

Council, 20 May 2009

Psychologist Case Transfer

Executive summary and recommendations

Introduction

Article 5(3) of the Health Care and Associated Professions (Miscellaneous Amendments and Practitioner Psychologists) Order 2009 provides that:

“(3) Subject to paragraphs (5) and (6), if on the day before the appointed day for practitioner psychologists a person’s name is included in the BPS register or the AEP register (or both) , the person shall be registered in the part of the HPC register which relates to practitioner psychologists with effect from the appointed day for practitioner psychologists.”

In turn, paragraph (5) and (6) of that Article provide that:

“(5) If on the day before the appointed day for practitioner psychologists a person’s name is included in the BPS register or the AEP register but –

- (a) the person’s registration is suspended (whether temporarily or permanently); or
- (b) the person is the subject of proceedings which could lead to the person’s removal or suspension from the BPS register or the AEP register,

paragraph (6) applies.

(6) In the circumstances described in paragraph (5), the HPC –

- (a) may determine that the person’s name is not to be entered in the part of the HPC register which relates to practitioner psychologists; and
- (b) shall dispose of the matter (including any proceedings) in such manner as it considers just.”

Thus, the only practitioner psychologists who may be denied automatic transfer to the HPC register are those who, at the point of the transfer, are:

- suspended; or
- subject to ongoing complaint.

1. Complaints which have not been pursued

If HPC is informed about a complaint at a time when a person is not on the HPC register it cannot take any action against that person. If the complaint is also not pursued by the BPS or AEP then the person concerned is entitled to transfer to the HPC register under the Section 60 Order and HPC cannot raise any form of pre-registration 'character' issues as that transfer will take place by operation of law. A person in that position meets the requirements for automatic transfer laid down in the Order and thus must be included in the HPC register.

However, as Article 22(3) of the HPO enables the HPC to pursue allegations relating to events which arose before a person was on the register, it will be open to HPC to pursue the complaint as an allegation once the person concerned has been transferred to the HPC register. In doing so, care must be taken to ensure that, if the complaint is about a specific breach of BPS or AEP standards, the underlying issues also represent a potential fitness to practise issue which is within HPC's remit.

2. Conditions of Practice

A person who is subject to conditions of practice imposed by the BPS or AEP is also entitled to transfer automatically to the HPC register. However, HPC is entitled to treat those conditions as matters alleged to have occurred at a time when the person was not registered and to pursue the matter as an investigation under Article 22(6) of the HPO.

Although HPC may be aware of conditions of practice imposed by the BPS or AEP, those conditions will not automatically 'carry over' on to the HPC register and therefore such conditions will need to be assessed in order to determine whether HPC needs to take any steps to re-impose or replace them.

In cases where conditions do need to be re-imposed or replaced, the registrant can first be offered the option of agreeing to the conditions by consent and, where they do so, the matter can be dealt with by means of a Consent Order before the Conduct and Competence Committee or Health Committee. If a registrant wishes to contest the matter then an allegation will need to be pursued in the normal way.

3. Disposal of outstanding cases

As part of the transfer from the CPSM to HPC a Transitional Provisions Order was made which sought to 'map' between charges under the old regime and allegations under the new regime but, in practice, proved to be of limited value. When the Operating Department Practitioners were brought into regulation the legislation provided HPC with a simpler and more flexible power to dispose of matters "in such manner as it considers just" and the current Order makes similar provision.

In order to dispose of cases 'justly' a case by case approach will need to be adopted in which cases are analysed to identify the nature of allegation, the applicable standards (especially if it relates to specific breaches of any BPS or AEP Code) and to formulate a means of hearing and disposing of the case in a

manner which accords with the principles which would have been applied had the BPS or AEP disposed of the case.

In the case of a person who is currently suspended from the BPS or AEP register, the decision which a Panel needs to make will be (a) whether or not the person concerned should be admitted to the HPC Register and (b), if so, whether the suspension needs to be continued or extended or an measure substituted, such as conditions of practice.

In considering these kind of suspension cases, Panels will need to adopt a reviewing role and give appropriate deference to the BPS or AEP Committee which was the original fact-finding body that made the suspension decision, in the same way that the courts would do on appeal from the decision of an HPC Panel. Panels will also need to take account of the fact that psychologists on the BPS and AEP register have a presumption in their favour that they should be transferred to the HPC register.

