

Audit Committee, 6 September 2016

Internal Audit Report – Review of Whistleblowing Arrangements

Executive summary and recommendations

Introduction

As part of the Internal Audit programme agreed at the June 2016 meeting of the Audit Committee, Grant Thornton have undertaken a review of HCPC's whistleblowing arrangements.

Decision

The Audit Committee is asked to discuss the report.

Background information

See Grant Thornton's report, attached

Resource implications

None

Financial implications

Grant Thornton's fees for this audit will be around £5k including VAT.

Appendices

Internal Audit Report – Review of Whistleblowing Arrangements

Date of paper

26 August 2016



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The Health and Care Professions Council

Review of Whistleblowing arrangements

Last updated 26 August 2016

Distribution		Timetable	
For action	Marc Seale, Chief Executive and Registrar	Fieldwork completed	19 August 2016
	Andy Gillies, Finance Director	Draft report issued	22 August 2016
For information	Audit Committee	Management comments	26 August 2016
		Final report issued	26 August 2016

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Glossary

The following terms are used in this report:

HCPC/Council The Health and Care Professions Council

Policy HCPC's Whistleblowing Policies

PIDA Public Interest Disclosure Act 1998

PIDO Public Interest Disclosure (Prescribed Persons) Order 2014

Partners HCPC registrants, the public and legal professionals who contribute their expertise to the HCPC

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It is the responsibility solely of the Health and Care Professions Council's management to ensure that there are adequate arrangements in place in relation to risk management, governance and control.

1 Executive Summary

1.1 Background

As part of our 2016-17 Internal Audit Plan, it was agreed with the Health and Care Professional Council's Audit Committee and Management that Internal Audit would perform a review examining the policies, procedures and controls in place over the two key strands on whistleblowing, namely:

- **audit of the HCPC's Whistleblowing arrangements** in relation to the Public Interest Disclosure Act 1998 and the Public Interest Disclosure (Prescribed Persons) Order 2014
- **audit of HCPC's internal whistleblowing policy and process** (as it applies to employees, Partners and Council members).

The HCPC is a regulator whose primary objective is "to safeguard the health and well-being of persons using or needing the services of registrants". To do this, HCPC maintain a register of health and care professionals who meet their standards for training, professional skills, behaviour and health. As of 31 March 2016, the HCPC regulated c.341,000 individuals, known as registrants, from the 16 professions they regulate.

Public Interest Disclosure Act / Public Interest Disclosure (Prescribed Persons) Order

The Public Interest Disclosure Act 1998 was created by parliament to protect whistleblowers from detrimental treatment or victimisation from their employers after they have made a qualifying disclosure. Whistleblowing is when a worker reports suspected wrongdoing at work. Officially this is called 'making a disclosure in the public interest'. A worker can report things that aren't right, are illegal or if anyone at work is neglecting their duties, including: someone's health and safety is in danger.

HCPC became a prescribed person in October 2014 from which date a worker of any organisation could make a disclosure in the public interest to the HCPC about their employer. The HCPC is able to consider matters which may fall within its statutory functions. If it does not fall within its responsibilities, it can refer the matter to another relevant prescribed person – for example, to the Care Quality Commission (CQC) in England for issues which are about health and care providers.

For information to be considered a 'qualifying disclosure', the worker who made it has to have a reasonable belief that the disclosure was in the public interest and it must be related to an alleged criminal offence; breach of a legal obligation; a miscarriage of justice; danger to the health and safety of any individual; damage to the environment; or covering up any of these things. Ultimately whether a disclosure made by an employee about their employer is a 'qualifying disclosure' is something which can only be determined by an employment tribunal.

A whistleblower must say straight away if they don't want anyone else to know it was them who raised the concern. A whistleblower won't have a say in how their concern is dealt with. The HCPC will keep the whistleblower informed about the action it has taken, but they can't give the whistleblower much detail if they have to keep the confidence of other people. The HCPC as a prescribed person and regulator of individuals is unable to help a whistleblower with their relationship with their employer.

