

Council, 24 September 2015

Fitness to Practise Publications Policy

Executive summary and recommendations

Introduction

The Fitness to Practise Publications policy has been revised to enhance the sections on data protection and publication of outcomes of our hearings, as well as including a more detailed section on consent orders.

The policy has been reviewed by HCPC's Special Counsel, who has confirmed that the documents contain the required current legislative background to support these areas of work. The revisions are attached to this paper as an appendix.

Decision

The Council is asked to discuss and approve the revisions to the Fitness to Practise Publications Policy

Background information

None

Resource implications

None

Financial implications

None

Appendices

Fitness to Practise Publications Policy

Date of paper

7 September 2015

Fitness to Practise Publication Policy

Introduction

1. The Health and Care Professions Council (**HCPC**) seeks to regulate in an open, transparent and proportionate manner. The circumstances and outcome of fitness to practise (**FTP**) proceedings are matters of legitimate public interest and we publish most of the FTP decisions that are made about those we regulate.
2. The HCPC has a statutory duty under Article 22 of the Health and Social Work Professions Order 2001 (the **Order**) to publish particulars of certain orders and decisions made by Practice Committee Panels. That Article also gives us the discretion to disclose any information about a person's fitness to practise where we consider disclosure to be in the public interest. The HCPC is also subject to the Data Protection Act 1998 and the Freedom of Information Act 2000 which impose specific duties in respect of information disclosure.
3. The publication of FTP decisions provides valuable information about the standards expected of registrants, assists service users to make informed choices and helps to maintain public confidence in the professions we regulate. It is consistent with our statutory function of setting and maintaining standards for those professions, with the objective of protecting the public. However a balance must be struck. Whilst the publication of FTP decisions will generally be in the public interest, the HCPC must take account of the rights of registrants and others involved in proceedings and the risk of harm that may arise from the disclosure or non-disclosure of information.
4. What we publish must be accurate, relevant and proportionate. Furthermore, the level of detail published and the length of time it remains publicly available must be proportionate, striking a fair balance between the public interest objectives highlighted above and fairness to all participants involved in the process. For that reason, FTP decisions that are published on the HCPC website will normally be removed from the website within the timescales set out below. The published versions of FTP decisions are also likely to be redacted or contain anonymised information. For example, normally, we do not identify witnesses by name in FTP decisions.

Fitness to Practise Allegations

5. If a Panel of the HCPC Investigating Committee determines that there is a 'case to answer'¹ in relation to an allegation, the HCPC will issue a notice of allegation to the registrant concerned.
6. The HCPC does not publish the details of allegations at the 'case to answer' stage but, in order to give public notice of forthcoming hearings, allegations will be published on the HCPC website 28 days before the date on which the hearing is due to take place. The website listing will include details of the date, time and venue of the hearing.
7. Sometimes it may be necessary for an allegation to be amended after it has been referred for hearing. Any amendment would need to be approved by the Practice Committee hearing the case and, if that approval is not given until the day of the hearing, the allegation published on the HCPC website will be the original, rather than the amended, allegation.
8. In order to ensure that an allegation is sufficiently specific, it is often necessary to include information about the registrant's interaction with service users. In such cases, the published allegation will be anonymised so that the identity of service users is not disclosed. Allegations may also be redacted to remove the identity of complainants, colleagues or other parties involved in the case.

Final hearings

9. In cases where a registrant's fitness to practise is found to be impaired at a final hearing, the outcome will be published on the HCPC website at the conclusion of the hearing. The Panel's decision and the sanction it imposed will be published on the HCPC website. That decision will provide details of the background to the case, the evidence that was heard, the order which the panel imposed and the reasons for the Panel's decision.
10. If a Panel decides that an allegation is not well founded, the outcome will not be published on the HCPC website unless the registrant concerned requests that the information is published. In the absence of such a request, the information about the hearing will be removed from the HCPC website at the conclusion of that hearing.
11. In cases where the Panel imposes a caution, the published decision will remain on the hearings page of the HCPC website for one year from the date that the order takes effect, regardless of the length of the caution period. However, if the caution is for more than one year, details of the caution will remain accessible through the advanced search function on the HCPC website for the duration of the sanction. A caution will appear as an annotation to a registrant's online register entry for so long as the caution order has effect and the annotation will include a link to the Panel's decision and order. The

¹ for more information please see the HCPC Practice Note Case to Answer Determinations

annotation and associated link will be removed from the online register when the caution order expires.

