

Council 7 October 2009

Document Retention Policy – Fitness to Practise and Regulatory Activity

Executive summary and recommendations

Introduction

The Fitness to Practise department has recently undertaken a review its practice in relation to the retention and destruction of the following type of case files:

- (a) Fitness to Practise
 - i. No Case to Answer
 - ii. Case to Answer – Fitness to Practise Allegations
 - iii. Case to Answer – Register Entry Allegations
- (b) Prosecution of Offences
- (c) Protection of Title
- (d) Registration Appeals
- (e) Health and Character
- (f) Watch List

As a result of that review, the attached policy has been produced which sets out how the Fitness to Practise department will retain (or not) information, destroy manual and electronic files and publish information.

Decision

The Council is asked to discuss and approve the attached policy (subject to minor editorial amendments)

Background information

As part of the development of overall retention policy across the HPC, the Director of Operations is reviewing the retention policies of the Registration's Department and anticipates bringing a paper to a future meeting of Council.

Resource implications

None

Date	Ver.	Dept/Cmte	Doc Type	Title	Status	Int. Aud.
2009-09-23	a	F2P	POL	Retention_ Cover Sheet	Final DD: None	Public RD: None

Financial implications

None

Appendices

Document Retention Policy – Fitness to Practise and Regulatory Activity

Date of paper

25 September 2009

DOCUMENT RETENTION POLICY – FITNESS TO PRACTISE AND REGULATORY ACTIVITY

1 Introduction

- 1.1 The Fitness to Practise (**FTP**) Department at the Health Professions Council (**HPC**) undertake investigations into allegations made about the fitness to practise of the health professionals registered with HPC (**FTP Allegations**).
- 1.2 In addition to the investigation of FTP Allegations the FTP Department is responsible for the following investigative and adjudicative functions:
 - 1.2.1 investigating allegations that an entry in the HPC Register has been fraudulently procured or incorrectly made (**Entry Allegations**);
 - 1.2.2 investigating complaints that a person is committing an offence under Article 39 the Health Professions Order 2001 (**POT Offences**);
 - 1.2.3 investigating declarations relating to good health or good character made by registrants or applicants for registration (**Declarations**); and
 - 1.2.4 preparing and presenting appeals against the registration decisions made by HPC's Education and Training Committee (**Registration Appeals**).
- 1.3 FTP Allegations are considered under one of seven categories. These categories are:
 - 1.3.1 caution or convictions;
 - 1.3.2 misconduct;
 - 1.3.3 lack of competence;
 - 1.3.4 physical and mental health;
 - 1.3.5 adverse determination by another regulatory body;

- 1.3.6 inclusion in a barred list (under the Safeguarding Vulnerable Groups Act 2006 or the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007; and
 - 1.3.7 inclusion in the children’s list or adults’ list (under the Protection of Vulnerable Groups (Scotland) Act 2007.
- 1.4 The FTP Department prepares cases to be heard by panels of the appropriate HPC Practice Committee and maintains a file on each complaint and case. These files are to be retained for specific periods of time as established by HPC’s governing legislation or good practice.
 - 1.5 HPC may, in addition to the outlined uses, reopen and use information in the files where it is determined that the information contained within the file should be retrieved and used in the public interest and in accordance with HPC’s governing legislation.
 - 1.6 This Policy sets out:
 - 1.6.1 the time periods for which HPC shall retain documents and files;
 - 1.6.2 the uses to which such documents can be put whilst they retained by HPC; and
 - 1.6.3 the destruction processes for each file.
 - 1.7 The time periods that are implemented in this Policy fulfil HPC’s duties with regard to patient and public protection and transparency of HPC’s processes.
 - 1.8 When a decision is taken to destroy a file after a set period, for example, 3 years after a particular event, the file will be listed for destruction on the third anniversary of the event, but HPC shall have twelve months in which to undertake the actual destruction of the file.
 - 1.9 References to “the file” in this Policy are references to the files created in respect of the investigative and adjudicative functions undertaken by the FTP Department.