From our discussions with management, we understand that there have been no qualified disclosures in the public interest to the HCPC as a prescribed person. Management told us that it was important to note that a qualifying disclosure is made by someone about their employer, but the HCPC's statutory remit does not extend to regulating employers.

Management also told us that information it receives is often either about individual registrants and their fitness to practice; an employee seeking re-assurance about meeting standards in light of the policy or practice of their employer; or concerns over the quality of an approved education programme. In these instances, HCPC have procedures to respond, with the number of complaints received and overall performance reported in the Education and fitness to Practice Annual Reports. We have not reviewed these procedures as they are outside of the scope of this audit.

Internal Whistleblowing

The HCPC's Employee Handbook dated February 2016 includes a section on whistleblowing. This sets out the HCPC's policy, definition of whistleblowing, scope, responding to reports of malpractice, investigating reports of malpractice and assurances and protections for employees reporting malpractice and is referred to as

part of a new employee's induction process. At the time of this review, the policy was being revised by Human Resources to reflect findings and relevant recommendations from the report in December 2015 by the Professional Standards Authority into whistleblowing at the General Dental Council. The review of the policy was agreed by Council.

The current policy states that an employee who considers that their cause for concern is a matter of malpractice must arrange to meet and discuss this with the Chief Executive and Registrar or a member of the Human Resources Department. We understand that there have been no cases of whistleblowing in the last two years.

1.2 Scope and objective

As discussed and agreed with the Chief Executive and Registrar, this audit did not consider customer service complaints. However, it did have regard to fitness to practise (FTP) complaints as some of these relate to HCPC's role as a prescribed person. Our review therefore was confined to whistleblowing about FTP and other activities of the Council as well as those forwarded to other organisations.

The objective of this review was to provide assurance to the Audit Committee that:

- in relation to **HCPC's role as a prescribed person**, reports by persons other than employees are appropriately responded to and in a consistent manner
- HCPC's **whistleblowing arrangements for employees** are consistent with good practice and that policies and procedures are being adhered to.

However, during the audit we were informed that there have been no recent internal whistleblowing or whistleblowing to the HCPC as a prescribed person. Therefore, our audit has focussed on the design of whistleblowing arrangements only and not operational effectiveness.

Further details on responsibilities, approach and scope are included in Appendix C.

1.3 Overall assessment

Public Interest Disclosure Act / Public Interest Disclosure (Prescribed Persons) Order

Since becoming a prescribed person in October 2014, the Council at its meeting in March 2015 considered the Francis Report on Freedom to Speak Up and made a number of commitments to be completed within agreed timescales. We reviewed the commitments and found that management is making steady progress. One of these was to continue work in 2015/16 on developing an organisation-wide process for

identifying, recording and handling protected disclosures made to the HCPC as a prescribed person under PIDA (we have provided specific advice and recommendations on where existing processes, based on our review, could be further developed). At the time of this review, management had only recently published detailed information on its website about making such disclosures and an internal policy setting out what is meant to be a prescribed person and what procedures need to be followed had not yet been produced, but planned for autumn 2016.

The Council should use the launch of this policy to promote the role of the HCPC as a prescribed person to managers and staff and provide training to those who might receive such disclosures.

We found that in line with good practice, the Council has protocols to share information with other bodies such as the Care Quality Commission and Disclosure and Barring Service through Memorandum of Understanding documents which are also in place with those bodies responsible for social care in Northern Ireland, Scotland and Wales. We have not tested the operations of these as this was outside of scope.

Additionally, the Council's Standards of Conduct, Performance and Ethics was updated and a revised version released in January 2016 including more explicit statements about the duty to raise concerns in the interests of service users' health and wellbeing.

The Council will be consulting from September 2016 on a revised version of its Standards of Education and Training and supporting guidance which we understand includes emphasis on education providers to act on feedback. There are also plans to strengthen the guidance for education providers to support students in raising and escalating concerns.

