

Education and Training Committee, 4th December 2007

Paper title: Education Complaints Procedure

Executive summary and recommendations

Introduction

There is currently no agreed process for complaints made about educational courses. At present, the Education and Training Committee investigates an approved programme from the outset if any information is received about which may call into question whether it should be approved.

This paper sets out a process to consider complaints received about educational programmes. The process balances the need to disregard information which is not related to how a programme meets the Standards of Education and Training, with the need to take action if it appears that a programme which appears on the Register of Approved Courses does not meet HPC's standards.

The executive is seeking the Committee's approval to implement a consistent complaints procedure. We are not asking the Committee to delegate its powers to withdraw approval. The powers to withdraw approval from a course are significant powers of the kind which it is unreasonable to delegate. They involve judgements which need to be made by the Committee and we would expect such judgements to be reached by open debate among the members.

Decision

The Committee is asked to agree the process set out in the following paper.

Background information

A paper 'Process for complaints made about educational programmes' was put to the Committee on the 12th June 2007. The Committee considered the paper and requested the Executive to conduct further research. This was followed up with a paper to note that was put to the Committee on the 27th September 2007.

Resource implications

The project to establish this process and to do further work on the detailed operational requirements forms part of the workplans for the relevant departments for this financial year.

Financial implications

None

Appendices

None

Date of paper
22nd November 2007

Education complaints procedure

Present situation

Approving, and ensuring the ongoing approval of educational programmes is a vital part of HPC's role to protect the public. It ensures that students who have completed an approved programme will meet the Standards of Proficiency (SoPs) for their profession. An up-to-date list of all approved courses is available online and any change to an educational course is normally picked up either through the annual monitoring process or the major/minor change process as appropriate.

There is currently no formal procedure for making a complaint about an educational course to HPC. If information about a programme is received it is examined and assessed by the Education and Training Committee who then recommend the course of action that the Education – Approvals and Monitoring department should take.

With no formal procedure in place it is difficult to carry out an appropriate risk assessment of a complaint or allegation and ensure it is initially handled by the appropriate department and that complaints are dealt with consistently. The executive believes that any complaints about educational programmes should be subject to a clear and transparent process balancing the need to disregard any information not related to the programme's approval with the need to take action in other cases in order to protect the public.

This document therefore proposes a new complaints process to deal with information about educational programmes which relate to either the Standards of Education and Training (SETs) or the SoPs.

Complaints processes currently in place

The complaints procedure should not be seen in isolation from the complaints procedures that are currently in place and used by education providers, practice placement providers, students and the public. Any process that the HPC has in place must be applicable UK-wide and must therefore take account of the provisions and conditions currently made in all 4 home countries.

We could receive complaints about educational programmes from a variety of sources. They may come from practice placement providers, staff from an education provider, students, or members of the public. There are a number of complaints procedures already in place for all of these groups and in most cases we would expect any complainant to have used all appropriate procedures before the complaint is investigated by ourselves.

Each education provider would normally have a complaints procedure in place. The majority of complaints procedures available in this field are for students. This

includes the Office of the Independent Adjudicator for Higher Education (OIA) whilst the Quality Assurance Agency (QAA) issues a code of practice to education providers. The Education and Training Committee has established a professional liaison group (PLG) to review the SETs. As part of this, the PLG will review whether there should be a new SET requiring programmes to have a complaint mechanism for staff, practice placement educators and members of the public.

Using the fitness to practise (FTP) assessment process

This is not to say that we assume complaints about programmes will always be about an individual, but is instead a safeguard to ensure any process we create does not prejudice our statutory fitness to practise function.

Following legal advice, it is established that an important consideration for any process developed by the Education and Training Committee is the need not to compromise any FTP case that might be necessary against an individual registrant involved in delivering the programme.

Specifically, any complaint we receive about an individual registrant must comply with the due process requirements of the Health Professions Order and the Human Rights Act 1998. When a complaint is received it is necessary to establish at the outset whether it is a complaint about an individual or a programme because any course of action is dependent on this distinction.

If the complaint is about an individual, any investigation would be conducted by the FTP team. These complaints must be investigated in accordance with the registrant's right against self-incrimination. Importantly, any evidence obtained by voluntary admission through this type of investigation *would* be admissible if it was later found that this was in fact a complaint relating to an educational programme.

