

Fitness to Practise Committee – 24 May 2011

CHRE learning points

**Executive summary and recommendations**

Attached is a report reviewing the learning points received from CHRE in reviewing final decisions of panels of the Conduct and Competence Committee and Health Committee.

**Decision**

This paper is to note, no decision is required.

**Background information**

None

**Resource implications**

None

**Financial implications**

None

**Appendices**

Appendix One – CHRE Learning Points

**Date of paper**

14 May 2012

## **CHRE learning points**

### **1 Introduction**

- 1.1 In accordance with section 29 of the NHS Reform and Health Care Professions Act 2002, the Council for Healthcare Regulatory Excellence (CHRE) can refer decisions made by panels of HPC's Conduct and Competence Committee and Health Committee, if they feel that the decision reached is 'unduly lenient' or 'under prosecuted'. At the conclusion of all final or review hearings, HPC hearings officers send out a copy of the decision to enable CHRE to undertake their review. As part of this review, CHRE also issue 'learning points' to aid regulators in improving the quality of decision making and other aspects of the fitness to practise process.
- 1.2 This report summarises the types of learning points received in the period 1 April 2011 to 31 March 2012, and describes the actions taken by the Executive to mitigate future occurrences.

### **2 Process for receiving and handling learning points**

- 2.1 As described in previous FTP Committee papers, there is a process for CHRE reviewing all substantive hearing decisions at Health and Conduct and Competence Committees.
- 2.2 In summary, the Scrutiny and Quality Team at CHRE receive all substantive decisions from cases. They review these decisions and may request further information in the form of the transcript of the case, or the exhibits.
- 2.3 To assist CHRE, HPC proactively sends a list of concluded cases from the previous week to assist their review process. This list is generated automatically using a standard report in the new Case Management System.
- 2.4 CHRE use this information to raise concerns, ask for clarifications or make recommendations to HPC about specific cases. Cases where there are significant concerns can be formally challenged using the section 29 legislation. There has been only one challenge of a case in the last three years.
- 2.5 On receipt of learning points, the Executive review then review each case, and respond to CHRE. This allows the opportunity to agree (or not) with

the learning point, and to indicate any changes made to the system for processing cases or support for hearing participants.

- 2.6 The Executive also - as part of the wider quality assurance and compliance function - use the CHRE learning points as practical case studies for the regular refresher training for panel members. This allows any learning to be propagated across a wider number of panels. To further this effect and achieve greater consistency, the learning points are also circulated to all panel members where appropriate as part of the quarterly Panel member newsletter. As a further development of this process, in 2012 the Executive have started to send the CHRE learning point and HPC's response to the panel so they get feedback on the outcomes of their own practice.

### **3 Analysis of learning points since April 2011**

- 3.1 The following table summarises the number of learning points received since April 2011. It builds on a previous part year analysis which was provided to Committee in October 2011. The learning points cover cases that were heard by panels from September 2010 until 20 January 2012. This period does not match the FTP activity year as there is a period of review allowed by section 29 following the conclusion of the case. Cases with hearings from 2010 were included to ensure the thematic analysis was as detailed as possible.

Date received from CHRE	Number of Cases affected	Number of Registrants affected	Total Number of Learning Points	Number of Areas of Concern
8 April 2011	6	6	6	4
13 May 2011	24	24	37	11
22 June 2011	16	16	28	10
1 August 2011	12	12	17	9
30 August 2011	8	8	12	9
30 September 2011	5	5	9	5
8 November 2011	11	11	14	9
20 December 2011	1	1	3	3
7 December 2011	7	7	12	7
27 January 2012	8	8	15	8
14 February 2012	5	5	9	5
8 March 2012	5	5	8	5
<b>TOTAL</b>	<b>108</b>	<b>108</b>	<b>160</b>	<b>85</b>

- 3.2 There continues to be variation in the number of learning points received each month. So far, each learning point has related to a case where there is only one registrant involved.
- 3.3 The earlier part of the year (April to September) had more cases to which learning points applied – 71 individual cases – compared to the 37 cases in the period November to March 2012. The average number of cases about

which learning points were received was therefore 9 per month across the whole year, but fell to 7 per month from November to March. There is evidence to suggest that this number may be continuing to fall, with 5 cases per month having learning points in February and March 2012.

