

Fitness to Practise Forum 17 September 2008

Frivolous, Vexatious and Abusive Complaints Policy

Executive summary and recommendations

Introduction

As part of the ongoing review of fitness to practise department processes, it was noted that there is no formalised policy on the handling and management of frivolous, vexatious and abusive complaints.

It is anticipated that as the number of complaints and allegations that the HPC receives increases, the frequency of complaints that may fall in the category of frivolous, vexatious or abusive will also increase. The Executive therefore consider that it is necessary for a formalised policy to be considered by the forum.

The Executive also propose to produce fitness to practise operating guidance and check lists to go alongside other operating guidance which is designed to aid the fitness to practise department in their work. This will also ensure consistency in the application of the policy.

Decision

The forum is asked to discuss the policy and recommend it for approval to the Health, Investigating and Conduct and Competence Committee.

If the forum does recommend the policy, it is also asked to recommend that the Health, Investigating and Conduct and Competence Committees pass the following resolution providing the Director of Fitness to Practise with delegated authority to manage or close cases that are frivolous or vexatious:

“That the Director of Fitness to Practise be authorised to exercise the power of the Committee to take no further action in respect of any complaint which, in the reasonable opinion of the Director, is frivolous or vexatious. The exercise of this power shall be subject to any policy which has been approved by the Committee on the management of such complaints. In the Director’s absence, this power may be exercised by a person nominated by the Director.”

Background information

Date	Ver.	Dept/Cmte	Doc Type	Title	Status	Int. Aud.
2008-08-18	a	F2P	AGD	Front Sheet -PN Vexatious Complaints	Final DD: None	Public RD: None

Case managers and case officers in the fitness to practise department are due to receive training on the handling of vexatious and frivolous complaints on 22 October 2008. This is subject to forum and committee approval of the policy.

The executive has also produced service level standards which set what people who come into contact with the fitness to practise department should expect by way of service, and what is expected of them. The service level standards are on the forum agenda to note.

Resource implications

None

Financial implications

None

Appendices

Abusive, Frivolous and Vexatious Complaints Policy

Date of paper

29 August 2008

Frivolous, Vexatious and Abusive Complaints Policy

Introduction

The investigation of complaints against registered health professionals is an important part of the work of the Health Professions Council. As HPC's primary objective is to protect the public, it is vital that all complaints are properly considered on their merits, regardless of their nature or source.

In making complaints to HPC, most people act entirely reasonably. Occasionally, complainants may act inappropriately towards Fitness to Practise Department (FTP) employees and this can arise from a variety of causes, including:

- acting out of character at a time of stress, anxiety, or distress;
- a medical condition or mental illness which makes effective communication difficult without giving the appearance of being aggressive;
- the use of prescription or other drugs which cause similar effects;
- a learning difficulty which hinders positive formal social communication.

FTP employees are trained to make reasonable allowances for a complainant's¹ behaviour and to understand that it does not, of itself, mean that a complaint is unjustified. However, a small minority of people make complaints that are vexatious, in that they persist unreasonably with complaints, make complaints other than genuinely to resolve a concern or act in a manner which, even after making allowances for the cause of their behaviour, is inappropriate and unacceptable.

Vexatious complaints are not only distressing for the FTP employee who must deal with them, but are time consuming and unnecessarily divert valuable HPC resources from their true purpose; public protection. Therefore, it is important that such complaints are properly identified and managed.

Frivolous or Vexatious complaints

In identifying frivolous or vexatious complaints, HPC caseworkers must be careful to distinguish between complainants who are raising genuine concerns and people who are simply being difficult. This can be achieved by recognising that:

¹ Complainant for these purposes means both those who are making a complaint about a health professional and complainants in the wider sense, including those who may be subject to a complaint and are abusive, frivolous or vexatious.

- complainants may often be aggrieved, frustrated or have other reasons for their behaviour and, therefore, that the focus must be on careful consideration of the merits of the case rather than the attitude of the complainant; and
- every complaint must be considered on its merits and, even if someone has made a vexatious complaint in the past, it must not be assumed that any other complaint they make will also be vexatious.

The need to consider every complaint on its merits cannot be over-emphasised. However, a complaint may be regarded as vexatious where the complainant:

- persists in pursuing a complaint which has already been investigated by HPC and provides no new and material information;
- seeks to prolong contact by continually changing the substance of a complaint or by continually raising further concerns or questions whilst the complaint is being addressed;
- fails to clearly identify the substance of a complaint or the precise issues which may need to be investigated, despite reasonable efforts by HPC to assist the complainant to do so;
- complains solely about trivial matters to an extent which is out of proportion to their significance;
- makes excessive contact with HPC or seeks to impose unreasonable demands or expectations on resources, such as responses being provided more urgently than is reasonable or necessary.