Internal Whistleblowing

We compared the employees, partners and Council members' policies and procedures which were in development with best practice and policies we have seen elsewhere, and concluded that the emerging HCPC's policies and procedures are broadly consistent (we were not able to test the operation of the policy as there have been no reported cases over the last two years).

It was evident from our review of other information and documents that the policies and procedures were being further developed following recent publicity surrounding the subject, particularly the PSA's report on the General Dental Council which was discussed at Council in February 2016.

However, we noted that the policy for employees could be further improved, for example:

- more explicit statements - the consequence of not raising concerns of serious malpractice
- clarification - whether employee consent is required to disclose their identity other than by law
- additional items - reference to briefing and raising awareness.

Further details are provided at Appendix A.

We also noted that a separate policy did not previously exist for Partners and Council and committee members, but that one was in development as the procedures are slightly different to those for employees, for example, to whom they should whistleblow within the HCPC. We compared this new draft policy with the employee policy and found that they were consistent. Management will therefore need to take into account our detailed observations in relation to the employee policy and whether these also need to be included in the policy for Partners and Council and committee members.

With reference to the more practical aspects of internal whistleblowing, we found that:

- whistleblowing has not been part of staff briefings for over two years, however, the launch of the revised policy in the Autumn should address this. It should be noted that reference is made to the whistleblowing policy as part of the staff induction process
- there has been neither recent awareness raising for staff on how disclosures should be raised and how they will be acted upon, nor briefing for managers on how to deal with disclosures.

The table below details the key findings from our review.

1.4 Key findings

Risk / Process	High	Medium	Low	Info.
Protected disclosure Policy	-	1	-	-
Whistleblowing Policies	-	1	-	-
Briefing and awareness raising	-	-	1	-
Total	-	2	1	-

The following findings were rated as Medium:

- The Council should ensure that a Prescribed Persons Policy is developed, approved and introduced within an agreed timescale. All employees, partners and Council and committee members should be made aware of the new policy so that the HCPC’s role as a prescribed person is clear and understood.
- The Director of HR should review the draft policies for Employees, Partners and Council and committee members in light of the comments at Appendix A.

Further details of our findings and recommendations are provided in Section 2 of this report.

Refer to Appendix D for definitions of internal audit issue ratings.

1.5 Basis of assessment

We would like to take this opportunity to thank the staff involved for their co-operation during this internal audit. Their details can be found at Appendix C.

2 Detailed Findings

2.1 Public Interest Disclosure (Protected Persons) Order 2014

1.	Medium	Development of policy
Finding and Implication	Proposed action	Agreed action (<i>Date / Ownership</i>)
<p>Since becoming a prescribed person in October 2014, the Council at its meeting in March 2015 considered the Francis Report on Freedom to Speak Up and made a number of commitments to be completed within agreed timescales. One of these was to continue work in 2015/16 on developing an organisation-wide process for identifying, recording and handling protected disclosures made to the HCPC as a prescribed person under PIDA.</p> <p>The Director of Policy and Standards informed us that management had recently published more detailed information on its website about making such disclosures (as part of an existing section for registrants on reporting and escalating concerns).</p> <p>An internal policy setting out what it means to be a prescribed person and what procedures need to be followed had not yet been produced, but is planned for autumn 2016. The Council should use the launch of this policy to promote the role of the HCPC as a prescribed person to managers and staff and to brief and/or train as appropriate those who might receive such disclosures.</p> <p>There may not be clarity within the HCPC in how to deal with disclosures to it as a prescribed person without a policy.</p>	<p>The Council should ensure that a Prescribed Persons Policy is developed, approved and introduced within an agreed timescale and monitored.</p> <p>All employees, partners and Council and committee members should be made aware of the new policy so that the HCPC's role as a prescribed person is clear and understood.</p>	<p>Recent discussion with the Solicitor to Council has confirmed that we are compliant with the legal expectations placed on us as a prescribed person. We agree, however, that an internal policy which can be used to raise awareness across the organisation of our role as a prescribed person would be very helpful.</p> <p>A policy will be produced and agreed by the Executive Management Team in 2016, with progress reported in the Policy and Standards Directorate report to Council.</p> <p><i>Date Effective:</i> November 2016</p> <p><i>Owner:</i> Michael Guthrie</p>

