

Fitness to Practise Forum, 23 April 2008

CHRE guidance on clear sexual boundaries

Executive summary and recommendations

Introduction

In January 2008 CHRE produced a suite of documents about sexual boundaries between health professionals and service users. The paper provides the background to the work undertaken by the CHRE project group, a summary of the documents, an explanation on how they differ and relate to our existing rules and guidance, and how we are proposing to implement the recommendations from the documents relevant to HPC.

Decision

The document is to note. No decision is required.

Background information

All of the documents are available from the CHRE website.
<http://www.chre.org.uk/publications/>

Resource implications

None

Financial implications

None

Appendices

None

Date of paper

11 April 2008

CHRE guidance on clear sexual boundaries

Background

In 2004, a Committee of Inquiry published the findings of the 'Independent investigation into how the NHS handled allegations about the conduct of Clifford Ayling'. Ayling had been convicted of indecent assault against a number of female patients. In 2005, the Government published the findings from the Kerr/Haslam Inquiry, which involved two psychiatrists convicted of indecent assault against vulnerable female psychiatric patients.

Against the backdrop of the Inquiries' findings, and in light of evidence of boundary abuses by a variety of healthcare professionals, CHRE commissioned research from WITNESS (published in January 2005) looking at the guidance provided by regulators to their registrants on boundary maintenance. The report identified a number of recommendations, much of which went beyond regulation. One recommendation suggested that information be provided for employers and service users, another suggested that guidance and training should be produced for regulators' fitness to practise panels on the impact of boundary violations. As a result of this initial research, CHRE took forward a wide-ranging piece of work with Department of Health sponsorship.

CHRE's 'clear boundaries' project categorised boundary issues into two groups. The first category is sexualised behaviour; ranging from inappropriate comments through to sexual assault and rape. The other main category relates to physical and/or mental abuse; ranging from coercive persuasion to accept a particular treatment through to violent attack occasioning bodily harm. CHRE set about drafting professional guidance and education materials on boundary maintenance, and they also highlighted the need for a change of culture and ethos within healthcare delivery, informed by guidance for employers on preventing, detecting and dealing with boundary violations.

The purpose of the CHRE project was to protect the public and improve public reassurance by introducing measures to minimise inappropriate behaviour on the part of professionals and employees, and to improve management processes to detect and deal with abuse. The remit of the project was to provide guidance on clear sexual boundaries for the NHS; other employers; professional bodies; service users; education and training providers; and regulators.

For the regulators, CHRE feel that the guidance should be adopted by all regulatory bodies; to enhance sensitivity and expertise in dealing with complaints and fitness to practise cases for alleged boundary violations; be used in training fitness to practise panel members on the impact of boundary violations; and taken up in the education and training materials either of pre-registration education and training, or post-registration CPD.

Date	Ver.	Dept/Cmte	Doc Type	Title	Status	Int. Aud.
2008-04-04	a	POL	PPR	CHRE sexual boundaries to note	Draft	Public
					DD: None	RD: None

Summary

In January 2008 CHRE produced five documents, three of which apply to us. They are:

1. Clear sexual boundaries between healthcare professionals and patients: responsibilities of healthcare professionals.
2. Clear sexual boundaries between healthcare professionals and patients: a report on education and training.
3. Clear sexual boundaries between healthcare professionals and patients: guidance for fitness to practise panels.

The first document is aimed at health professionals. It provides guidance on establishing and maintaining clear sexual boundaries as well as guidance for reporting breaches of sexual boundaries.

The second document is aimed at those involved in the training and development of health professionals. It provides guidance on how, when and where sexual boundary issues may be taught in both pre and post registration education and training. The recommendations to the regulators in this document are that we should work with the professional bodies and CHRE to encourage the inclusion of training on sexual boundaries within training and our codes of conduct.

The third document is guidance to be used to supplement and support existing documents used for training fitness to practise panel members. It provides factors that should be considered and training exercises.

Our existing rules and guidance

Currently, our standards of education and training, standards of conduct performance and ethics, and standards of proficiency, are purposely put together in broad, enabling terms describing the outcomes of safe and effective practice, and of education and training which delivers health professionals who are fit to practise. The standards do not list specific behaviour which would not meet our standards or give detailed guidance around avoiding these types of behaviour (for example, theft, sexual boundary violations, abuse of power, misuse of drugs). Instead, the standards focus on high standards of behaviour, on good conduct, and on over-arching ethical principles such as acting in the best interests of service users.

