

Council 30 June 2015

Investigating Committee Panel decisions audit: April 2014 to March 2015

Executive summary and recommendations

Introduction

This report is a summary of the regular audit activity relating to the process of considering cases at the Investigating Committee Panel (ICP). It also is a summary of the learning from the decision making, and includes an update on the development work streams to support this core element of Fitness to Practise (FtP) activity.

Decision

This paper is for discussion

Background information

In the period April 2014 to March 2015, 849 cases were considered by panels of the Investigating Committee. Of this number, seven were cases that had transferred over from the General Social Care Council (GSCC). There were 127 Investigating Committee Panels scheduled across the audit period.

The case to answer rate for the period reviewed in this report was fifty three per cent. This is similar to the previous 12 month period. In the period 2012-2013, the case to answer rate was higher (56%) due to the “on boarding” of Social Workers.

Resource implications

None. The audits are undertaken by the Quality Compliance Officers within the Fitness to Practise Department as a function of their role.

Financial implications

None

Appendices

Appendix 1 – Investigating Committee Panel Decisions Audit report - April 2014 to March 2015

Appendix 2 – Summary of audit results – April 2014 to March 2015

Date of paper

17 June 2015

**Investigating Committee Panel Decisions Audit:
April 2014 to March 2015**

1. Introduction

- 1.1. This report covers the period 1 April 2014 to 31 March 2015. Panels of the Investigating Committee met on 127 occasions. Due to the re-focussing of Quality Compliance Team resources on other priority areas, panels that sat in December 2014 were not included in the audit. Furthermore, changes to the audit framework in Fitness to Practise resulted in a sampling approach being applied to decisions from September 2014 onwards.
- 1.2. Eight hundred and forty nine decisions were made by Investigating Committee Panels in the audit period. Of these, seven related to open Conduct cases that transferred over from the General Social Care Council (GSCC). Of the 849 cases considered by an ICP, 39 cases required further information to reach a decision. Of the 810 which concluded, 433 (53%) were considered case to answer, and the remaining 377 (47%) no case to answer.
- 1.3. The sample selected for the audit consisted of 530 cases (63% of the total ICP considerations). Of these, 282 cases were case to answer (65% of all case to answer decisions). A sample of 229 no case to answer decisions were reviewed (61% of those considered no case to answer), and 19 of the 39 cases (49%) where further information was required.
- 1.4. The audit is carried out using a spread sheet which is populated by the Quality Compliance Officer. Cases are reviewed retrospectively, after the ICP has concluded. It is therefore possible to review the ICP decision in relation to information that is generated by any further investigations by external lawyers. The spread sheet has fields to identify individual and/or team learning points, alternative mechanisms for disposal, and issues with case management including, risk assessments.
- 1.5. This report divides the analysis on the audit and further actions into four sections: investigation, decision, other considerations and ongoing work.

2. Investigation

- 2.1 The first point the auditor reviewing the decision is asked to address is whether the case meets the standard of acceptance of allegations. Of the five hundred and thirty cases reviewed, all were assessed as meeting the Council's standard of acceptance for allegations. In 2013, the rate had been 1.5% of cases (6 out of 390) that were audited.
- 2.2 The standard of acceptance is detailed in the policy, The Standard of Acceptance for Allegations. Any case being considered by the Investigating Committee should meet this standard. The Standard of Acceptance Policy was updated in December 2011, and has been further revised in May 2015 to provide further guidance around matters which may be closed without the need to be considered by a panel of the Investigating Committee.
- 2.3 Specific and revised refresher training in relation to the Standard of Acceptance Policy was also included in all Panel training delivered by the HCPC in the audit period, including suitable redacted case studies based on examples of decisions. Additionally, specific workshops for HCPC Case Managers and Case Team Managers has been delivered on writing and evidencing allegations prior to consideration by panels. Training has been delivered in June 2015 to implement the changes in the Standard of Acceptance policy approved by Council in May 2015. Refresher sessions will continue to be included in the training planned for the year ahead.
- 2.4 Pre-ICP, the Case Manager requests and collates information relating to the allegation and this is put before the ICP. In cases where information is requested but is not provided, follow up letters are sent. Cases are reviewed at least every four weeks in the first two months and then every two weeks for cases that have been in the investigations process for more than two months. This helps to ensure that information is obtained in a timely manner, and where delays are occurring in the information being provided, more frequent contact is made with the individual from whom the information is being sought. In addition, relevant older cases are put to a case progression conference where the case is discussed with management and ways to progress it are explored.
- 2.5 The Case Progression Conferences have been in place since January 2012, as a further tool to monitor and facilitate the timely progression of cases. Case progression conferences provide a forum in which Case Managers can discuss ways in which older cases can be progressed with management input. A selection of Pre-ICP cases that are four months old (or more) with no ICP date fixed are reviewed by Case Team Managers to determine whether the case is suitable consideration at the case conference. Data from our case management system helps to identify these individual cases. At the case conference a review of the investigation to date takes place, as well as discussions about any reasons for delay and recommendations about the future progression of the case. The meetings also provide an opportunity for Case Managers to raise issues, ask questions and seek advice on the management of cases. The Case Progression Conferences are attended by the Investigations Managers, the Case Team Manager for the Case Advancement Team and the Case Managers with conduct of the cases being considered. The cases discussed are also considered for suitability for transfer to the Case Advancement Team.