12. In cases where a conditions of practice order or suspension order are imposed, the published decision will remain on the hearings page of the HCPC website for so long as the order has effect. Where such an order is reviewed and extended (or varied or replaced with another conditions of practice order or suspension order) the original decision and any subsequent review decisions will be published on the HCPC website for so long as an order remains in effect.
13. Conditions of practice orders and suspension orders will appear as an annotation to a registrant's online register entry for so long as an order has effect and the annotation will include a link to the Panel's decision and order. Information about the original decision and order and any review decisions will be removed from the HCPC website, and the annotation and associated link will be removed from the online register, when the sanction is revoked.
14. In cases where a striking off order is imposed, the published decision will remain on the HCPC website for a period of five years from the date that the order takes effect. This includes striking off orders that are imposed at a review hearing to replace a conditions of practice order or suspension order. The name of a person who has been struck off will not appear in the online register.

Restoration

15. A person who has been struck off the HCPC register may, after five years have elapsed, apply for 'restoration' in accordance with Article 33 of the Order. Details of restoration hearings (including the date, time and venue) will be published on the HCPC website 28 days before the date on which the hearing is due to take place.
16. All decisions and orders made by Panels under Article 33 will be published on the HCPC website at the conclusion of the hearing and, except where the Panel has made a direction under Article 33(9) of the Order (indefinite suspension of a person's right to make further applications) they will remain on the website for a period of five years. In cases where an Article 33(9) direction has been made, the decision will remain on the HCPC website for so long as such a direction (including any continuation of that direction following a review under Article 33(10) of the Order) has effect.
17. In cases where restoration is granted subject to the imposition of a conditions of practice order under Article 33(7)(b) of the Order, that conditions of practice order will be subject to the same publication requirements (as set out above) that apply when such an order is imposed at a final FTP hearing.

Interim Orders

18. Under Article 31 of the Order an interim conditions of practice order or interim suspension order may be imposed upon a registrant whilst FTP proceedings are pending. A Panel may do so where it is satisfied that, based upon the nature and severity of the allegation, the registrant may pose a risk to the public or to himself or herself if permitted to remain in unrestricted practice or that, for wider public interest reasons, the registrant's freedom to practise should be restricted.
19. Interim order hearings are usually held in public and the HCPC will publish the time, date and venue of the hearing on its website. Interim order applications (and review applications) are often heard at short notice and details of the hearing will be published as soon as a hearing is arranged. Details of hearings for the periodic review of interim orders will normally be published on the HCPC website 28 days before the date on which the hearing is due to take place.
20. If an interim order is made (or an order remains in place following a review hearing) the HCPC will publish on its website the outcome of the hearing and the terms of any order made by the Panel.
21. Information about an interim order will only be published on the HCPC website for as long as the order has effect and, in any event, will be removed from the HCPC website when the case in respect of the allegation to which it relates has been concluded.

Consent Orders

22. The HCPC's consent process is a means by which the HCPC and the Registrant concerned may seek to conclude a case without the need for a contested hearing. In such cases, the HCPC and the registrant consent to conclude the case by agreeing an order of the nature of kind which the Panel would have been likely to make had the matter proceeded to a fully contested hearing. For more information about consent orders see the HCPC Practice Note; 'Consent Orders'.
23. Cases can only be disposed of in this manner with the authorisation agreement of a Practice Committee Panel, of a practice committee and such authorisation which will be sought at a hearing. Consent order hearings are usually normally held in public and the HCPC will publish the time, date and venue of a consent hearing on its website in line with all other HCPC final hearings the usual manner. The website entry will also include the full allegations referred to a final hearing by the Investigating Committee to which the consent order relates.
- 22-24. If a consent order is authorised accepted by the Panel it shall produce its written decision should explaining why the case was considered to be suitable for disposal in this manner. The decision will not contain the same level of detail as a decision produced at a contested hearing as the Panel will not have heard live evidence or conducted a substantive enquiry into the allegations, the decision does not need to contain the same level of detail as a

decision produced at a contested hearing. However, ~~It will be a stand-alone decision which will~~ it does need to provide sufficient details of the background detail to enable readers to understand what the registrant was accused of and why the Panel considered that the outcome to which the registrant consented was appropriate to the case. The Panel's decision will be published on the HCPC website at the conclusion of the hearing and will be subject to the same publication requirements (as set out above) that apply when such an order is imposed at a contested FTP hearing

