel considers that the facts alleged are insufficient to establish a realistic prospect that the HPC will be able to prove [INSERT STATUTORY GROUND] or that the registrant's fitness to practise is impaired.

The alleged events of the kind which often occur when a [profession] undertakes [procedure X].

[IF THE DECISION IS THAT THERE IS NO CASE TO ANSWER BUT LEARNING POINTS ARE APPROPRIATE, SET THEM OUT BELOW:]

For example:

Although the Committee has determined that there is no case to answer, it [is concerned that the Registrant's explanation to the complainant of the potential side effects of Procedure X may not have been sufficiently comprehensive and draws the Registrant's attention to the importance of communicating clearly with patients where there is a risk of side effects of the kind identified in this case].

On this occasion the Committee was satisfied that there is insufficient evidence to establish that the Registrant's fitness to practise is impaired. However, the Committee reminds the Registrant of the need to communicate clearly with patients, particularly when discussing treatment options and their consequences.

[3 YEAR RULE - ONLY INCLUDE IF THERE IS NO CASE TO ANSWER]

In accordance with Rule 4(6) and (7) of the Health Professions Council (Investigating Committee) (Procedure) Rules 2003, the Registrant is given notice that, if within three years of the date of the present allegation(s) another allegation is made against the Registrant, the Committee may take account of the allegation(s) set out in this Notice in considering that subsequent allegation.]

Signed: _____ Panel Chair

Date: _____

GUIDANCE FOR PANELS

Article 26(2) of the Health Professions Order 2001 requires the Panel to determine whether there is a “case to answer” that the registrant’s fitness to practise is impaired. That decision must be made on the evidence and the test to be applied is whether there is a “realistic prospect” that HPC will be able to establish that the registrant’s fitness to practise is impaired.

That test does not call for substantial inquiry. The Panel may assess the overall weight of the evidence but should not seek to resolve conflicts in that evidence or make findings of fact. The Panel also needs to take account of the wider public interest, including protection of the public and public confidence in the profession concerned and the regulatory process.

The Panel only needs to be satisfied that there is a realistic or genuine possibility (as opposed to remote or fanciful one) that the HPC, which has the burden of proof, will be able to prove:

1. the facts alleged;
2. that those facts amount to the statutory ground (e.g. misconduct); and
3. that, in consequence, the Registrant’s fitness to practise is impaired.

The Panel should only determine that there is a case to answer if they are satisfied that the HPC’s case, when considered as a whole, provides a realistic prospect of establishing that fitness to practise is impaired.

The facts alleged

The Panel needs to consider whether there is sufficient evidence to provide a realistic prospect of proving each element of the facts alleged.

If the evidence is insufficient in respect of any element, the Panel must consider whether that element should be (1) amended or (2) deleted. If the Panel amends or deletes any element of the facts, it also needs to consider whether the allegation in its revised form is sufficient to constitute the basis of an allegation that fitness to practise is impaired.

If an amendment has the effect of alleging a matter which was not previously put to the registrant, the Panel must adjourn the case, in order for the registrant to be provided with an opportunity to respond to that revised allegation.

Statutory Ground

The Panel needs to consider whether the facts alleged (subject to any amendments which the Panel has made) are sufficient to provide a realistic prospect that HPC will be able to prove the statutory ground of the allegation. Typically, specific submissions will not be provided on this point and it is therefore an inference which the Panel may draw from the factual evidence.

Impairment

Finding that there is a case to answer in respect of the statutory ground of an allegation does not automatically mean that there is a case to answer in respect of impairment. The issue of impairment must be addressed separately. The Panel needs to consider whether, taking account of the allegation as a whole, there is a realistic prospect of establishing that fitness to practise is impaired.

The HPC's regulatory regime is not intended to create a 'climate of fear' and there will always be situations in which the Panel may properly conclude, for example, that the event in question was an isolated error on the part of the Registrant and that the chance of it being repeated in the future is so remote that fitness to practise is not impaired.

Reasons

The Panel must give clear and detailed reasons for its findings on each element of the allegation. Those reasons must explain the Panel's rationale for its findings and must not simply be a repetition of the evidence or comments to the effect that the Panel has considered all of that evidence. Those reasons should be sufficiently detailed for a person to be able to read and understand the decision reached and the reasons for it without the need to refer to any other documents.

Learning points

In cases where the Panel concludes that there is a realistic prospect of proving the statutory ground but not impairment, it must determine that there is no case to answer.

In such cases the Panel may wish to include in its decision 'learning points' or other matters arising from the statutory ground which the Panel considers should be brought to the attention of registrant.

The Panel should not feel compelled to do so and should only take this course of action where they are satisfied that a realistic prospect exists of proving the statutory ground (misconduct etc) and there are matters which need to be brought to the attention of the registrant but which fall short of establishing that the registrant's fitness to practise is impaired.

The Panel is reminded that any such comments should be limited and must only be guidance. They cannot take the form of conditions of practice or any other mandatory requirement. The Panel must also take care to provide guidance in a form which does not undermine its decision on impairment. In particular, if the Panel is considering providing guidance on a range of issues then the Panel should reflect upon whether the need for such broad guidance suggests that their decision on impairment may be incorrect.