2.2 Whistleblowing Policies

2.	Medium	Further development
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Finding and Implication	Proposed action	Agreed action (<i>Date / Ownership</i>)
<p>As part of our work, we compared the draft Whistleblowing Policy for HCPC Employees with policies we have seen elsewhere, such as:</p> <ul style="list-style-type: none"> • Freedom to speak up: raising concerns (whistleblowing) policy for the NHS, April 2016 • Guidance for Employers and Code of Practice – Department for BIS, March 2015 • Healthcare Regulator • Economic Regulator • Human Resources example policy. <p>We found that the HCPC’s policy for employees was broadly consistent, but would benefit from:</p> <ul style="list-style-type: none"> • more explicit statements – for example, the consequence of not raising concerns of serious malpractice • clarification - whether employee consent is required to disclose their identify other than by law • additional items - reference to briefings and raising awareness. <p>We have provided more detailed information at Appendix A.</p> <p>Policy users may not be clear on certain aspects without more clarity and information which may prevent them from using the policy or ensuring its consistent application.</p>	<p>The Director of HR should review the draft policies for Employees, Partners and Council and committee members in light of the comments at Appendix A.</p>	<p>Recommendation agreed.</p> <p>November 2016</p> <p>Teresa Haskins</p>

2.3 Awareness raising

3.	Low	For managers and staff
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Finding and Implication	Proposed action	Agreed action (<i>Date / Ownership</i>)
<p><i>Internal whistleblowing</i></p> <p>It is important that employers encourage whistleblowing as a way to report wrongdoing and manage risks to the organisation. Employers also need to be well equipped for handling any such concerns raised by workers. It is considered best practice to provide briefings to all workers on how to “blow the whistle” and how this will be responded to. The Council has not provided briefings in the last two years, however, we understand that new starters are made aware of the whistleblowing policy as part of the induction process.</p> <p><i>Public Interest Disclosure (Protected Persons) Order 2014</i></p> <p>The FTP Management team considered the recommendations from the Hooper report on the GMC in relation to handling whistleblowing and identified the potential need for training FTP staff about whistleblowing once the prescribed persons’ policy has been developed and implemented.</p> <p>We believe that all relevant managers should be provided with training or briefings on how to deal with disclosures once the internal policy has been developed.</p> <p>Failure to provide training may impede the organisation’s understanding of whistleblowing as well as fail to demonstrate that it supports and encourages whistleblowing.</p>	<p>The HCPC should provide briefings to managers and staff once the revised whistleblowing policy has been launched</p> <p>The HCPC should provide training or briefings to managers on how to deal with disclosures made in the public interest, once the internal policy has been developed.</p>	<p>Recommendation agreed.</p> <p>November 2016</p> <p>Teresa Haskins</p>

A Benchmarking of Health and Care Professions Council's Whistleblowing Policy

Benchmarking	Health and Care Professions Council
1. Introduction	
The introduction includes brief descriptions of the following:	
The organisation's commitment to being open, accountable, transparent and maintaining high ethical standards in all of its operations.	✓
Purpose of the Whistleblowing Policy.	✓
Reference to the Public Interest Disclosure Act 1998 regarding the protection provided by the law for employees that report concerns of serious malpractice.	✓
2. Scope and principles	
The scope and principles includes brief descriptions of the following:	
Definitions of serious malpractice.	✓
Who the policy applies to.	✓
The distinction between internal grievance related to individuals and instances of malpractice which have an effect on the public.	✓
References to the processes employees should follow to report grievances, complaints and disputes e.g. through the grievance process.	✓
The Whistleblowing Policy should not be used to reconsider any matters that have been addressed through other procedures e.g. grievances and disciplinary.	There is no statement included in the policy.
Employees may be in breach of their contracts and/or breaking the law if they do not raise their concerns of serious malpractice with management or an appropriate body.	There is no statement included in the policy.