2 FTP Allegations

- 2.1 The file is created on receipt of an allegation and, as the matter may be disposed of in several different ways, the retention of the file will depend on how the case progresses and the final method of disposal.
- 2.2 FTP case files may include the following materials:
 - 2.2.1 the complaint;
 - 2.2.2 any evidence collected from the complainant;

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2009-09-21	a	F2P	POL	Document Retention Policy	Final DD: None	Public RD: None

- 2.2.3 any evidence collected from third parties;
 - 2.2.4 statements and evidence provided by the registrant;
 - 2.2.5 statements and evidence provided by the complainant and witnesses for HPC; and
 - 2.2.6 administrative documents relating to the management of the case.
- 2.3 As well as the progression of the main allegation the files may also be used in applications for Interim Orders which may be made by a Practice Committee.
- 2.4 FTP Case Files are held separately to files held in other departments within HPC.
- 2.5 An FTP Allegation may be disposed of in the following ways:
- 2.5.1 no case to answer;
 - 2.5.2 case to answer:
 - 2.5.2.1 but no finding of impairment;
 - 2.5.2.2 with a finding of impairment but no sanction;
 - 2.5.2.3 with a finding of impairment and sanction.
- 2.6 An Entry Allegation may be disposed of in the following ways:
- 2.6.1 no case to answer;
 - 2.6.2 case to answer:
 - 2.6.2.1 but not found;
 - 2.6.2.2 found but no further action taken;
 - 2.6.2.3 found and register entry removed; or
 - 2.6.2.4 found and register entry amended.
- 2.7 No case to answer**
- 2.7.1 Where an FTP Allegation or an Entry Allegation has been considered by the Investigating Committee (**IC**) and the IC determines that there is no case to answer HPC will retain the file as outlined below:
 - 2.7.1.1 the file will be retained for three years;
 - 2.7.1.2 the matter can be reopened if a similar FTP Allegation about the same registrant is received within three years

of the allegation being made. This is in accordance with the Health Professional Council (Investigating Committee) (Procedure) Rules 2003; and

2.7.1.3 where there are a number of separate complaints, where there has been no case to answer and the matter has been re-opened, all files will remain live until the end of the three year period of the last received complaint.

2.7.2 A record of the action will be retained in the FTP database permanently. Four (4) years after the finding of no case to answer the record will be depersonalised and will not be linked to the registrant's general information.

2.7.3 No information resulting in no case to answer will be provided on the part of the register open to the website and no information will be provided on the HPC Website (the **Website**).

2.8 Case to Answer – FTP Allegations

2.8.1 Where an FTP Allegation has been considered by the IC and the IC determines that there is a case to answer, the matter is then referred to the relevant Practice Committee to consider whether the allegation is well founded. Depending upon the Committee's finding HPC will retain the file as outlined below.

2.8.2 Four weeks prior to any hearing by a Committee the name of the registrant will be published on the Website as having to appear before a Committee. If the allegation is not well founded, the Website entry will be removed from the Website within one month of the Committee's hearing unless the registrant consents to the information remaining on the Website.

2.8.3 No finding of impairment

2.8.3.1 Where there is no finding of impairment file will be kept for three years from the date of decision.

2.8.3.2 A database entry of the decision will be kept permanently. The entry on the database will be depersonalised 4 years after the finding of no impairment is given.

2.8.3.3 The decision is only published on the Website at the request of the registrant.

2.8.3.4 No record of the FTP Allegation is placed on the part of the Register available to the public.

2.8.4 Finding of impairment but no sanction

Date	Ver.	Dept/Cmte	Doc Type	Title	Status	Int. Aud.
2009-09-21	a	F2P	POL	Document Retention Policy	Final DD: None	Public RD: None

2.8.4.1 Where there is a finding of impairment but no sanction the file will be kept permanently and will only be destroyed following the death of the registrant.

2.8.4.2 Where a further 'similar fact' allegation against the registrant is received the original file may be reopened and taken into account in deciding what action should be taken in relation to the new allegation.

