

Agenda Item 9

Enclosure 7

**Health and Care Professions Council
22 September 2016**

**Proposed changes to the registration appeals
process**

For discussion and approval

**From Claire Harkin, Registrations Operations
Manager**

Council, 22 September 2016

Practice Statement: Registration Appeals

Executive summary and recommendations

Introduction

This is a new Practice Statement designed to provide guidance on the management of Registration Appeals.

Article 37 of the Health and Social Work Professions Order 2001 (the Order) allows applicants or registrants who are aggrieved by certain registration-related decisions of the Education and Training Committee (ETC) to appeal against those decisions to the Council.

Article 37(5)(a) of the Order enables the Council to arrange for a panel to determine Registration Appeals on the Council's behalf. The Council has exercised that power and all Registration Appeals are determined on its behalf by its Registration Appeal Panel (the Appeal Panel).

The procedure for Registration Appeals is set out in statutory rules made by the Council, the Health and Care Professions Council (Registration Appeals) Rules 2003 (the appeal rules). This Practice Statement should be read in conjunction with the appeal rules.

Decision

The Council is requested to review, discuss and approve the attached Practice Statement, including the consent order.

Background information

At its meeting in May 2015 the Council noted that the Executive intended to transfer the day-to-day management of Registration Appeals from the Fitness to Practise Department to the Registration Department.

The newly formed Registration Appeals team became operational on 11 January 2016.

As part of ongoing review of the Registration Appeals process, it was felt that a specific Practice Statement providing guidance on the Registration Appeals process was required. This guidance captures the existing Registration Appeals process and also elaborates on the Appeal Panel's full case management powers to ensure that Registration Appeals are dealt with in a fair, just, proportionate and expeditious manner.

One addition to the Registration Appeals process which is included within the Practice Statement includes the allowance for a consent process in which the Appeal Panel is invited to allow the appeal with the consent of the appellant and the Education and Training Committee (ETC) (the respondent). It is anticipated that this scenario would apply in cases for example where the ETC becomes aware that the additional information provided by the appellant as part of their appeal, suggests that the appeal should be allowed.

It is proposed that the Appeal Panel (consisting of Chair, lay member and registrant member) will be electronically sent the appeal bundle for review, as well as the ETC's reasons for why it does not contest the appeal and the appellant's consent to dispose of the appeal in this manner (i.e. without a fully contested hearing). If the Appeal Panel agree to allow the appeal, they will sign the consent order making note of the reasons why the ETC decision has changed.

This change to the process is suggested in order to improve the transparency of the process ensuring all Registration Appeals are put before an Appeal Panel. This change will also improve the timeliness of decision making as matters can be sent to Appeal Panel's electronically without the delays associated with scheduling a hearing.

Resource Implications

None

Financial implications

By implementing the consent process the HCPC will avoid costs associated with a hearing and cost savings will be made. This includes costs associated with:

- Partner expenses including travel, accommodation and incidentals;
- Transcriber fees;
- Legal assessor fees;
- Instructing solicitor fees;
- Venue hire fees.

Appendices

Appendix 1 Practice Statement: Registration Appeals

Appendix 2 Registration Appeal Panel Consent Order

Date of Paper

7 September 2016

Practice Statement

Registration Appeals

Introduction

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Article 37(5)(a) of the Order enables the Council to arrange for a panel to determine registration appeals on the Council's behalf. The Council has exercised that power and all registration appeals are determined on its behalf by its Registration Appeal Panel (the Appeal Panel).

The procedure for registration appeals is set out in statutory rules made by the Council, the Health and Care Professions Council (Registration Appeals) Rules 2003 (the appeal rules). This Practice Statement should be read in conjunction with the appeal rules, a consolidated version of which can be found on the HCPC website.

Registration Appeal Panel

The appeal rules¹ require a Registration Appeal Panel to comprise:

- the Panel Chair, who must be a Council Member;
- a registrant panellist from the relevant profession;
- a lay panellist; and
- a registered medical practitioner (if the appellant's health is in issue).