Employees are not required to prove their suspicions but rather provide as much information as possible to assist with the possible investigations.	There is no statement included in the policy.
3. Assurances and protections for employees reporting malpractice	
The assurances and protections for employees reporting malpractice includes brief descriptions of the following:	
The organisation's commitment to protecting employees reporting malpractice from dismissal, victimisation or any other detrimental treatment.	✓
Employees reporting malpractice are protected by the law.	✓
Statement on the consequences for the raising malicious or knowingly false allegations of malpractice.	✓
4. Confidentiality	
The confidentiality includes brief descriptions of the following:	
The organisation's request that employees rather report malpractice in person than anonymously in order to improve the efficiency of the investigations.	✓
Process to follow on how to report malpractice anonymously should the employee feel the need to.	✓
The source of the allegations may only be disclosed with the consent of the employee unless required by law.	While there are statements around maintaining the confidence of the employees that reported as far as possible, there is no statement regarding obtaining the consent to disclose the employees' identities when required.
5. Roles and responsibilities	
The roles and responsibilities includes brief descriptions of the following:	
Employees that are reporting suspicions of malpractice.	✓
The HR Team provides guidance and advice on the policy and process	✓
The informing of the employees, who reported the malpractice, around the progress and outcomes of the investigations	✓
The commissioning of investigations after consideration of information received as part of the allegations by the appropriate senior management, e.g. CEO or Audit Committee. Senior Management should be responsible for the appointing of the Investigation Managers.	✓
6. Process for reporting malpractice	
The process for reporting malpractice includes brief descriptions of the following:	
Raising concerns internally	✓

Raising concerns externally	✓
Contacting the "Public Concern at Work body" for external advice on the appropriate reporting channel to follow	✓
All records relating to disclosures, any subsequent investigation and action taken will be managed in compliance with the Data Protection Act 1998 and the organisation's Retention and disposal policy.	There is no statement included in the policy.
7. Briefings and awareness raising	
Training and the regular updating of management around the Whistleblowing policy and process will be provided.	There is no statement included in the policy.
Staff will be provided with updates in terms of their ability to report malpractice and protection afforded to them by the organisation and law when reporting malpractice.	There is no statement included in the policy.

B Benchmarking of Whistleblowing arrangements

It is important that employers encourage whistleblowing as a way to report wrongdoing and manage risks to the organisation. Employers also need to be well equipped for handling any such concerns raised by workers. We have compared the Council's arrangements with best practice for an employer with findings in the table below:

No.	Best practice	In place at HCPC?
1	Have a whistleblowing policy or appropriate written procedure in place	✓
2	Ensure the whistleblowing policy or procedures are easily accessible to all workers	✓
3	Raise awareness of the policy or procedures through all available means such as staff engagement, intranet sites, and other marketing communications	Awareness should be raised with the launch of the updated policy
4	Provide briefings to all workers on how to blow the whistle and how this will be acted upon	X – see recommendation 2.3
5	Provide training or briefings to managers on how to deal with disclosures made in the public interest	X – see recommendation 2.3
6	Create an understanding that all staff at all levels of the organisation should demonstrate that they support and encourage whistleblowing	We were not able to measure this aspect as the proposed staff survey was not considered timely by management.
7	Ensure the organisation's whistleblowing policy or procedures clearly identify who can be approached by workers that want to raise a disclosure. Organisations should ensure a range of alternative persons who a whistleblower can approach in the event a worker feels unable to approach their manager. If your organisation works with a recognised union, a representative from that union could be an appropriate contact for a work to approach	✓
8	Create an organisational culture where workers feel safe to raise a disclosure in the knowledge that they will not face any detriment from the organisation as result of speaking up	See 6 above
9	Undertake that any detriment towards an individual who raises a disclosure is not acceptable	✓

10	Make a commitment that all disclosures raised will be dealt with appropriately, consistently, fairly and professionally	✓
11	Undertake to protect the identity of the worker raising a disclosure, unless required by law to reveal it and to offer support throughout with access to mentoring, advice and counselling	The Employee Assistance Programme is available to all staff.
12	Provide feedback to the worker who raised the disclosure where possible and appropriate subject to other legal requirements. Feedback should include an indication of timings for any actions or next steps	✓

C Internal audit approach

Approach

Our role as internal auditor is to provide objective and independent assurance to the Audit Committee and Management that risks are being managed successfully for each of the areas being audited.

