

Council – 29 March 2012

Transfer of cases from the General Social Care Council to the Health and Care Professions Council

Executive summary and recommendations

Introduction

The Executive has prepared a paper setting out how the HCPC should deal with cases transferred to it by the GSCC. That paper is attached as an appendix. This paper solely focuses on conduct cases concerning “full” registrants. It does not set out how matters declared on admission, readmission or renewal to the register will be dealt with nor does it deal with cases concerning those on the GSCC student register. Those issues will be dealt with in separate papers

Decision

Subject to the caveat set out in paragraph 1.2 of the attached paper, the Council is asked to:-

- (a) Discuss the attached paper;
- (b) Agree with the approach set out in paragraph 5; and
- (c) Delegate authority be given to the Director of Fitness to Practise and those authorised to act on her behalf, to exercise the ‘just disposal’ powers.

Background information

None

Resource implications

Accounted for in 2012-13 FTP forecast model

Financial implications

To be accounted for in 2012-13 budget

Appendices

Appendix 1 Transfer Approach

Date of paper

12 March 2012

The transfer of the GSCC's conduct function to the Health and Care Professions Council

1.0 Introduction

- 1.1 This paper sets out the operational and procedural approach that it is proposed should be taken to the transfer of "conduct" cases from the General Social Care Council (GSCC) to what will become the Health and Care Professions Council (HCPC).
- 1.2 Adoption of the procedures outlined in this document would be subject to the enactment of the Health and Social Care Bill currently before Parliament, and assumes that an Order would be made under the enacted Bill transferring the GSCC's cases to the HCPC in the manner set out in paragraph 2.0.

2.0 Legislative framework

- 2.1 Typically, when a statutory register is transferred to another regulator, the successor regulator assumes responsibility for concluding any outstanding fitness to practise or disciplinary cases relating to transferred registrants, but subject to a statutory obligation to act in a 'just' manner and to adapt its procedures where necessary to meet the specific needs of the cases in question. For example, if an allegation relates to breach of the previous regulator's code of ethics, then the case must be decided based upon that code.

3.0 GSCC conduct and HPC Fitness to Practise

- 3.1 The General Social Care Council (Conduct) Rules 2008 provide the legislative framework for the conduct function of the GSCC. There are a number of areas of similarity and difference between how the HPC fitness to practise process and the GSCC conduct process operate.
- 3.2 Article 22(1)(a) of the Health Professions Order 2001 (the Order) provides that allegations can be made against registrants on the basis that their fitness to practise' is 'impaired' by reason of:
- misconduct,
 - lack of competence,
 - conviction or caution for a criminal offence,
 - their physical or mental health,
 - a fitness to practise determination by another health or social care regulatory or licensing body;

- being 'barred' under the Safeguarding Vulnerable Groups Act 2006, the Safeguarding Vulnerable groups (Northern Ireland) Order 2007 or the Protection of Vulnerable Groups) (Scotland) Act 2007.
- 3.3 The GSCC does not operate a fitness to practise process but deals with conduct cases. The General Social Care Council (Conduct) Rules 2008, as their name implies, are concerned with 'whether the Registrant has committed misconduct.'
- 3.4 The Order provides for the HPC to have three statutory practice committees:
- Investigating Committee;
 - Conduct and Competence Committee; and
 - Health Committee.
- 3.5 In broad terms, the role of the Investigating Committee is to conduct a first stage assessment and determine whether there is a 'case to answer' in relation to an allegation and, if so, refer it either of the other two Committees. Panels of those Committees will then conduct the second stage proceedings in the form of a hearing and decide whether the fitness to practise allegation is well found and, if so, may impose a sanction. The three committees also consider applications for interim orders depending on the stage that the allegation has reached. The role of an Investigating Committee in reviewing the HPC's investigative efforts and determining whether there is a 'case to answer' is an important procedural safeguard. It allows an independent Panel to provide oversight and profession-specific expertise in a transparent manner, a valuable input which would not be available if case to answer decisions were simply made administratively.
- 3.6 Although the GSCC also has three related committees, their functions are different. Those committees are:
- Preliminary Proceedings Committee;
 - Conduct Committee; and
 - Restoration Committee
- 3.7 The Preliminary Proceedings Committee considers and determines applications for interim suspension orders. The Conduct Committee determines whether the registrant has committed misconduct and, if so, whether any sanction should be imposed. The role of the Restoration Committee is self-explanatory, being to consider and determine applications for restoration to the register.
- 3.8 In terms of sanctions, Article 29 of the Order provides that a Panel which finds that an allegation is well founded may impose one of the following sanctions:
- caution order;
 - conditions of practice order;
 - suspension order

- striking off order.
- 3.9 Article 30 of the Order further provides for suspension orders and conditions of practice orders to be reviewed before they expire, enabling them to be continued or replaced by another, more appropriate, order.
- 3.10 The GSCC Rules provide that the Conduct Committee may impose the following range of sanctions:
- admonishment (for a period of up to five years);
 - Suspension Order (for a period of up to two years);
 - Removal Order
- 3.11 The investigative powers of the two organisations are also different. The GSCC has no equivalent power to that in Article 25(1) of the Order which enables the HPC to compel the supply of information or production of documents in the course of an investigation.