Only those Council members who are not members of the ETC are eligible to be appointed as Panel Chairs.

The panellists (both registrant and lay) are drawn from among the panellists who hear fitness to practise cases. On the rare occasion that a registered medical practitioner needs to be appointed to a Panel, he or she must be selected with due regard to the health issues to be considered by the Panel.

¹ Rules 9(3) and (4).

Appealable decisions

Article 37(1) of the Order sets out the ETC decisions which may be appealed. It provides that a person may appeal against a decision by the ETC to:

- refuse admission or re-admission to the register;
- refuse renewal of registration;
- refuse to add an additional register entry (e.g. a prescribing annotation);
- refuse registration as a visiting health or social work professional under Article 13A of the Order;
- impose additional conditions which must be satisfied before admission, re-admission or renewal of registration;
- remove the person from the register for failing to comply with:
 - continuing professional development (CPD) requirements;
 - applicable education, training or experience requirements under Article 19(3) of the Order;
 - the requirement to have appropriate cover under an indemnity arrangement.²

An appeal may also be made if the ETC fails to issue a decision under the European Union (Recognition of Professional Qualifications) Regulations 2015 within the time limit specified in those regulations.

Time limit

The appeal rules³ provide that an appeal must be made within 28 days of the date on which the relevant decision which is being appealed was made.⁴

That time limit must be strictly applied by the Appeal Panel. The relevant case law, notably *R (Adesina) v Nursing and Midwifery Council*⁵, makes clear that a statutory time limit may be extended to secure compliance with the European Convention on Human Rights, but that it is a discretion which must be exercised sparingly and only in the most exceptional circumstances, where an appellant has personally done all that he or she could to bring an appeal within the time limit.

² this requirement does not apply to social workers.

³ Rule 4.

⁴ in the case of an appeal against failure to make a decision, the appeal must be made within 28 days of the date on which the decision should have been made.

⁵ [2013] EWCA Civ 818.

Notice of appeal

The appeal rules⁶ require an appeal to be made by the submission of a written notice to the HCPC Registrar and specify the minimum requirements which a notice must meet in order to be valid.

That notice must state that it is a notice of appeal, be signed by or on behalf of the appellant and include:

- the appellant's name, address and (where applicable) registration number;
- the date, nature and other relevant details of the decision being appealed;
- a concise statement of the grounds of the appeal, and
- the name and address of the appellant's representative (if any) and a statement as to whether the Council should correspond with the representative rather than the appellant.

A notice of appeal must be accompanied by a copy of any documents which the appellant proposes to rely upon for the purposes of the appeal.

Determining appeals

The appeal rules⁷ allow appeals to be determined by means of:

- an oral hearing; or
- consideration of the 'documents alone' without a hearing.

The choice is initially a matter for the appellant, so the Appeal Panel must arrange an oral hearing where one is requested by an appellant.

If an appellant asks for an appeal to be considered on the basis of 'documents alone', the Appeal Panel may still hold an oral hearing if it considers that to be desirable, but it cannot compel the appellant to attend that hearing. Where the Appeal Panel takes that step, for example, because it considers that an appeal raises issues which it would be better to pursue with the appellant in person, the Panel should ensure that the appellant is made aware of the reasons for its decision.

Where an appeal is to be considered on documents alone, the appellant should be notified of the date on which the appeal will be considered and given the opportunity to submit additional written representations up to seven days before that date.

⁶ Rule 5(1).

⁷ Rule 11.

Oral hearings must take place in the UK country where the appellant resides, except for appeals relating to the Social Workers in England part of the register, which must be heard in England. Appeals from outside of the UK must also be heard in England.⁸

Case management

The Appeal Panel should make full use of its case management powers to ensure that registration appeals are dealt with in a fair, just, proportionate and expeditious manner.

In particular, the Panel has the power⁹ to:

- hold a preliminary hearing with the parties, their representatives and others to assist the Panel to perform its functions (which may be helpful in complex cases); or
- give directions as to the conduct of an appeal, which may include setting out the consequences of failing to comply with those directions.

