
Council – 20 May 2010

Appointment of Registrant Assessors

Executive summary and recommendations

Article 36 of the Health Professions Order 2001 (“the Order”) enables the Council to appoint HPC registrants with appropriate expertise as “registrant assessors” to give advice to Practice Committees on “matters of professional practice arising in connection with any matter” which the panel is considering.

The Fitness to Practise Department is currently implementing the use of registrant assessors in the investigation of allegations. This paper sets out the policy for the appointment of registrant assessors. The power to appoint registrant assessors is delegated to the Chief Executive under the scheme of delegation, subject to “any appointments process established by the Council”.

Decision

The Council is asked to approve the attached policy for the appointment of registrant assessors

Background information

Fitness to practice operational guidance is available to Case Managers on the types of cases where the appointment of a registrant assessor may be appropriate. As the number and complexity of cases increases, the use of registrant assessors has been identified as an important way to ensure that panels have the necessary information in cases where the registrant panel member may not have specialist knowledge in the particular area of practice to which the allegation relates.

Resource implications

Financial implications

The cost of registrant assessor advice will vary depending on the nature of the case and extent of the advice required.

Appendices

Policy - Appointment of registrant assessors

Letter of engagement

Registrant assessor report form

FTP Operational Guidance - Instructing Registrant Assessors and seeking their advice to assist the ICP in making 'case to answer' decisions

Date of paper

6 May 2010

Policy Appointment of registrant assessors

Introduction

Where ever possible, registrant assessors should be appointed from among HPC's existing pool of registration assessor partners, provided that the partner is not also a panel member (or chair) or visitor. By virtue of Article 36(4) of the Health Professions Order 2001, such partners may not be registrant assessors.

Where it is not possible to identify an existing HPC partner to fulfill the role, a registrant assessor may be identified and appointed on an ad hoc basis. Any such appointment should be made on the basis of the standard letter of engagement which, among other things, incorporates the code of conduct for partners.

Fees

Where a registrant assessor is identified from within the HPC's existing pool of partners, a fee structure equivalent to that used for panel members will apply. An estimate of time should be requested from the registrant assessor in advance of the work being undertaken, and full day or half day fees agreed depending on the amount of time required to provide the advice.

Where a registrant assessor is sought from outside of the HPC's current partners, the fees may be determined on a case by case basis in a similar manner to the fees for expert witnesses.

May 2010

Engagement Letter – Registrant Assessor

Dear

Appointment as Registrant Assessor

This letter is to confirm your appointment as a Registrant Assessor to the HPC's [Investigating] [Conduct and Competence] [Health] Committee, to advise the Committee on the matters set out in the Instructions below.

Instructions

You are instructed to advise the Committee on:

[provide Instructions]

A template Registrant Assessor's Report Form will be sent to you electronically and your report should be provided in that form.

As a Registrant Assessor, your role is to advise the Committee on matters of professional practice. You must confine your advice to such matters and should not comment upon other, unrelated aspects of the case.

Your Obligations

In accepting this appointment you agree and confirm that:

- the role of a Registrant Assessor is similar to that of an expert witness and, as such, you have similar overriding duty to assist the Committee;
- you have the relevant qualifications and experience to enable you to fulfil the Instructions and will do so to the best of your ability with all due skill and care;
- you are unaware of any conflict of interest (whether actual or perceived) which would prevent you from fulfilling the Instructions and you will promptly inform the HPC if any such conflict arises;
- in fulfilling the Instructions you will act fairly, objectively and impartially and the report which you prepare for the Committee will be the product of your own independent work;
- you will fulfil the Instructions and all related matters promptly and within any time limits agreed with the HPC or set by the Committee;

- you will take make yourself available to attend any hearing conducted by the Committee in respect of matters to which the Instructions relate and other related meetings;
- you will abide by the HPC Code of Conduct for Partners (a copy of which is enclosed with this letter).

Use of reports

You acknowledge that, as well as being provided to the Committee, a copy of your report will be sent to the registrant who is the subject of the proceedings for which it has been prepared.

Confidentiality

You agree not to disclose or make any other use of confidential information to which you have been given access other than for a proper purpose related to the fulfillment of the Instructions or as required by law.

You agree to:

- take appropriate steps to ensure that confidential papers and information are stored securely; and
- promptly notify the HPC of any breach in confidentiality of which you become aware.

Fees and Expenses

The fees payable for your services as a registrant Assessor [set out as applicable]

The HPC will also reimburse you for all reasonable expenses wholly, necessarily and properly incurred in fulfilling the Instructions provided that you comply with the HPC's Expenses Policy and your claim is supported by appropriate VAT receipts, invoices or other documentary evidence which is acceptable to the HPC.