2.8.5 Finding of Impairment and a sanction is imposed

2.8.5.1 Striking Off

(a) Where a registrant is struck off the register the file will be kept permanently and only be destroyed following the death of the registrant.

(b) A former registrant is able to re-apply for restoration to the register five years after being struck off. If an application is received for restoration to the register any documents contained within the file would be used in determining the restoration application.

2.8.5.2 Suspension

Where a registrant is suspended from the register the file will be kept for seven years from the date that the final sanction ends.

The file will be accessed and considered when the suspension order is being reviewed, which must occur before the expiry of the suspension period (a maximum of a year). This may result in:

(a) the suspension order being extended for further periods;

(b) the suspension order being revoked with no further action;

(c) the suspension order being revoked and replaced with conditions of practice;

(d) the suspension order being revoked and replaced with a striking off order.

Where the suspension order has been revoked with no further action being taken, the file will be reconsidered where it is concluded in a subsequent matter brought

against the registrant concerned, that there is a case to answer.

2.8.5.3 Conditions of Practice

A conditions of practice order may be imposed for a period of up to three years. Where a registrant receives a conditions of practice order the file will be kept for seven years from the date that the final sanction ends. The file will be accessed when the conditions of practice order is reviewed, the results of such a review are:

- (a) the extension of the conditions of practice order;
- (b) the revocation of the conditions of practice order;
- (c) the revocation of the conditions of practice order and its replacement with a new conditions of practice order;
- (d) the revocation of the conditions of practice order and their replacement with a different sanction

Where a conditions of practice order is revoked and no further action is taken, but it is determined that there is a case to answer in respect of a subsequent allegation within the seven (7) year period during which the file is retained, the file will be accessed and the information may be used in determining the sanction imposed in relation to the subsequent allegation.

2.8.5.4 Caution

A caution order may be imposed for a period of between one and five years. Where an individual receives a caution the file will be kept for a period of seven years following the end of the sanction. The file may be accessed were a subsequent allegation is considered and it is concluded that there is a case to answer.

2.8.6 In all cases, where it has been determined that there is a case to answer or that the allegation is well founded the decision notices are kept for the life of the registrant.

2.8.7 In all cases where it has been determined that there is a case to answer which is well founded:

2.8.7.1 a database record is kept and linked to that registrant for their lifetime; and

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- 2.8.7.2 a record of the outcome of any hearing is entered onto the register and will be available via the Website during the period in which the registrant is registered with HPC. All such entries shall be updated should any change occur such as a suspension order be revoked and be replaced with a conditions of practice order. In such cases information about the original sanction shall remain on the register.

2.9 Case to Answer – Entry Allegations

- 2.9.1 Where the allegation is determined to be not well founded:
 - 2.9.1.1 the file will be kept for three years from the date of the decision that the allegation is not well founded; and
 - 2.9.1.2 the file may be reopened if a similar complaint comes to the attention of HPC about the same registrant.
- 2.9.2 Where it is determined that the allegation is well founded and the registrant is to be removed from the register:
 - 2.9.2.1 the registrant shall be removed from the register;
 - 2.9.2.2 the file will be retained for the life of the individual; and
 - 2.9.2.3 the decision notice will be retained for life of the individual.
- 2.9.3 Where the allegation is determined to be well founded and the registrant's entry on the register is amended or no further action is taken:
 - 2.9.3.1 the register entry shall be amended to reflect the status of the decision;
 - 2.9.3.2 the file will be kept for the life of the registrant; and
 - 2.9.3.3 the decision notice will be kept for life of the registrant.

3 Prosecution of Offences

- 3.1 HPC:
 - 3.1.1 investigates POT Offences and other matters which may be offences under the Health Professions Order 2001; and
 - 3.1.2 where appropriate, undertakes prosecution or refers the matter to another prosecuting authority.

- 3.2 Information relating to such offences will be kept as outlined below and may be accessed from time to time as part of HPC's regulatory functions.
- 3.3 Where the prosecution is against a person who is not in a notifiable profession, the file will be kept until offence is spent.
- 3.4 If an offence has been committed by a person in a notifiable profession, under the *Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975*, the file will be kept for the life of the individual.