Public and private hearings

23-25. Most FTP proceedings are conducted in public. This is consistent with the principle of 'open justice' and with Article 6(1) of the European Convention on Human Rights (**ECHR**), which restrict the circumstances in which hearings may be held in private. Based upon Article 6(1) ECHR, the procedural rules for HCPC Practice Committee Panels provide that:

24-26. *"At any hearing... the proceedings shall be held in public unless the Committee is satisfied that, in the interests of justice or for the protection of the private life of the registrant, the complainant, any person giving evidence or of any patient or client, the public should be excluded from all or part of the hearing;..."*

25-27. Although the rules provide Panels with a discretion to hear part or all of a case in private,² Article 6(1) ECHR requires all decisions "to be pronounced publicly". Consequently, at the conclusion of a case that has been heard wholly or partly in private, the Panel will need to consider what, if any, 'public pronouncement' it will make. Clearly, this will also have an impact upon what information the HCPC publishes about that case.

26-28. The ECHR case law make clear that the 'public pronouncement' obligation should not be interpreted literally, as doing so may frustrate the purpose of hearing that case in private and undermine the primary aim of Article 6(1), which is to secure a fair hearing.

27-29. Where a Panel has proper grounds for hearing a case in private, it is not obliged to pronounce its full decision in public, but must consider the extent to which the evidence it has heard, its decision and the reasons for that decision can and should be made public. In doing so the Panel should take account of:

- the nature of the case and reasons why it was heard in private;
- the 'fair administration of justice' objective of Article 6(1); and
- the HCPC's objective under Article 3(4) the Order to protect the public.

² for more information please see the HCPC Practice Note Conducting Hearings in Private

~~28.~~30. If proceedings were held in private in order to protect the identity of, or sensitive information relating to, particular individuals then it may be that the Panel's decision can be delivered and published subject to appropriate redaction or in an anonymised form.

~~29.~~31. In cases where delivery or publication of a redacted or anonymised decision may frustrate the purpose of hearing the case in private the panel is expected to deliver a brief decision:

- stating whether or not any allegation was well founded and the sanction (if any) it has imposed (and directing the Registrar to amend the HCPC register accordingly); and
- recording that the Panel's decision has been provided to the Registrar who has the discretion to make it available (in an appropriately anonymised or redacted form) to any person who has good grounds for seeking the information.

Press Releases

~~32.~~ The HCPC's Media & PR team ~~produces~~ normally issues a press releases ~~for~~ when a registrant is ~~Suspensions and Striking Off orders~~ suspended or struck off, as part of its obligation under Article 22 of the Order to publish orders and decisions made by Practice Committee Panels. ~~in accordance with the responsibility which is laid out in Article 3 (13) of the Health and Social Work Professions Order 2001 to inform and educate registrants, and to inform the public, about the HCPC's work.~~ Press releases contain information which has been set out in the notice of decision and order document and include a link to that document which is listed on the HCPC website. Press releases are sent out to relevant media and will appear on the HCPC website. The ~~relevant section of the HCPC website where the press releases appear~~ is regularly reviewed and press releases are removed ~~from the website~~ in line with the requirements for each sanction as set out above. ~~There are times when there is separate reporting on hearings which the HCPC has no responsibility for and this is when~~ If journalists attend hearings which are held in public, they may publish reports about hearings over which the HCPC has no control.

Deciding not to publish

~~30.~~33. The obligation imposed upon the HCPC by Article 22 of the Order is to publish "particulars" of orders and decisions made by Practice Committee Panels. This provides the HCPC with the discretion to decide exactly what is published and it is a discretion which the HCPC will consider exercising if, in all the circumstances, the impact of publishing certain information would be disproportionate. This may arise where, for example, publication would:

- disclose confidential information about a person's health;
- disclose legally privileged or confidential information;

- create a significant risk of breaching the Article 8 ECHR right to privacy and family life;
- prejudice another investigation or other legal proceedings; disclose information which may hinder the performance of the HCPC's functions.
- Disclose information which may hinder the performance of the HCPC's function

Internet search engines

~~31.34.~~ Publications are removed from the HCPC website in accordance with this policy. However, many internet search engines, such as Google, manage information by 'caching', which involves storing a snapshot of a webpage in a database and then refreshing that snapshot periodically. In consequence, historical HCPC webpages may remain available on internet search engines (which are not with the HCPC's control) after they have been removed from the HCPC website.

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