

Council, 5 July 2012

Just Disposal Criteria

Executive summary and recommendations

Introduction

At its meeting in March 2012, the Council approved the operational and procedural approach that should be taken in relation to the transfer of cases from the General Social Care Council (GSCC) to what will become the Health and Care Professions Council. That paper also provided that to ensure that the process is fair, just and transparent the Council would be asked to consider just disposal criteria.

Furthermore, The General Social Care Council (Transfer of Register and Abolition – Transitional and Saving Provision) Order of Council 2012 provides throughout that the HCPC is to make arrangements for the just disposal of cases. This is both with reference to the equivalent of HCPC's fitness to practise process and with the disposal of outstanding cases under Article(s) 5, 7, 10 and 11 of that Order.

Attached to this paper as an appendix are proposed just disposal criteria and arrangements for those cases. It is planned that cases will be transferred from the GSCC to the HPC between 6 and 27 July 2012. The Director of Fitness to Practise, Head of Case Management, Head of Investigations and Investigations Manager will review each open case file and taking into account the just disposal criteria, prepare a case plan for handover to the case management team on 1 August 2012.

Decision

The Council is asked to approve

- (a) the just disposal criteria for fitness to practise cases; and
- (b) the just disposal arrangements for open cases under articles 5, 7, 10 and 11 of the General Social Care Council (Transfer of Register and Abolition – Transitional and Saving Provision) Order of Council 2012

Background information

Council Paper March 2012 – Transfer of cases from the General Social Care Council to the Health and Care Professions Council - <http://www.hpc-uk.org/assets/documents/100039C8enc13-GSCCtransferofcases.pdf>

Allegations: Standard of Acceptance <http://www.hpc-uk.org/assets/documents/10003872Standardofacceptancepolicy.pdf>

Health and Character Policy

Resource implications

Accounted for in 2012-2013 budget

Financial implications

Accounted for in 2012-13 budget

Appendices

Appendix One – Just Disposal Criteria and Arrangements

Date of paper

25 June 2012

Just Disposal of GSCC Transfer Cases

Legacy cases

Article 9 of the General Social Care Council (Transfer of Register and Abolition – Transitional and Saving Provision) Order of Council 2012 (the **TPO**) provides that, in relation to outstanding conduct matters which are transferred to it by the General Social Care Council (**GSCC**), the Health and Care Professions Council (**HCPC**) is to make “such arrangements as it considers just for the disposal of the matter”.

The following Criteria apply to all those outstanding conduct cases transferred to the HCPC from the GSCC (**legacy cases**). They will not apply to allegations which are made against social workers after the transfer of the GSCC register to the HCPC (but allegations relating to events prior to the transfer will be determined having regard to the GSCC Code of Conduct.

Dealing with legacy cases can be a complex transitional process. They were commenced by a different regulator under a different regulatory regime and each legacy case must be given proper consideration, taking account for all relevant information. The HCPC cannot set rigid rules for their review which must be conducted on a case by case basis, but has set these Criteria to ensure that, in reviewing legacy cases, the HCPC meets the statutory obligation of just disposal in a manner which is fair, transparent, consistent and proportionate.

The following Criteria should be taken into account, as appropriate, in any such review:

- the time elapsed since the allegation was first made to the GSCC, whether there has been any delay in handling the case and how the delay arose;
- the nature and seriousness of the allegation and, in particular, the nature and degree of any potential risk to the public;
- whether the case raises any important points of principle or professional practise or wider public interest;
- the nature, quality and reliability of the available evidence, the overall viability of the case and the prospects of the allegation being proved;
- whether the time elapsed or any delay would be detrimental to the evidence or availability and reliability of witnesses;
- the extent to which the registrant may have been prejudiced by any delay not caused by the Registrant;
- the current health and working status of the registrant; and
- overall, whether there is a realistic prospect of establishing that the registrant's fitness to practise is currently impaired.

There is a public interest presumption in favour of proceeding with an allegation where there is a realistic prospect of establishing that fitness to practise is impaired. Accordingly, any decision to discontinue a legacy case must be carefully considered and accurately recorded along with the reasons for that decision.

The TPO also makes specific provision for the following:

Article 5 (Registration subject to conditions)

Where a person was registered by the GSCC subject to conditions which would have continued in force on 1 August 2012, that person's registration is to be treated as if the conditions had been imposed in the same terms and the same duration as a conditions of practice order made by a HCPC Practice Committee.

Those conditions may be reviewed by a Practice Committee in the normal way but in doing so, regard must be had to the fact that conditions were used for a different purpose by the GSCC and may not have been directed towards addressing fitness to practise issues. So far as possible, the review and variation of GSCC conditions should be undertaken in accordance with the Practice Note on 'Disposal of Cases via Consent.'

Article 7 (Suspended registration)

A suspension order or interim suspension order which was made by the GSCC and which would have continued in force on 1 August 2012 is to be treated as if the person was suspended on the same terms and for the same duration by an HCPC Practice Committee.

In relation to suspension orders, these may be reviewed under Article 30 of the Health and Social Work Professions Order 2001 as if originally imposed by the HCPC. However, the TPO provides that where the original order made by the GSCC was for two years, the order may have effect for that period. Orders should be reviewed following the transfer and registrants may apply for an early review in the normal way.

In respect of interim suspension orders, these should all be reviewed following transfer, as if imposed by an HCPC Practice Committee. Where an interim suspension order is due to expire and it is determined that a further order may be necessary, an application for a new order should be made (rather than seeking an extension by the High Court) so that the need for such an order is fully explored and the registrant is provided with an appropriate opportunity to challenge that application if they chose to do so.

Article 10 (Outstanding applications for registration or renewal)

In respect of applications for registration as a social worker which have been referred to the GSCC's Registration Committee, HCPC should dispose of those cases by referral to HCPC's Health and Character Policy.