

Council, 8 February 2017

Mediation Pilot

Introduction

In October 2011 the Council decided that a mediation pilot should be undertaken to determine the use and value of such a process to complainants, registrants and contributing to ensuring public protection. The pilot was to consist of six cases or last a period of six months.

Following this decision, work was undertaken to develop the pilot and it began in September 2013. The pilot was designed to include cases where there has either been a case to answer or no case to answer decision made by a panel of the Investigating Committee. Although the pilot was set up to only take place for a limited period of time and involve a limited number of cases, the process needed to be thorough in order to test its feasibility and value for the longer term.

In February 2016 the Council considered a paper reviewing the pilot and decided it should continue for a further year, with a further review being undertaken at that point.

The attached paper provides an update on the pilot to date and a recommendation to bring the pilot to an end. There has been little change in the position since the last review and there remains only one case to date that has been through the mediation process successfully.

Decision

The Council is asked to:

- i) consider the attached paper; and
- ii) decide whether mediation pilot should be brought to an end.

Background information

The pilot was approved by the Council in October 2011. Prior to this the following pieces of work were undertaken:

- 2009 - Jackie Gulland was commissioned to undertake a *Scoping Report on Existing Complaints Mechanisms*
- 2010 - Ipsos MORI undertook research on behalf of the HPC into the *Expectations of the Fitness to Practise Complaints Process*
- 2011- Charlie Irvine was commissioned to undertake research into *Alternative Mechanisms for resolving disputes: a literature review*

- 2011 - Stakeholder event was held to share the research to date and engage interested parties and hear their views

Resource implications

The cases are identified and managed through the existing FTP processes and existing resources.

Financial implications

Budget has been allocated for the pilot as part of the annual budget process to cover the costs of the mediator, the venue and expenses. The approximate cost per mediation is £2500.

Appendices

Appendix 1: Mediation Pilot Update

Date of paper

18 January 2017

Appendix 1: Mediation Pilot Update

1. Overview and background

Between 2009 and 2011 research was undertaken by Jackie Gulland, Charlie Irvine and Ipsos MORI as part of a work stream looking at Alternative Mechanisms to Resolve Disputes. In October 2011 the Council decided that a mediation pilot should be undertaken to determine the use and value of such a process to complainants, registrants and contributing to ensuring public protection. At its meeting in February 2016 Council decided to extend the pilot by one year.

Although there is provision within the Health and Social Work Professions Order 2001 (the Order) to refer a case to mediation, the circumstances in which this can be done are limited. A case can only be referred where a case to answer decision is made by a panel of the Investigating Committee, or where an allegation is well founded at a final hearing. There is no provision for the case to be returned to the FTP process should mediation fail.

The legal advice obtained advised that we could undertake a limited trial such as a pilot, but that fully implementing a mediation scheme for non-FTP cases (such as where a no case to answer decision has been made) would require HCPC's legal powers to be widened.

The pilot was designed to offer mediation in appropriate cases where either a case to answer or no case to answer decision is made by a panel of the Investigation Committee. Where a case to answer decision is made, the Committee include in its decision an order that the case should be referred back if mediation fails.

The previous Council and Fitness to Practise Committee papers relating to this can be found here:

February 2011 FTP Committee paper -

www.hpc-uk.org/assets/documents/1000333120110216FTP05-alternativemechanismsfordisputes.pdf

October 2011 Council paper –

www.hpc-uk.org/assets/documents/10003738Enclosure04-alternativemechanismstoresolvedisputes.pdf

February 2013 FTP Committee paper -

www.hcpc-uk.org/assets/documents/10003EC7enc10-mediationpilotupdate.pdf

February 2016 Council paper –

<http://www.hcpc-uk.org/assets/documents/10004F04Enc04-Mediationpilot.pdf>

2. Activity undertaken since February 2016

In order to ensure the pilot was given every opportunity to succeed, and following some suggestions made by Council at its meeting in February 2016, the following range of activities have been undertaken over the past 12 months.