As part of our 2016-17 Internal Audit Plan, it was agreed with the Health and Care Professional Council's Audit Committee and Management that Internal Audit would perform a review examining the policies, procedures and controls in place over the two key strands on whistleblowing, namely:

- **audit of the HCPC's Whistleblowing arrangements** in relation to the Public Interest Disclosure Act 1998 and the Public Interest Disclosure (Prescribed Persons) Order 2014
- **audit of HCPC's internal whistleblowing policy and process** (as it applies to employees, Partners and Council members).

We achieved our audit objectives by:

- Meeting with audit sponsors and other key contacts to gain an understanding of the processes in place and the risk areas, building upon information gained through the audit planning process
- Reviewing key policies, procedures and other documents to support management's representations
- Assessing the adequacy of design of the emerging arrangements.

The findings and conclusions from this review will support our annual opinion to the Audit Committee on the adequacy and effectiveness of internal control arrangements.

Additional information

Client staff

The following staff were consulted as part of this review:

- Elaine Buckley, Chair of Council
- Marc Seale, Chief Executive and Registrar
- Andy Gillies, Finance Director
- Teresa Haskins, Director of HR
- Kelly Holder, Director of FTP
- Michael Guthrie, Director of Policy and Standards
- Sarita Wilson, Head of FTP Service Improvement

Documents received / examined

The following documents were received or looked at during the course of this audit:

- Whistleblowing Policy for HCPC Employees
- Whistleblowing Policy for HCPC Partners

- HCPC Employee Handbook February 2016 Section 5K Public Interest Disclosure Act (Whistleblowing)
- Minutes of the 103rd meeting of the Health and Care Professions Council for Wednesday 10 February 2016
- HCPC response to the report of the Freedom to Speak Up Review presented to Council on 26 March 2015
- Statutory Instrument 2014 No.2418, Terms and Condition of Employment, The Public Interest Disclosure (Prescribed Persons) Order 2014
- Partner Handbook (HCPC website)
- HCPC Information for members of the public - “How to raise a concern” booklet
- “How to raise a concern” for registrants (HCPC website)
- Whistleblowing (HCPC website)
- Making a disclosure to a prescribed person (HCPC website)
- Education Annual Report 2015
- Fitness to Practice Annual Report 2015
- Fitness to Practice Operational Guidance – Signposting
- New FTP Logging Form
- Memorandum of Understanding between CQC and HCPC, dated September 2014

Locations

The following location was visited during the course of this review:

- Health and Care Professions Council
Park House
184 Kennington Park Road
London SE11 4BU

D Definition of audit issue ratings

Audit issue rating

Within each report, every audit issue is given a rating. This is summarised in the table below.

Rating	Description	Features
High	Findings that are fundamental to the management of risk in the business area, representing a weakness in control that requires the immediate attention of management	<ul style="list-style-type: none"> Key control not designed or operating effectively Potential for fraud identified Non compliance with key procedures / standards Non compliance with regulation
Medium	Important findings that are to be resolved by line management.	<ul style="list-style-type: none"> Impact is contained within the department and compensating controls would detect errors Possibility for fraud exists Control failures identified but not in key controls Non compliance with procedures / standards (but not resulting in key control failure)
Low	Findings that identify non-compliance with established procedures.	<ul style="list-style-type: none"> Minor control weakness Minor non compliance with procedures / standards
Improvement	Items requiring no action but which may be of interest to management or best practice advice	<ul style="list-style-type: none"> Information for department management Control operating but not necessarily in accordance with best practice



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