4 Protection of Title

- 4.1 Where an individual has committed a POT Offence, the file is kept for the life of the individual. This is to enable HPC to identify any repeated or further offending.
- 4.2 Information that is received by HPC regarding individuals who may be committing a POT Offence will be kept for the life of the individual unless it is established that the information provided is malicious and the allegation is without foundation.
- 4.3 If a POT Offence allegation is found to have been made maliciously and without foundation, the file shall be destroyed within three years of that finding by HPC.

5 Registration Appeals

- 5.1 Members of the health professions regulated by HPC apply to HPC for registration so that they can practise in their chosen fields. If a health professional is refused registration (or renewal or re-admission to the register) they have the right to appeal against the decision.
- 5.2 When a Registration Appeals is made it is referred to the FTP Department, which manages the case and refers it for hearing and determination by HPC's Registration Appeals Panel (the **Panel**).
- 5.3 Where the Panel allows an appeal the individual will be admitted or readmitted to the register. The file will be kept for the life of the registrant as part of the application of the registrant and may be accessed by HPC from time to time in compliance with HPC's regulatory duties.
- 5.4 Where the Panel rejects an appeal the file will be kept for the life of the individual. The file will be accessed and considered if the individual makes a further application for registration.
- 5.5 Where the Panel passes the case to the Education and Training Committee, the file will be kept for the life of the individual. The file will be accessed in the situations outlined above in Paragraphs 5.3 and 5.4 above.

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6 Health and Character

- 6.1 In applying for admission or re-admission to the register an individual is required to provide references in respect of their health and character. Registrants are also required to meet specified standards relating to their health and character throughout the time they are registered with HPC.
- 6.2 The health and character references provided are retained for the life of the registrant.
- 6.3 If the individual makes a Declaration about their health or character as part of an application for registration, renewal of registration or readmission to the register, it will be considered under HPC's Health and Character Process.
- 6.4 Where an individual has been refused registration by HPC on the grounds of health and/or character the following will apply:
 - 6.4.1 any information received about the health of the individual will be kept until the individual's health changes or where it is deemed to be in the public interest, for the life of the individual;
 - 6.4.2 any information received about the character of the individual will be kept for the life of the individual. This is kept as a matter of public protection.
- 6.5 When information is provided to HPC relating to the health or character of an individual seeking re-admission to the register, it will be treated in the same way as information provided by an individual making a first application for registration.
- 6.6 If matters relating to a registrant's health are raised with HPC during their registration but not as an FTP Allegation, the matter will be considered to determine if it should be pursued as such an allegation and, if so, will be dealt with in accordance with HPC's standard practices and the file will be held as an FTP Allegation.
- 6.7 If HPC receives information about a registrant's character during their registration which does not amount to an FTP Allegation, it will be kept for the life of the registrant. This is kept as a matter of public protection and may be accessed as part of HPC's regulatory functions.
- 6.8 If HPC receives information about a former registrant's health and/or character the person's name will be added to the Watch List (see Paragraph 7.1 below) and HPC shall keep the information on file for consideration should the former registrant seek re-admission to the register.

7 Watch List

- 7.1 HPC keeps a 'Watch List' in relation to individuals who have been identified by other bodies as posing a potential risk to the public.

- 7.2 This information may be used when an individual applies for registration. This information is used to help HPC's Education and Training Committee make an informed decision as to the individual's fitness for registration. This information will be kept indefinitely or, if an individual applies for registration will be retained in accordance with the application procedures.
- 7.3 If HPC establishes that Watch List information has been provided to it maliciously without foundation then HPC may remove the name of an individual from the watch list along with any information that was held with the name and this will be destroyed.

8 Destruction of the Documents

8.1 Manual files

- 8.1.1 All paper/manual files will be destroyed via shredding or confidential waste disposal upon expiry of the applicable retention period.
- 8.1.2 These files are not suitable for general rubbish.