If you consider that specific investigations or tests need to be undertaken in order to fulfil the Instructions, the HPC will only be liable for the cost of such investigations or tests if you have obtained the HPC's prior written approval to meet the cost of those investigations or tests.

You must submit an invoice to the HPC within one calendar month of providing any services and the invoice should also include any expenses you incurred during the period to which it relates and for which you are entitled to be reimbursed. The HPC will use its reasonable endeavours to settle any invoice within 30 days of its receipt.

Intellectual property

The intellectual property rights in any report produced by you in fulfilling the Instructions shall belong to the HPC.

Termination

Your appointment as a Registrant Assessor under the terms set out in this letter is a contract for services and (other than in respect of the confidentiality obligation) that contract will terminate when you have satisfactorily fulfilled the Instructions and the HPC has paid the related fees and expenses.

However, the HPC may terminate your appointment with immediate effect if you commit a material breach of the terms set out in this letter or breach any terms of the HPC Code of Conduct for Partners.

Applicable law

This letters sets out an agreement which is personal to the parties and which shall be governed by and construed in accordance with the laws of England and Wales.

If you are willing to accept this appointment on the terms set out above, please sign and return one copy of this letter and retain the other copy for your own records.

Yours

I accept my appointment as a Registrant Assessor on the terms set out in this letter.

Signed: _____ Date: _____

BEFORE THE [INVESTIGATING] COMMITTEE

IN THE MATTER OF:

REGISTRANT ASSESSOR'S REPORT

regarding

[ABCDEFGHIJKLMNOPQRSTUVWXYZ]

Registrant Assessor

[Registrant Assessor's name and brief CV, including qualifications and relevant experience in relation to the specific issues to be addressed in the case. If appropriate, a more detailed CV may be included as an appendix.]

Instructions

[Set out the substance of all instructions received by the Registrant Assessor.]

Issues

[The issues to be addressed and the questions to be answered should be clearly set out, either in accordance with the Instructions received or as identified by the Registrant Assessor following any preliminary investigations.

Any issue not included in the Instructions but which, in the opinion of the Registrant Assessor needs to be addressed should also be included.]

Documents

[List all documents and other submitted material on which the report is based.]

Chronology

[A chronology may be helpful but it should only contain factual evidence and must not contain any matter of opinion. The chronology should be laid out in short paragraphs, each referring to a discrete event or topic in the chronology.]

Technical background

[In cases where the technical issues are particularly specialised, an explanation of those issues may be necessary.]

Opinion

[The Registrant Assessor's opinion should be set out here in clear and unambiguous terms. Explicit reasons should be given for the opinions expressed and if different opinions can be held based on the same evidence, this should be stated and reasons given for the chosen opinion.]

Summary of conclusions

[In complex cases it may help to summarise the conclusions reached and the reasons for them.]

References

[List here any technical literature or other material which has been relied upon or to which reference is made. If the references are extensive they should be set out in an appendix.]

Declaration and Statement of Truth

In preparing this report I have:

- done my best to be accurate and complete;
- mentioned all matters that I regard as being relevant to my opinions;
- only expressed opinions on matters within my field of expertise;
- drawn attention to matters of which I am aware that may adversely affect my opinion.

I consider this report to be complete and accurate. Where any facts stated are within my own knowledge I have made that clear and I believe them to be true. The opinions I have expressed represent my true and complete professional opinion.

Signature: _____ Date: _____

Appendices

FTP OPERATIONAL GUIDANCE

Instructing Registrant Assessors and seeking their advice to assist the ICP in making ‘case to answer’ decisions

Introduction

This guidance is provided to members of the Case Management Team investigating fitness to practise cases and should be read in conjunction with the Assessors and Experts practice note.

Depending on the nature of the allegation, in some cases it may be appropriate to seek an expert opinion on professional practice in a particular field before the case is referred to the Investigating Committee for a ‘case to answer’ decision to be made.

Article 36 of the Health Professions Order 2001 (“the Order”) enables the Council to appoint HPC registrants with appropriate expertise as “registrant assessors” to give on “matters of professional practice arising in connection with any matter which [a Practice Committee] is considering”.

Although Practice Committee Panels always include a panel member who is a registrant from the relevant Part of the HPC register, that panel member may not have specialist knowledge in the particular area of practice to which the allegation relates. In those circumstances, where an allegation concerns matters outside of the knowledge of the Panel, the expert opinion of an assessor may assist the Panel in their deliberations.

It is important to remember that, in investigating allegations, you are expected to act as a neutral fact finder. The advice of a Registrant Assessor should be sought where it will assist the Panel to reach a case to answer decision, and regardless of whether that advice may or may not support the allegations.

When should advice be sought?