Handling vexatious complaints

The management of vexatious complaints can be very time consuming but, to a large extent, must be a matter of professional judgement for the caseworker concerned, taking advice from their Lead Case Manager or the Head of Case Management as appropriate. HPC is not obliged to meet a complainant's unreasonable demands, for example, by answering every single point in an unreasonable letter. However, in some cases it may be worth devoting time to trying to resolve the matter at an early stage rather than seeking to draw the matter to a close and then having to spend even more time enforcing that decision.

The most difficult vexatious complaints to deal with are those where the complaint is slightly different from the original complaint, but about the same broad area of activity. A careful decision will have to be made as to whether or not the matters are sufficiently different to justify being considered as a new complaint.

Equally, if a complainant keeps making complaints about different matters, each complaint should be considered in the usual manner unless they are about entirely trivial matters.

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In cases where it is decided that a complaint is vexatious, the matter may be closed with the consent of the Director of Fitness to Practise². This is not a power that should be exercised lightly or frequently. In the event that it is, the complainant must be informed in writing of the decision and advised that HPC will not enter into any further correspondence about the matter.

Disruptive Telephone Complaints

If a complainant persistently calls to discuss a complaint or to make further complaints, and this is proving time consuming and disruptive, it is reasonable for the employee concerned to ask the complainant to put their concerns in writing and to terminate the conversation.

It is also perfectly acceptable for an employee to terminate a telephone conversation if a complainant displays an unacceptable level of abuse or aggression during the conversation.

In either case the employee should remain polite and, wherever possible:

- provide the complainant with the opportunity to modify their behaviour, by informing the complainant that unless they do so, the call will be terminated; and
- warn the complainant that, if the call is terminated, HPC may no longer accept telephone calls from the complainant and will only deal with them in writing.

If a call needs to be terminated as a result of the complainant's conduct, the caseworker should do so politely and make a file note of what occurred.

With the consent of the Director of Fitness to Practise, the complainant may be informed in writing that HPC will no longer accept telephone calls from them and will only deal with the complainant in writing.

Abusive complainants

People under stress or who are feeling angry or upset may react in an abusive or aggressive way to the person with whom they are dealing. However, a balance must be drawn between the ability and desire to assist a complainant and what can reasonably be achieved in the circumstances.

HPC is committed to maintaining a working environment in which threatening, abusive, humiliating or offensive behaviour is not tolerated. It is not appropriate that caseworkers should be faced with verbal aggression or abuse. A robust approach must be adopted in any case where a complainant subjects a caseworker (or any other any person dealing with their complaint) to:

² or, in the Director's absence, by the Head of Case Management or another person nominated by the Director.

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- harassment, intimidation or verbally aggressive behaviour such as excessive swearing or foul language;
- personal abuse such as offensive sexual or racial remarks or offensive remarks about a person's disability;
- threats or use of physical violence.

The personal safety of HPC employees must never be compromised. Meetings should always be brought to an end in circumstances where the complainant becomes aggressive, abusive or displays or a high level of distress.

So far as possible, the decision by HPC to end a meeting should be explained clearly and politely, so that the complainant does not feel that they are being dismissed or their complaint ignored. Unless it is clearly inappropriate to do so, they should also be informed that it may be possible to continue the conversation at a future meeting when they are less distressed.

In any case where a meeting is terminated because of the conduct of the complainant, the employee should make a file note of what occurred and bring the matter to the attention of the Director of Fitness to Practise. The Director will review the case and may decide that personal contact with the complainant is to be discontinued. In that event the Director will inform the complainant in writing that the complaint may only be pursued further by written correspondence.

If correspondence is predominantly abusive or threatening, it is acceptable not to reply to it and simply leave the correspondence on file with a note explaining why a reply has not been sent. All such correspondence should be brought to the attention of the Director of Fitness to Practise, who will review the case and may decide to respond to the complainant explaining that the tone of their correspondence is unacceptable and that no further correspondence will be entered into unless the complainant amends their tone. In extreme cases, for example, where there are direct and credible threats towards an individual, the Director may refer the correspondence to the police.

Violence or threats of violence are unacceptable and will not be tolerated by HPC. Other than in the most exceptional of circumstances, any assault on a member of HPC staff in course of their duties should be reported to the police.

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