- 2.6 Seventy seven cases have been considered at the case progression conferences, in the audit period. The number of cases considered each month ranged from 2 to 11.
- 2.7 Following the approval by Council in May 2015 of the revised Standard of Acceptance Policy, we have started to categorise a group of cases using Rule 12 of the Registration and Fees Rules. This rule prevents the Registrar from removing a registrant's name from the register if the registrant is subject to an allegation, investigation or proceedings. Rule 12 provides for a category of cases where we are awaiting the outcome of an evidence gathering process and cannot progress our investigation until that process is completed, for instance in the circumstances where a local employer or the Police are conducting their own investigations. We have developed a system where these cases can be categorised and monitored during the ongoing external investigations, but do not require as frequent chasing or updates to parties. This in turn allows us to concentrate on cases where progression is possible. We will be evaluating this approach in the coming year.

3. Decisions

3.1. The 849 decisions made by the Investigating Committee are broken down as follows:

- case to answer – 433 (51%)
- no case to answer – 377 (44%)
- further information – 39 (5%)

3.2. The case to answer rate for the period reviewed is 53% once the further information cases are removed. This figure has remained the same over the previous 12 months to the audit period. This may be explained by two factors:

3.2.1 The impact of Social Worker cases. The cases that transferred from the General Social Care Council in August 2012 were broadly concluded by this stage, with only seven of the ICP considerations relating to this group. As such, the HCPC Standard of Acceptance was applied to all ; and

3.2.2 The continuing number of cases that are being closed prior to being considered by the Investigating Committee on the basis that they do not meet the HCPC's Standard of Acceptance for Allegations Policy. For the audit period, 1042 cases were closed pre-ICP. The policy was updated and rolled out to the Fitness to Practise Department in December 2011. Continuing and focused training on the application of the Standard of Acceptance Policy was provided to the case management team in each year since, including 2014. As a result, cases that may in the past have been put before an Investigating Committee Panel are now being closed.

- 3.3. Of the nineteen cases reviewed where further information was requested, it was not apparent that this could have been predicted prior to consideration by the ICP.
- 3.4. In April 2012, the ICP Co-ordinator role was formalised. This is performed by the Hearings Team Managers, having previously been performed by a Case Manager on rotation. This focusing of the role allows a more consistent approach, and the ability to build effective working relationships with the panels.
- 3.5. The role of the ICP Co-ordinator is to ensure the smooth running of ICP days, providing guidance to the Panel on the realistic prospect test and its role in respect of amending allegations, where appropriate. It is important to note that the ICP Co-ordinator plays no role in the actual decision making process. Changes have also been made to the way in which ICP decisions are drafted, with the ICP decision template being amended to include discrete sections on each of the elements of the allegation that panels must apply the realistic prospect test to. Decisions are drafted using a projector so that panels can read and review the decision as it is being drafted.
- 3.6. In 127 (24%) of the cases audited, the Investigating Committee made amendments to the allegation before either making a case to answer decision or referring the case back for further information. This is an important role of the panel as it is responsible for the cases referred to a final hearing and the final drafting of the allegations. This has been a particular focus in the panel training provided to HCPC panel members in 2014-15. The type of amendments the panel made include:
- amending minor inaccuracies, for example an incorrect date;
 - rewording or adding additional clarity to some particulars of the allegation;
 - redrafting particulars relating to profession specific competency allegations; and
 - splitting or combining elements of the allegation.
- 3.7. There was some variation across the audit period in the numbers of amended allegations. In the early part of the audit period prior to September 2014, 22% of cases had amendments; this rose to 29% in the latter part of the audit cycle.
- 3.8. Previous development work was based around the desire to support panels to amend allegations where they felt this was necessary, so this variation across the audit period can be positively received. Early amendments support the preparation of the case for final hearing by our external solicitors, and reduces the need to have preliminary hearings to consider amendments to allegations. Furthermore, it reduces the impact on the conclusion of the final hearing as it avoids time spent making amendments at the start of a public hearing. Limiting allegation amendments at the start of a hearing also allows the Registrant time to engage with and prepare for the hearing.
- 3.9. A number of factors may impact on the increased amount of allegations by the panel. These include:

- Continued focus through partner training on the responsibility of the Panel to amend allegations based on the information provided to them.
- Continued presence and confidence of the ICP Co-ordinator role, in reminding panels of their responsibilities in respect of approving allegations and making changes where necessary.
- Changes in Case Management personnel or the age of the case relative to the enhanced training on allegation drafting.