Currently, our standards of education and training require that those who complete an approved programme should meet our Standards of Proficiency. In addition, SET 5.7.3 requires students and practice placement educators to be prepared for placement, including 'expectations of professional conduct', and SET 6.6 requires that 'Professional aspects of practice must be integral to the assessment procedures...' During its review of the standards, the PLG leading the review has recommended that the standards of conduct, performance and ethics should be referenced more specifically in the SETs, and that teaching of these standards should be required for programme approval.

The rules and guidance for fitness to practise do make reference to sexual boundaries with regards to vulnerable witnesses. The rules regarding vulnerable witnesses are set out in 8A of The Health Professions Council (Investigating Committee) (Procedure) Rules 2003, and 10A of The HPC (Conduct and Competence Committee) (Procedure) Rules 2003:

8A and 10A (1e) *In proceedings before the Committee, the following may, if the quality of their evidence is likely to be adversely affected as a result, be treated as a vulnerable witness any witness, where the allegation against the practitioner is of a sexual nature and the witness was the alleged victim.*

(2) *Subject to any representations from the parties and the advice of the Legal Assessor, the Committee may adopt such measures as it considers desirable to enable it to receive evidence from a vulnerable witness.*

(3) *Measures adopted by the Committee may include, but shall not be limited to*

(a) *use of video links;*

(b) *use of pre-recorded evidence as the evidence-in-chief of a witness, provided that the witness is available at the hearing for cross-examination and questioning by the Committee;*

(c) *use of interpreters (including signers and translators) or intermediaries;*

(d) *use of screens or such other measures as the Committee consider necessary in the circumstances, in order to prevent—*

(i) the identity of the witness being revealed to the press or the general public; or

(ii) access to the witness by the health professional; and

(e) *the hearing of evidence by the Committee in private.*

(4a) *Where the allegation against a health professional is based on facts which are sexual in nature the health professional shall only be allowed to cross-examine the witness in person with the written consent of the witness.*

With these rules in mind, fitness to practise panels are able to use the practice notes to make sure that the proceedings are conducted in a way that supports the witness and facilitates their providing accurate evidence..

Implementing CHRE recommendations

In our response it is important to note that sexual boundaries are an emotive subject which can be magnified under public scrutiny. Information gained from fitness to practise hearings, and published in the fitness to practise annual report, shows that other issues relating to behaviour and conduct appear to be more prevalent in both allegations and findings.

Regarding the recommendation that boundaries information should be included in the curriculum of approved programmes, this is an area which the professional bodies may be interested in taking forward as part of their role in writing curriculum frameworks. Our standards of education and training are broad, outcome based standards linked to the standards of proficiency, which do not require a particular curriculum to be followed in order to gain approval. In particular, it could be difficult for us to require that a particular area like boundary issues formed part of the curriculum for professions where there may be limited contact with services users, for example biomedical science.

However, as part of the guidance on the SETs, we publish a list of reference documents which education providers may refer to in order to gain more information. We will add the CHRE guidance to this reference list in order to help to make education providers aware of this work.

Overall, we propose using the appropriate guidance in the following ways:

- To inform Partner induction and review training. The documents will be used to help make sure that panel members are aware of the issues surrounding sexual boundaries.
- To help raise awareness of the guidance amongst education providers by adding the document to our list of reference documents in the SETs guidance.
- To inform future reviews of the standards of conduct, performance and ethics. (The next review is planned in 2011, in line with the standards workplan.)
- To help raise awareness of the guidance for registrants by adding this to a list of references for registrants that is currently being assembled for the HPC website.

We also feel that in light of the lack of significant data available on boundary violations in the UK, we may need to review how we capture and retain fitness to practise data in the future, to enable us to categorise cases and then interrogate the information to provide reports and analysis. This is part of the ongoing work that fitness to practise is doing in interpreting trends that arise from the data the department collects. It should be noted that this would be a large and possibly costly exercise, because of the impact on the IT systems, available staff, and business requirements. All aspects of this would have to be considered in a future fitness to practise department workplan.