As it is the appellant who initiates an appeal and has the burden of proof, the Appeal Panel should address unreasonable delay by an appellant fairly but firmly. In such a case the Appeal Panel should consider issuing directions for the future conduct of the appeal and which provide for it to be struck out if there is any further and unreasonable delay by the appellant.

As part of the case management process, the ETC as respondent will be given notice of every appeal at an early stage.

The Council expects the ETC (and those acting on its behalf) to engage with the appeal process in a constructive manner. In particular, the Council does not expect the ETC to contest appeals where it has no realistic prospect of success.

If, in preparing for an appeal, the ETC becomes aware that its original decision was made in error or the new information submitted by the appellant means that the appeal should be allowed, the Council expects the ETC to consider whether it should make the Appeal Panel and the appellant aware of that fact and seek to conclude the appeal without a contested hearing.¹⁰

Hearing procedure

At the beginning of an oral hearing, rule 14(2) of the appeal rules requires the Panel Chair to explain to the parties the order of proceedings which the Appeal Panel proposes to adopt.

⁸ Articles 37(8) and (8A) of the Order.

⁹ Article 437(6) of the Order and Rule 10.

¹⁰ for example, by inviting the Appeal Panel to allow the appeal with the consent of the parties.

In many quasi-judicial proceedings, the party with the burden of proof (here, the appellant) opens the proceedings; an arrangement which is reflected in rule 14(3) of those rules and to which the Panel must have regard.

However, an Appeal Panel is not bound to adopt the order of proceeding set out in rule 14(3), as that rule makes clear that the Panel should proceed in the manner it considers to be “most suitable to the clarification of the issues before it and generally to the just handling of the proceedings”.

Experience has shown that in many cases, particularly where the appellant is unrepresented, permitting the ETC’s representative to open the proceedings by setting out the history of the case often helps to clarify the issues before the Panel. Consequently, the Appeal Panel is encouraged to adopt that practice in appropriate cases.

Decisions

Article 37(9) of the Order provides that, having considered an appeal, the Appeal Panel may:

- dismiss the appeal;
- allow the appeal and quash the original decision;
- substitute for the original decision any other decision that the ETC could have made; or
- remit the case to the ETC to be disposal in accordance with the Appeal Panel’s directions.

Where the Appeal Panel decides to remit a case to the ETC, it should make full use of the power of direction to avoid the need for the case to be referred back to the Panel unnecessarily. So, for example, where the Panel directs the ETC to re-assess a registration application, where appropriate, it should also direct that the appellant is to be admitted to the register if the outcome of the re-assessment is that the appellant is eligible for admission.

Advice from the Legal Assessor

A Legal Assessor must be present at any hearing conducted by the Appeal Panel¹¹ and Article 34(3) of the Order allows Legal Assessors to assist the Appeal Panel in drafting its decisions. Panels should make full use of the Legal Assessor’s expertise in that regard.

The Legal Assessor’s role is to assist the Panel in drafting, not making, its decision. The Appeal Panel should ensure that no confusion arises on the part of the appellant about the Legal Assessor’s role in the decision-making process, by retiring alone and reaching a decision before asking the Legal Assessor to join them to assist in the final drafting.

[Date]

¹¹ Rule 3, Health and Care Professions Council (Functions of Assessors) Rules 2003.

Appendix 2

REGISTRATION APPEAL PANEL

CONSENT ORDER

TAKE NOTICE THAT:

1. An appeal was made on [date] by [name] (the Appellant) against the decision of the Education and Training Committee (the Respondent) of [date] to [set out appealable decision].
2. The Respondent does not intend to contest the appeal for the following reasons:
 - (1) [Explain why ETC decision has changed]
 - (2)
3. The parties consent to the Registration Appeal Panel making the Order set out below.

AND FURTHER TAKE NOTICE that, upon due inquiry being satisfied that it is appropriate to do so, the Registration Appeal Panel now orders that the Appellant's appeal is allowed and the decision appealed against is quashed.

Signed: _____ Panel Chair

Date: _____