- 3.4 Each case may have more than one learning point. The average to date is 14 individual learning points per month since April 2011. However, two thirds of the total learning points (109 individual learning point areas) were received in the period April to September, with only 61 received from November onwards. The average number of learning points received per month is 12 for this latter period, but like the number of cases in paragraph 3.3, this has been even lower than this for the last two months running (with eight and nine cases only in February and March).
- 3.5 Some learning points are repeated across a number of cases, hence the difference between the total number of learning points and the number of areas of concern.
- 3.6 The average number of areas of FTP process where learning points apply is 7 per month. There have been no changes in this monthly average over the year. There are decreasing numbers of areas to which learning points apply that suggest changes to process, training and guidance are having an effect. The Executive continue to monitor and react to new trends.

3.7 The following table summarises the areas to which learning points relate.

Learning Point issue	Date received												TOTAL
	08-Apr-11	13-May-11	22-Jun-11	01-Aug-11	30-Aug-11	30-Sep-11	08-Nov-11	20-Dec-11	07-Dec-11	27-Jan-12	14-Feb-12	08-Mar-12	
Appropriateness of sanction or Alternate sanction proposed		9	2	4	2	1	2		1	2		1	24
Decision lacks detail of remedial action or insight		3	4	3									10
Decision was too lenient		2		1	2		1		1	2			9
Insufficient detail in published decision		6	5	1	1	4	4		2	2	2	2	29
Insufficient detail for reviewing panel		3		2	1	1	1		3	2	1	2	16
Poor reasoning		1	1	1									3
Missing charges or poor drafting of charges	1	5	4	2	1		1	1		1			16
Lacking or not utilising medical evidence	2	1						1					4
Insufficient detail relating to compliance with previous conditions			2	2	1								5
Confidentiality issues													0
Not applying indicative sanctions	1	4	2						1		1		9
Evidential issues		2	5		1	2	2	1	3	3	3	2	24
Not considering interim order	2				2								4
Cause of impairment challenged													0
Discontinuance issues		1	1				1						3
Deal with by a single committee					1								1
Patient harm not referenced			2										2



- 4.5 Earlier in the year, CHRE expressed a number of concerns relating to the appropriateness of sanctions, either in length of suspension, or the practicality of conditions imposed on the registrant. This learning point seems to be decreasing in frequency, though we will continue to monitor it (and other more frequently received learning point areas) over the coming six months.
- 4.6 A final trend is the perceived lack of evidence for decisions. The main concern relates to not calling for or using medical evidence in health related cases, but there have also been concerns raised relating to the strength of live evidence or reliance on hearsay evidence. We are exploring this with our external investigators, and also reviewing cases to see if there was learning that could support earlier panel decisions at Investigating Committee as to whether the case should have been referred, or the allegation framed differently.

## **5 Actions as a result of the learning points**

- 5.1 The Executive continue to respond to CHRE for every set of learning points, detailing agreement or disagreement, and outlining the actions taken as a response.
- 5.2 Training has been delivered to a range of Panel members on practical examples of learning points. Learning points and HPC's response to CHRE is now routinely shared with panel members for their cases. This has reinforced the additional training on decision-making that has also been delivered. As the number of learning points is reducing, this suggests that the training and awareness is having the appropriate effect.
- 5.3 As part of the concentration on quality assurance and compliance, the new Assurance and Development team will ensure the detailed analysis of learning points and the inclusion –where appropriate - of the learning in new (or revised) Practice Notes, case studies and refresher training. An analysis of where the Executive disagrees with CHRE learning points will help frame future CHRE performance review submissions.
- 5.4 The Executive conducts a regular audit of final hearing decisions. The latest audit is considered in a separate paper to committee.
- 5.5 Hearings Officers have an expanded role to ensure they support the Chair and Legal Assessor on process or logistical issues that occur in hearings.
- 5.6 We continue to share the learning points with our external legal investigators and presenters to ensure future cases do not generate the same concerns where possible.