3.10. We will continue to review these trends in the coming months.

3.11. If a panel wishes to make material changes to the allegation or add additional heads of allegation that the registrant has not had the opportunity to respond to, the case must be sent back for the allegations to be re-drafted and the registrant provided with a further opportunity to respond.

3.12. The test applied at the Investigating Committee stage is the 'realistic prospect' test. The practice note, "Case to Answer" Determinations, sets out how this should be applied. The test applies to the whole of the allegation, that is:

1. the facts set out in the allegation;
2. whether those facts amount to the "ground" of the allegation (e.g. misconduct or lack of competence); and
3. in consequence, whether fitness to practise is impaired.

3.13. In the audit period, all cases demonstrated that the panel had addressed the realistic prospect test in their deliberations. The auditors noted greater consistency of the setting out of the decisions, and the use of consistent language in the reasons for decisions, which were included in the panel training. In all cases, the panels considered facts, then went on to give their reasons for their decisions on grounds and on impairment (where these were the decisions that they reached).

3.14. The auditors noted that in 424 cases (80% of the decisions that were reviewed), that the decisions were well reasoned as set out in our panel guidance. Again, there were similar variances in the proportion that were considered well-reasoned across the audit period. At the start of the audit period, this figure was 84%, and at the end was 69%.

3.15. There are a range of factors that may affect this. These include the changes in experience in panel members as terms of office end and new panellists are trained and inducted, as well as the greater number of amendments to allegations by the panel. It should be noted that the auditor reviewed the wording of the decision, and was not making judgements on the decisions of the panel.

3.16. The ICP also has a role in deciding if a case may be suitable for mediation. We are currently running a pilot to determine if this option is useful as an alternate method of disposal for cases. During the pilot period, ICPs are asked to consider whether they should offer the registrant and complainant the opportunity to meet with a mediator to discuss and resolve the matter rather than refer the matter for a final hearing. We have provided training and guidance to panels on the criteria for suitability, and are

evaluating the cases. The pilot will continue to run throughout 2015. To date, we have had one case that has been to mediation, and one that is awaiting mediation.

4. Other Considerations

- 4.1. Since 1 September 2010, panels have had the option of including learning points in their decisions. This is applicable where it is decided that there is a realistic prospect that HCPC will be able to prove the facts and the ground of allegation, but not that fitness to practise is impaired.
- 4.2. There were 39 cases in which the panel included learning points in its decision. This amounts to 7% of the 530 cases where a case to answer decision was made. The proportion of learning points has varied over the last three years, from 17% in 2011-2012, to 0.05% in the audit in 2012-2013, to 7% in the latest period. As the learning points are related directly to the cases, it is not possible to determine an expected rate at which learning points are made. We will continue to monitor this rate in future audits, but it is consistent with the emphasis in panel training, and the effectiveness of the ICP Co-ordinator role across the audit period. The individual learning points are reviewed and where appropriate used in the training sessions.
- 4.3. Some of the areas referred to in the learning points included in those decisions were similar to previous years and include:
 - Use of appropriate language
 - Maintaining high standards of personal conduct at all times
 - The need to maintain professional standards
 - Refreshing knowledge of child safeguarding policies
 - Refreshing knowledge of when to notify parents of their right to seek legal advice
 - Ensuring patient confidentiality
 - The need to maintain accurate records
 - The need to be open and honest with employers
 - Appropriate communication with patients

5. Policy issues

- 5.1 The analysis of these cases shows that there continue to be a range of allegations relating to:
 - expert witness matters
 - safeguarding;

- informed consent
- use of social media
- professional boundaries
- multi-agency failures
- communication
- information security
- Health

5.2 Some of the above issues (for example, expert witness matters, safeguarding and professional boundaries) continue to be a direct result of the types of cases that we are dealing, in particular Social Worker and Psychologist cases. These issues have been considered in the updating of our Standard of Acceptance Policy.