- The information sheet provided to Registrants and complaints was reviewed in March 2016 in light of the feedback received. It was produced in a new format and removing references to a 'pilot';
- The content of letters and feedback forms were reviewed in March 2016 and amended;
- The content of the website was reviewed and updated in March 2016;
- The FTP internal operating guidance was updated in April 2016 to include changes to process to encourage engagement by telephone and the timing of the offer of mediation;
- A meeting took place with TCM, the mediation provider, in April 2016 to explore ways to improve uptake of mediation. This included the use of video conferencing as an alternative to face to face mediation;
- A blog item was published April 2016 explaining the mediation process to raise awareness of the scheme;
- Mediation was raised at a regular meeting with the representative bodies in May 2016 to increase awareness and understanding of the process;
- Refresher training was provided to employees in April/May 2016 updating them on the changes to the guidance and to remind them of the process and the criteria for referral to mediation;
- Refresher training was provided to panel members from April 2016 when considering Investigating Committee cases;
- An item was included in the panel newsletter in February 2016;
- A review of cases considered by Investigating Committee Panels in January and February 2016 was undertaken to identify any additional cases that may have been overlooked prior to the refresher training provided to panel members and Case Managers; and
- In December 2016 a review of cases considered by Investigating Committee Panels in October 2016 was undertaken to ensure that no further opportunities for mediation had been overlooked.

3. Cases identified as suitable for mediation since February 2016

Between February 2016 and December 2016 three cases of the 617 cases considered at Investigating Committee Panel have been identified as suitable for mediation. In all three cases, the Investigating Committee had made a no case to answer decision. Of these cases:

- one case was subsequently deemed unsuitable for mediation on further review by an Operational Manager as this was not the first case relating to this individual;
- in one case no response was received from either the registrant or complainant despite the Case Manager chasing a response by phone; and
- in the final case the complainant declined mediation.

At the time of the previous review, between September 2013 and January 2015, nine cases were identified as suitable for mediation and one case was successfully mediated.

4. Feedback

In order to improve and evaluate the pilot, feedback has been sought from all those who have been offered mediation, including where mediation has been refused. Since February 2016 this has included following up an offer of mediation by phone where no feedback response is received.

None of the individuals offered mediation since February 2016 completed a feedback form. Feedback was received verbally by phone from one complainant who stated that he did not want anything else to do with the case or the HCPC and did not comment further on the mediation offer.

5. Evaluation and continuation of the pilot

In order to determine the success or otherwise of the pilot, a number of areas were initially identified as important to evaluate. These are as follows:

- The cost associated with mediation;
- The length of time cases take to proceed through the mediation process compared to other cases;
- The questions and queries raised by those offered mediation to assess the quality of the information provided by HCPC to the parties;
- Feedback from the parties who refuse mediation;
- Feedback from the parties and mediators where mediation is undertaken; and
- The outcomes in cases where mediation is successful.

As only one case has proceeded to mediation there is very limited information to evaluate in a number of these areas. We have, however, reviewed all the feedback received and this was fed into the improvements made over the last 12 months.

The point at which mediation can be offered under the Order, does not lend itself to the take up of mediation by the parties involved, even in cases where it may be suitable. The case has usually been ongoing for a number of months and mediation is recognised as being best offered at the earliest opportunity. There is little incentive for the parties to agree to mediate despite efforts to highlight the benefits of mediation.

Mediation may be a more useful tool in the very early stages of a complaint and in cases which do not raise fitness to practise concerns and therefore its use falls outside HCPC's remit. For example, the General Dental Council are currently exploring mediation as part of their Dental Complaints Service which handles cases which do not fall within the fitness to practise remit.

Considering the length of time the pilot has been running, the small number of suitable cases identified and the limited uptake, the Executive is of the view that there is little benefit in continuing the pilot further. Should the opportunity present itself in future to offer mediation at an earlier stage in the process, we may be able to review our position.