8.2 Electronic Files

- 8.2.1 All electronic files should be removed from HPC's computer system at the end of the retention period.
- 8.2.2 Electronic files will be destroyed in accordance with the protocol established by HPC's IT Department.

9 Publication of Information

- 9.1 HPC's governing legislation requires that certain information is made available to the public.
- 9.2 The HPC register is available to the public at the HPC offices and via the Website.
- 9.3 A registrant's details will be published for the following periods of time in the way that is described:
- 9.3.1 4 (four) weeks prior to the hearing of an FTP Allegation or an Entry Allegation, details of the hearing will be published on the Website, at the same time a press release may be issued;
- 9.3.2 where an interim order is granted against a registrant this information is published on the Website and in press releases;
- 9.3.3 any decision that are well founded are published on the Website and will remain posted in accordance with the terms of this Policy;

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- 9.3.4 any decisions that allegations are not well founded are only published only with the consent of the registrant and, where consent is given, shall be available on the Website for a period of 1 (one) year;
 - 9.3.5 the outcome of a hearing into an FTP Allegation is kept on the Website indefinitely. The outcome is removed from the current hearing page after approximately 10 (ten) days;
 - 9.3.6 when a caution order is received by a registrant a caution order mark is placed against the registrant's name on the Register, this will be reflected on the Website. The decision is kept on the Website until the caution order expires which will be between one and five years after the caution is imposed;
 - 9.3.7 where an individual has dual nationality or a qualification in another member state of the European Economic Area (**EEA**) the information will be provided to the regulatory body in the relevant country of member state of the EEA; and
 - 9.3.8 the decision HPC committees in relation to FTP matters will also be provided to the Council for Healthcare Regulatory Excellence (**CHRE**).
- 9.4 Complainant's Details
- 9.4.1 When a complaint is made HPC will record the details of the complainant on the relevant file. The complainant's details will be retained whilst the file is retained by HPC.
 - 9.4.2 If the complaint is made by a patient their name will not be published as part of any public information provided by HPC. Limited information which does not allow identification of the complainant may be published in a decision notice of the IC or any other committee if the IC determines that there is a case to answer.
 - 9.4.3 If the complaint is not made by a patient details of the complainant may be published by HPC.
 - 9.4.4 Details of complainants will be passed to EEA regulators and the CHRE on a case by case basis and on a confidential basis.
- 9.5 Witness' Details
- 9.5.1 When individual are asked to provide a witness statement, general evidence or appear before a hearing details will be recorded on the FTP file. Such information will be retained whilst the file is retained by HPC.

- 9.5.2 If the witness is a patient their name will not be published as part of any public information provided by HPC. Limited information which does not allow identification of the witness may be published in a decision notice of the IC or any other committee if the IC determines that there is a case to answer.
- 9.5.3 If the witness is not a patient their information may be published by HPC.
- 9.5.4 Details of witnesses will be passed to EEA regulators and the CHRE on a case by case basis and on a confidential basis.
- 9.6 Where an individual has been identified as possibly committing an offence under the Health Professions Order 2001 the details of the individual along with the information gathered will be referred to the following organisations where necessary:
- 9.6.1 the relevant court;
- 9.6.2 Trading Standards;
- 9.6.3 the relevant prosecution services;
- 9.6.4 Police; and
- 9.6.5 the NHS Counter Fraud and Security Management Service and any successor or related body.
- 9.7 For the purpose of Paragraph 9.6 above the “relevant court” means a Magistrate’s Court or, in Scotland, a Sheriff Court or District Court and “relevant prosecuting authority” means the Crown Prosecution Service, the Crown Office and Procurator Fiscal Service or the Public Prosecution Service for Northern Ireland.
- 9.8 Where an individual is applying for registration and has a registration appeal pending HPC will not publish the hearing date or the decision. The hearing will be held in public unless a successful application is made for the matter to be heard in private.

10 Queries

- 10.1 Any questions in relation to this Policy should be addressed to the Director of Fitness to Practise at HPC.

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