5.3 In the audit period, 12 complaints (2% of the sample) were made after the ICP decision. The auditors noted that the complaints were mostly in relation to whether the decision was case to answer or not, and that those relating to case to answer came from Registrants, and those relating to no case to answer came from the complainant. We will continue to review this rate in future audits.

6 Areas of on-going work arising from the audit

6.1 In 2014, we conducted a review of the operational processes that support the ICP decision making. A number of activities have started and are ongoing. These are summarised below.

6.2 Further refresher training will be provided to Case Managers in areas including:

- revisions to HCPC documentation to support assessment of whether information meets our Standard of Acceptance, better drafting of allegations for consideration by the ICP, case planning and risk assessment;
- review and continuation of focussed workshops for existing team members to consider approaches to information assessment, allegation drafting and case progression. Induction programmes for new HCPC team members to have a revised section on ICP preparation;
- review of the themes and trends in data for ICP cases, that can inform our approach to applications for discontinuance of allegations, mediation, consensual disposal, or complaints about ICP decisions;
- the need to request clarification from the complainants on receipt of the registrant's response where appropriate;

- ensuring all relevant information, including patient notes and relevant dates are requested in advance of the Investigating Committee where necessary, and the use of our Article 25 powers to request information;
- the impact of Rule 12 designation prior to presenting the case to the Investigating Committee;
- allegation drafting, continuing to use the input of HCPC Special Counsel to ensure the focus on evidencing the allegations is maintained, and through the existing HCPC legal advice authorisation process.

6.3 Revised training will be provided on an on-going basis to Panel Chairs and Members to ensure continued improvement in areas including:

- the ongoing need to provide reasons for their decision that can be easily understood by all.
- the application of the realistic prospect test.
- the identification and use of suitably anonymised learning points where appropriate in no case to answer decisions.
- amending allegations
- review of Partner training sessions to make explicit the role of the panel in assessing and amending the allegations at ICP, and the role of the ICP Co-ordinator in supporting the production of consistently high quality decisions

6.4 Review of the compliance approach for auditing, and for identifying examples that can be used in future training with both HCPC team members and Partners. This will include a review of the sampling mechanism as part of the wider FTP compliance audit activities for other areas such as closed cases, risk assessment, length of time to completion and general management and operational statistics. ICP activity remains a key closure point, and the proportion of audit resource needs to continue to reflect the outcomes and learning opportunities.

6.5 The policy areas identified will be reviewed in individual cases where identified.

6.6 Continuing implementation of the action plan developed from last Professional Standards Authority initial stages audit. The main actions for HCPC were to review the process for gathering information at these early stages, training team members in critically appraising information, and auditing the outcomes of ICPs to ensure a systematic mechanism for quality improvement

6.7 Our FTP Training Advisor is looking at options for self-directed and distance learning (for both Case Management and Panel Members), and we will consider any resource requirements associated with this in our resource planning discussions later this year. We have introduced, and continue to develop, training evaluation systems for all training delivered.

Audit area	Month of year												Total
	Apr-14	May-14	Jun-14	Jul-14	Aug-14	Sep-14	Oct-14	Nov-14	Dec-14	Jan-15	Feb-15	Mar-15	
Number of ICP decisions reviewed	71	85	66	79	75	25	22	21	0	26	24	36	530
Number of ICPs	71	85	66	79	75	79	54	64	60	80	71	68	849
% of ICP decisions audited	100	100	100	100	100	32	41	33	0	33	34	53	62%
Well reasoned decision?	71	64	57	66	58	16	14	14	0	20	17	25	422
% well reasoned	100	75	86	84	77	64	64	67	0	77	71	69	80%
Learning points issued by Panel	8	5	6	2	6	0	2	1	0	2	6	1	39
% of decisions with Learning Points	11	6	9	3	8	0	9	5	0	8	25	3	86%
Suitable for Mediation	0	2	2	2	0	1	1	0	0	0	0	1	9
% suitable for mediation	0	2	3	3	0	4	5	0	0	0	0	3	2%
Suitable for disposal by consent	4	8	4	3	3	3	2	1	0	2	1	1	32
% suitable for disposal by consent	6	9	6	4	4	12	9	5	0	8	4	3	6%
Suitable for discontinuance	1	4	1	0	5	0	3	1	0	0	1	2	18
% suitable for discontinuance	1	5	2	0	7	0	14	5	0	0	4	6	3%
Complaint received about decision	2	1	2	3	0	0	2	1	0	0	0	1	12
% of decisions with complaint	3	1	3	4	0	0	9	5	0	0	0	3	2%

Appendix 2:
Summary of
audit results
April 2014 to
March 2015