However, if a complaint was investigated as a complaint about a programme and was subsequently found to be about an individual, any evidence obtained effectively under the compulsion powers of Part IV of the Order may be *inadmissible* to any subsequent FTP proceedings.

An investigation undertaken within Part IV of the Health Professions Order 2001 (HPO) obliges an institution to co-operate with an investigation or risk programme approval being withdrawn. Article 17(4) of the HPO 2001 states:

“Where an institution refuses any reasonable request for information made by the Committee or the Council under this article, the Committee with the approval of the Council may in accordance with article 18 refuse to approve, or withdraw approval from, as the case may be, any education, training, qualification or institution to which the information relates”

There is no such obligation to co-operate under Part V of the HPO 2001. We could not investigate a complaint against an educational course and then use the information gathered in any later FTP proceedings because the evidence would have been obtained coercively which we were otherwise not entitled to obtain.

In effect, it is important that information is not mistakenly treated as a complaint about an educational programme, since this may compromise the information available to a subsequent FTP hearing.

Proposed complaints process

We would expect a complaint about an educational programme to be made in writing using an appropriate form. This will allow us to ask specific questions so that we can identify the type of complaint, conduct a risk analysis, and identify the complaints processes that have been gone through already. Any complaint would be analysed jointly by the Education department and FTP. Decisions will be made jointly with signed confirmation required from either the FTP Director or Manager confirming the allegation is not about an individual before the Education department could investigate a complaint against an educational programme.

Information could also be passed from FTP to Education. This may happen when an FTP allegation has been made, investigated, and concluded by FTP. If during the course of the investigation there were systemic failings relating to an educational programme found then these could be investigated after the conclusion of an FTP case, so not to prejudice any pending case.

The proposed process adopts processes that are well-established within FTP, and also represent good practice in terms of complaints handling, including allowing the education provider the opportunity to respond to the complaint.

We would want to know whether a complainant had exhausted all appropriate complaints channels (unless there were exceptional circumstances) before coming to the HPC. We must be clear that the outcome of any investigation may only affect the approval of an educational course and will not lead to any financial compensation for the complainant, any change to academic award, or support any case taken along judicial lines. Any decision to continue approval or withdraw approval must be taken by the Education and Training Committee.

If a complaint is identified against an approved programme, the outline proposed process below has three potential outcomes after the initial investigation:

- 1) **No case to answer** - The information received does not relate to the Standards of Education and Training, the Standards of Proficiency, or concerns a matter which is otherwise not relevant to the approval of the programme by the regulator. Or, the information does relate to the Standards of Education and Training, but is considered not to substantively alter how they are met, or to call into question the fact that

they are met. The outcome is effectively that the programme's approval is unchanged.