4.0 Joint Working

- 4.1 The HPC and the GSCC provided a joint proposal to the Department of Health in December 2011 setting out how the two organisations could work together to further contribute to ensuring the smooth transfer of conduct cases. The proposal provided that mechanisms should be put in place to allow the HPC to assist the GSCC in the management of conduct cases. That proposal was agreed by the Department of Health and since the middle of February the HPC has been working with the GSCC in an advisory capacity, reviewing cases and, where appropriate, offering guidance on the management of cases in the lead up to the transfer.
- 4.2 The scope of the advice provided by the HPC to the GSCC is restricted to those cases that are equivalent to HPC fitness to practise cases. It is also important to note that the GSCC is the statutory regulator until their regulatory responsibilities are transferred to the HCPC. The GSCC will continue to progress cases but, inevitably, may not be able to conclude them before the transfer takes place. The process set out at paragraph 4.1 has been put in place to assist the HCPC to conclude those cases as soon as reasonably practicable after the transfer takes place.
- 4.3 This process will help to:
- ensure public protection;
 - further allow for the smooth transfer of the regulatory functions from the GSCC to the HCPC;
 - ensure delay is mitigated so far as is possible;
 - ensure a larger volume of transferring cases can be heard earlier than previously anticipated; and
 - speed up the process of gathering information that would assist the HCPC in making an assessment as to whether fitness to practise is impaired.

5.0 Proposed procedure

- 5.1 It is suggested that the procedure outlined below should be adopted in relation to cases that are transferred from the GSCC to the HCPC:

A person who is suspended from the GSCC Register	The case will be referred to a Panel of the Conduct and Competence Committee or Health Committee and reviewed in accordance with Article 30 of the Order as if the suspension was a suspension order imposed by one of those Committees
A person who is subject to an on-going complaint but where the case has not been concluded by the GSCC	<p>In cases where a GSCC hearing was started but not concluded, the case will be reviewed to determine whether it would be appropriate for it to be concluded by a HCPC Practice Committee Panel. There will be a presumption in favour of doing so, but subject to review of the evidence and the overall viability of the case, including the prospects of fitness to practise being found to be impaired.</p> <p>In all other cases, an assessment will be undertaken to determine whether the case meets the HCPC standard of acceptance for allegations. Where that standard is met, the case will be referred to the Investigating Committee to determine whether there is a case to answer.</p>
Cases where an interim suspension order has been imposed by the GSCC	The order will be reviewed in accordance with Article 31 of the Order as if it was an order which had been imposed by a HCPC Practice Committee Panel.

- 5.2 GSCC processes also provide registration (on admission, readmission or renewal) to be granted subject to conditions. As HPC has no equivalent conditional registration process, these conditions will be reviewed as if these were conditions of practice orders imposed by a HCPC Practice Committee, but taking account of the fact that they are not conditions imposed following an adverse fitness to practise finding.

- 5.3 The approach set out above would ensure that those GSCC registrants who are subject to an allegation are treated in the same way as other registrants who are subject to an allegation. Importantly, it would ensure that they are provided with an opportunity to make observations to the HCPC on the allegation that has been made against them. It should also be noted that, although the allegation originally made to the GSCC would

be one of misconduct, in dealing with these legacy cases, the HCPC would act equitably and apply the full fitness to practise test as it would in any other case. Consequently, the transferring registrant would have the opportunity to answer the allegation on the basis that his or her fitness to practise was not impaired.

6.0 Statistics

6.1 From the information that has been provided by the GSCC, it is anticipated that around 400 open 'legacy' cases will be transferred to the HCPC when the social worker part of the register is opened.

7.0 Proposed operational approach

7.1 In line with previous case transfers, it is proposed that the Council's anticipated power to dispose of legacy cases 'justly' be delegated to the Director of Fitness to Practise.

7.2 Each case would be assessed against the standard of acceptance. A decision would also be made on what further information may be required and whether an interim order needs to be sought. This process should be relatively swift, given the joint working that is already underway.

7.3 To ensure that the process is fair, transparent and consistent, the Council will be asked in due course to approve 'just disposal' criteria which will be taken into account in making decisions. Legal advice will be sought as necessary, particularly in relation to evidential issues and overall case viability, in line with the procedure which is already adopted where the HPC acts as the complainant under Article 22(6) of the Order.

7.4 It is envisaged that decisions will be taken at regular case conferences attended by the Director of Fitness to Practise and other colleagues as appropriate. It is further envisaged that colleagues from the Council for Healthcare Regulatory Excellence will be involved in reviewing the approach taken by the HCPC. Given that CHRE's role includes auditing decisions not to refer cases for final hearing, it would be appropriate to involve that organisation in such process decisions at the early stage.

8.0 On-going operational needs

An assessment has been undertaken of HPC's on-going operational needs in dealing with new cases concerning social workers. More details on this can be found in the HPC forecast model.