Decisions on whether the advice of a Registrant Assessor is required should be taken on a case by case basis. In most cases, the need for such advice will be identified before the allegations are drafted and sent to the registrant concerned. In some cases the issues upon which expert advice is required may only be identified once the registrant’s response to the allegations is received or possibly even later. It may not be clear that a Panel needs assistance with a particular issue until the case is before the Panel. In that event, the proceedings should be adjourned until the advice has been obtained.

Identifying appropriate cases

When investigating fitness to practise cases, Case Managers should consider from the outset whether the advice of a Registrant Assessor may be required. Typically this will arise in cases which are focussed upon competence or capability issues. The following are relevant factors which may indicate that such advice is required and cases where any of these factors are present should be drawn to the attention of a Lead Case Manager for further consideration:

1. the issues raised by the allegations concern profession specific matters which are detailed in nature or relate to a specialised area of practice;
2. the issues are sufficiently specific or specialised that knowledge of them is unlikely to be common to all members of the profession and, consequently, the typical registrant panel member may not have the requisite skills and knowledge;
3. the evidence which forms part of the case includes detailed information that requires interpretation by a registrant with specialised knowledge or requires particular equipment which will not be available to the Panel (e.g. patient notes, diagnostic images or results; NOAH audiological records).

A recommendation form summarising the issues on which the advice of a registrant assessor may be required should be completed by the Case Manager. This recommendation will then be considered at a case conference between managers with the Case Management Team to determine whether such advice is needed. The use of case conferences enables managers to review and manage cases on a consistent basis across the department.

Identifying an appropriate registrant assessor

The Council's power to appoint Registrant Assessors has been delegated to the Chief Executive. The selection and appointment of assessors is similar to the selection of expert witnesses and an appropriate person can usually be identified by seeking advice from:

- HPC partners
- professional bodies
- royal colleges
- experts/registrant assessors used in previous cases
- Council members

However, Article 36(4) of the Order provides that a person cannot act as a Registrant Assessor if they are:

- a Council member;

- a member of a statutory committee (this includes all Panel Members and Panel Chairs);
- a Visitor; or
- an employee of the HPC

Appointments may be made from among those HPC Partners who act as registration assessors (a different role which involves the assessment of registration applications) and CPD assessors but only if the Partner does not also sit on Panels or act as a Visitor.

Instructing a registrant assessor

Careful consideration should be given to the advice sought and the specific questions being asked of the Registrant Assessor. The report template provided should be used to structure the questions and will be used by the Registrant Assessor when providing their response. This ensures that a consistent and structured approach is adopted and that Registrant Assessors limit their advice to the questions posed and only comment on other matters to the extent that they must be brought to the Panel's attention.

The Registrant Assessors must be provided with copies of any documents which are relevant. These must be identified in the report. It is not always necessary to provide the Registrant Assessor with a complete copy of the case file but the documents provided must be sufficient to enable the Registrant Assessor to provide advice on the basis of a properly formed, objective and balanced view of the case.

Contractual arrangements and fees

Registrant Assessor are appointed on the basis of a standard letter of engagement which, among other things, will set out the fees payable.

Registrant Assessors who are appointed from among the existing pool of HPC Partners will be paid at the same rate as Panel Members. For those appointed on an ad hoc basis, the fees will be a matter for individual negotiation.

In either case an estimate of the length of time they will require to provide the advice and, for fixed fees, the fee payable should be obtained from the Registrant Assessor and agreed with the Director of Fitness to Practise, Head of Case Management or Investigations Manager before formal instructions are given. A purchase order must also be raised prior to instructing the Registrant Assessor to carry out the work.

When the report is received

As with any other information received relating to an allegation, the registrant concerned must be provided with an opportunity to respond to any information which will be considered by the Investigating Committee in reaching a

decision on whether there is a case to answer. Accordingly, a copy of any Registrant Assessor's report should be sent to the registrant concerned, either with the letter inviting observations or, if the advice is obtained at a later stage once it has been received, and the registrant provided with sufficient opportunity to comment on the report.

Summary of procedure

In summary, the process for dealing with cases where the advice of a Registrant Assessor is required is as follows:

- the Case Manager, in the course of their investigation, identifies a case where, based on the criteria set out above are met, the advice of a Registrant Assessor may be required;
- the Case Manager discusses the case with the Lead Case Manager and, with the Lead Case Manager's agreement, completes a recommendation form which summarises the matters on which a Registrant Assessor's advice may be required;
- the recommendation is considered at a case conference by the Lead Case Managers and Head of Case Management and a decision is taken as to whether a Registrant Assessor should be instructed;
- an appropriate registrant assessor is identified and a quote obtained for their time/costs, which is agreed by the Director of Fitness to Practise, Head of Case Management or Investigation Manager before instructions are issued;
- a letter of engagement and formal instructions are sent to the Registrant Assessor using the forms provided together with copies of all relevant documents.