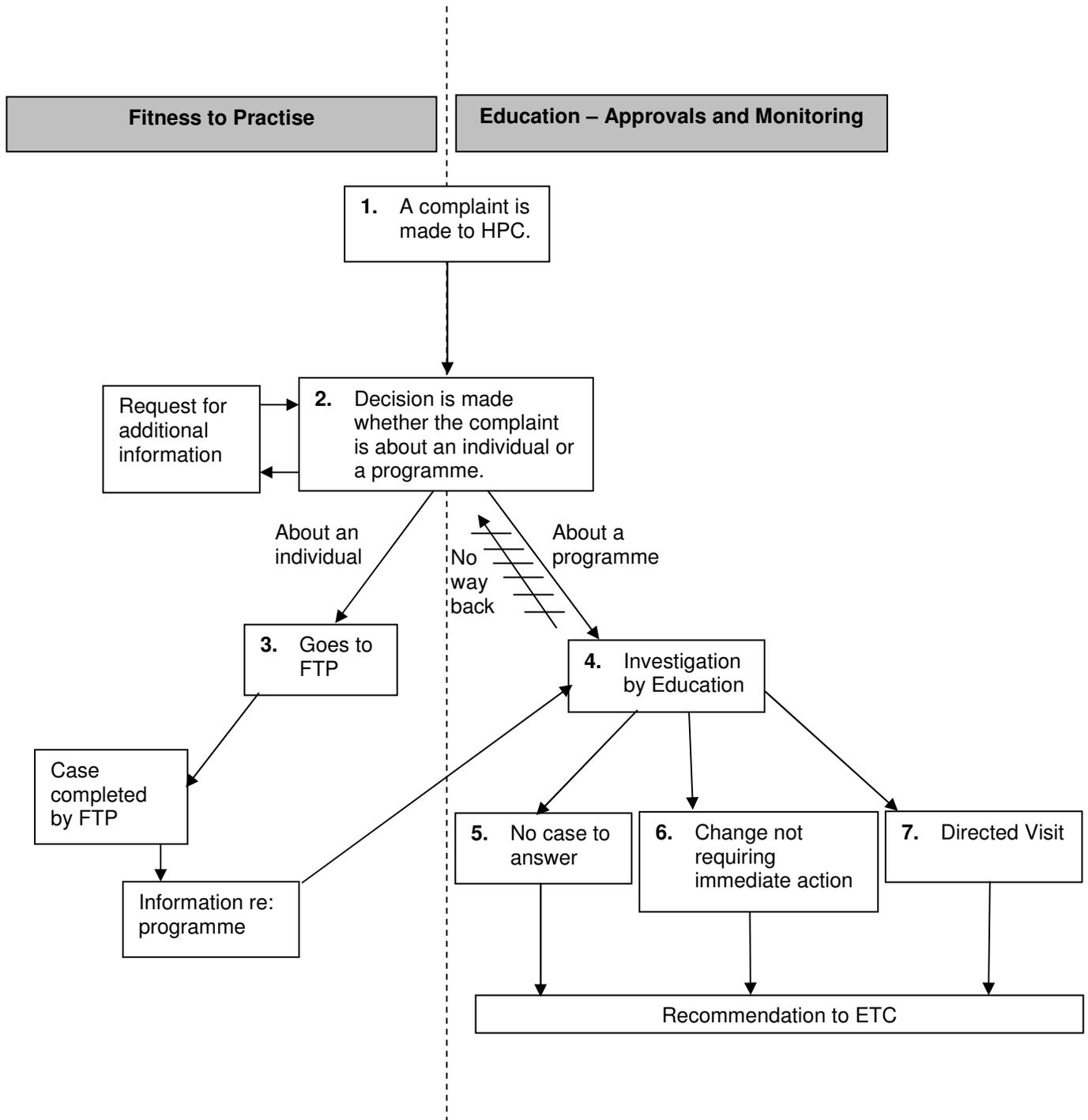
- 2) **Annual Monitoring** - This outcome is suggested for where there is information which relates to the Standards of Education and Training, but where the nature of the information is not such that immediate action is required.
- 3) **Further investigation by directed visit** - This third outcome is anticipated to only occur in a very small number of cases, where the information received is of such a nature that it necessitates immediate action, to ensure that the programme continues to meet the required standards.

There may be some instances where an investigated complaint against an educational programme is deemed of such a serious nature that a further investigative tool of a directed visit is required. A directed visit would be a tool used during an investigation into a complaint if it was deemed that there were specific serious concerns that a programme was failing to meet either specific SETs, SoPs or that there was potentially a serious risk to the public. A directed visit is one which involves a focused consideration of the programme based upon the particular information received and the issues raised.

All findings from an investigation would be taken to the private section of the Education and Training Committee with recommendations from the executive on the future course of action. The executive is not asking the Committee to delegate its powers to withdraw approval. The powers to withdraw approval from a course are significant powers of the kind which it is unreasonable to delegate. They involve judgements which need to be made by the Committee and we would expect such judgements to be reached by open debate among the members.

Complaint against an education provider process plan

The flow chart shows the process for making a complaint about an education provider. The subsequent text gives more detail on the stages of the proposed plan.



1. A complaint is made to HPC

There are three potential routes for a complaint about an education provider to arise. The first is a direct complaint about an education provider is made. The second is, from a fitness to practise complaint, information comes to light that is also a complaint about an education programme. Thirdly, we may receive information through another source. In our experience, we have found that people are likely to voice their concerns but not make a complaint. We propose that Education – Approvals and Monitoring should be able to investigate these concerns further on a case-by-case basis. This would be similar to the way FTP can investigate a complaint under Article 22(6) of the HPO 2001. We suggest that in the future this may mean that education officers may require training to take complaints over the telephone.

A complaint about an education provider can be issued to the HPC following the guidance that will be available to all types of complainants. We may deal with complaints from students, staff at education providers, staff from clinical teaching environments and members of the public. In the guidance we will define what a complaint can be made about, and we will do this by stressing that a complaint should not be;

- frivolous or vexatious;
- about academic judgement; or
- about fitness for academic award.