In summary, the arrangements for dealing with the ‘transitional’ cases should be:

A person on the BPS or AEP register who was subject to a complaint which was not pursued by the BPS or AEP:	Automatic transfer to the HPC register HPC reviews information to decide whether an allegation should be made against the new registrant based on acts prior to registration.
A person on the BPS or AEP register who is subject to conditions of practice imposed by the BPS or AEP:	Automatic transfer to the HPC register HPC reviews the conditions to decide whether an allegation should be made against the new registrant based on acts prior to registration.
A person who is suspended from the BPS or AEP Register:	No automatic transfer to the HPC register. The case is referred to an FTP Panel to determine whether: (a) to admit the person to the register; and (b) the suspension should be renewed by HPC or a lesser measure substituted.
A person who is subject to an ongoing complaint by the BPS or AEP and the complaint has not yet been concluded:	No automatic transfer to the HPC register. Where a “case to answer” decision has not been made by the BPS or AEP, the case is referred to the Investigating Committee to determine whether there is a case to answer; or that the person shall be admitted to the register. Where the BPS or AEP has made a case to answer decision, the case is referred to and heard by the appropriate Practice Committee.

Decision

The Council is asked to agree the following resolutions:

1. That a person to whom Article 5(5) of the Health Care and Associated Professions (Miscellaneous Amendments and Practitioner Psychologists) Order 2009 applies (practitioner psychologist whose registration is suspended or who is subject to proceedings which could lead to removal or suspension) is not to be entered in the HPC register on the appointed day.
2. In the case of such a person whose registration was suspended by the BPS or AEP (whether temporarily or permanently), the matter shall be referred to the appropriate Practice Committee which shall review the suspension and the circumstances which led to it and determine:
 - (1) Whether the person is to be admitted to the HPC register; and
 - (2) if so, whether the person's entry in the HPC register is to be subject to a suspension order or any other order which the Committee could have made if the matter was an allegation made under Part V of the Health Profession Order 2001.
3. In the case of such a person who was the subject of proceedings which could have led to the person's removal or suspension from the BPS or AEP register;
 - (1) If no "case to answer" decision has been made by the BPS or AEP, the matter shall be referred to the Investigating Committee and
 - (a) if it determines that there is a case to answer it shall refer the matter to the appropriate Practice Committee and the Committee shall determine and dispose of the matter as if the person had been admitted to the HPC register and as if the allegation was an allegation made under Part V of the Health Profession Order 2001; and
 - (b) if the Committee determines that there is no case to answer, the person shall be admitted to the HPC Register.
 - (2) If a "case to answer" decision has been made by the BPS or AEP, the matter shall be referred to the appropriate Practice Committee, the Committee shall determine and dispose of the matter as if the person had been admitted to the HPC register and as if the allegation was an allegation made under Part V of the Health Profession Order 2001.

4. In dealing with any matter put before it in accordance with these resolutions, a Committee shall act as if the matter was an allegation made under Part V of the Health Profession Order 2001 but making such modifications to the procedures as it considers to be necessary.
5. If, in dealing with a matter to which these resolutions relate, a Committee determines that a person is not to be admitted to the HPC register then, without prejudice to any other remedy which may be available, the person concerned shall be entitled to appeal against that determination to the Council as if the determination was a refusal of admission to the register under Part III of the Health Profession Order 2001.

The Council is also asked to resolve that:

6. The Director of Fitness to Practise be given delegated authority to exercise the powers of the Council under Article 5 (6) of the Health Care and Associated Professions (Miscellaneous Amendments and Practitioner Psychologists) Order 2009

Background information

The order provides for a three year grand parenting window. Therefore practitioner psychologists who would be eligible for the transfer save as to the provisions set out above, are able to practice using the protected title until the grand-parenting period ends.

Resource implications

Accounted for in 2009-10 Fitness to Practise budget and forecast model.

Financial implications

Accounted for in 2009-10 Fitness to Practise budget

Appendices

None

Date of paper

5 May 2009