A complaint about an education provider can only be received in writing and must be accompanied by the form which requires permission from the complainant to progress the complaint through all stages of the process.

A complaint about an education provider will normally be received by Education – Approvals and Monitoring. The complaint will be checked to ensure completeness and that it is not a complaint about an individual. We will check that:

- the form is completed correctly;
- information confirming internal complaints processes have been completed is submitted; and
- there is some evidence / documentation to support the complaint. If the complaint is incomplete it will be sent back to the complainant for him or her to complete.

A complaint initially about a registrant will be made to FTP. If at any stage the complaint is also determined to be related to an education programme then the information will be submitted to Education – Approvals and Monitoring once the Fitness to Practise case has been dealt with.

2. A decision is made about whether the complaint is about an individual or a programme

Education – Approvals and Monitoring will work with colleagues in Fitness to Practise to check that the complaint is not concerning an individual.

- Education – Approvals and Monitoring assess the complaint solely to determine if there is an indication that the complaint relates to the programme or institution of delivery or validation. The decision about the complaint will be based on whether:
 - the programme meets the standards of education and training;
 - graduates of the programme will still be able to meet the standards of proficiency; or
 - students on the programme will still be able to meet the standards of conduct performance and ethics
- Fitness to Practise assess the complaint to determine whether it meets the standard of acceptance for allegations.
 - Fitness to Practise may request additional information at this stage to further evidence of the complaint.
 - If the complaint about a programme is later found to concern an individual there is no way to conduct a fitness to practise case on the individual as the investigation into the programme will have prejudiced a fair trial. Therefore at the first indication of a complaint against an individual, the investigation of the complaint against the education provider will be halted until the Fitness to Practise case is complete.

3. Goes to Fitness to Practise

Complaints about individuals are handled exclusively by Fitness to Practise. At the end of a fitness to practise case, if information relating to an education provider has been identified, Education – Approvals and Monitoring will be notified to continue their investigation if appropriate.

4. Investigation

A complaint reaches this stage if:

- upon receipt Fitness to Practise feel the complaint does not concern a registrant's ability to meet the standards of proficiency or standards of conduct, performance and ethics; or
- the Fitness to Practise case is complete and there is evidence from the initial assessment of the complaint that the education provider was not meeting the standards of education and training or a graduate, as a result of their education and training, was unable to meet the standards of proficiency.

A formal letter is sent to the education provider stating the complaint and asking for a response. HPC receives comments and, as needed, the executive will assess the complaint and response from the education provider. Based on the comments and complaint a recommendation will be made.

5. No case to answer

The comments provided by the education provider are acceptable and evidence the programme continues to meet the standards

6. A change has occurred not requiring immediate action

As result of the investigation it may come to light that changes have occurred to the programme or that issues have arisen, but, these changes do not necessarily compromise the SETs or SoPs in such a way to require immediate action. Depending on the nature of change, Education – Approvals and Monitoring will use an appropriate process (approval, major / minor change, annual monitoring) to gather evidence that the programme meets all HPC standards.

7. Directed visit

A directed visit will be made to the programme if there is evidence that graduates will not be able to meet the standards of proficiency or the programme does not meet the standards of education and training and the risk to public safety requires immediate action. The scope of a directed visit may extend beyond the standards of education and training and the standards of proficiency. The notice period for a directed visit is normally 7-14 days although a visit may in exceptional circumstances be unannounced. Appropriate training will be provided to visitors and education officers.

Appeals

Along with the recommendation the education provider can submit representations to the Education and Training Committee. This must be done within 28 days of notification.

Implementation

In the past year we have received 4 written complaints about educational programmes, 3 are still outstanding. Currently there is no consistent framework for making and receiving complaints. It is therefore proposed that the outline process detailed in this paper will be implemented as soon as it is agreed by the Education and Training Committee. A complaints form and guidance about making a complaint will be available from the 1st February 2008. We propose that a paper will be taken to the Education and Training Committee on the 10th June

2008 to review the process along with the form and guidance notes as appropriate.

Further work and refinement will be needed and may form part of the workplans for next year, but agreeing the framework above will provide Education – Approvals and Monitoring with a steer from the Committee as to how to handle information relating to education programmes, and provides the foundation for further development.