

Fitness to Practise Committee, 14 February 2013

High Court Update

Executive summary and recommendations

Introduction

The Scheme of Delegation provides that the Director of Fitness to Practise is authorised on behalf of the Council to 'conduct and defend all proceedings brought by or against the Council in relation to registration appeals, fitness to practise cases and proceedings under section 29 of the NHS Reform and Health Care Professions Act 2002'. This report is intended to provide the Committee with an update into the decisions that have been challenged between April 2010 and January 2013.

In all instances where proceedings are brought by or against the Council in relation to the matters set out above, advice is sought on the merits of the appeal.

Outlined below is further detail on the action brought against the HCPC. Feedback is provided to the panels involved and general feedback is included in the FTP newsletter. The Executive have also implemented a process to feedback learning points received from the Professional Standards Authority (PSA – formerly the Council for Healthcare Regulatory Excellence) to individual panel members where appropriate. This report also includes statistical information on the number of occasions where it has been necessary to seek an extension of an interim order before the High Court and detail on appeals considered by the First Tier Tribunal regarding decisions made by the General Social Care Council where HCPC became responsible for the management of that appeal in August 2012.

Challenges to Decisions

- PSA

Between April 2010 and January 2013 there have been 2 cases where the PSA have referred a matter to the High Court where they have felt the decision in the case was unduly lenient. In one case, the allegation was not well founded. It was agreed between the parties to dispose of the matter via consent and the case was remitted back to the Conduct and Competence Committee for reconsideration. The registrant subsequently had a caution order imposed on her registration. The other case is still ongoing

- Registrant

Between April 2010 and January 2013 there have been 13 appeals by registrants against decisions of the Conduct and Competence Committee. 11 registrants

appealed decisions to strike them from the register. In those cases the outcomes were as follows

- Striking off quashed and remitted back to CCC for re-determination – Caution order imposed*2
- Appeal dismissed by interlocutor
- Appeal dismissed*2
- Appeal allowed and remitted back to CCC for redetermination as to sanction
- Appeal allowed via consent and remitted back to CCC – still to be listed for redetermination
- Ongoing*3
- Appeal allowed and remitted back for re-determination – allegation not well found
- Appeal allowed on a limited basis, conditions of practice order to remain in place

- **Judicial Review**

Between April 2010 and January 2013, permission has been sought to apply for judicial review in 6 cases. 2 of those matters are currently ongoing, 3 were withdrawn and one, due to the health of the registrant, was disposed of via consent. There are a number of cases where judicial review is threatened but permission not subsequent sought.

- **Registration Appeals**

Two appeals to the County Court against decisions made by the Registration Appeal panels were made in 2012. Both matters have now concluded. In the first matter, the appeal was dismissed and the appellant ordered to pay HCPC costs. In the second matter, the appeal was allowed via a consent order and the appellant admitted to the Register. We paid the costs of the appellants application to appeal as well as our own costs in conducting the appeal.

The last appeal against a registration appeal panel decision was made in 2005.

Interim Orders

Article 31(8) of the Health and Social Work Professions Order 2001 provides that the *'Council may apply to the court for an order made by a Practice Committee under paragraph (2) or (7) to be extended, and may apply again for further extensions.'*

When considering applications to extend interim orders, the Court has the power to further extend the order by a period of 12 months.

Between April 2010 and January 2013, 22 applications to extend interim orders have been made. All have been granted. Steps are normally taken to ask the registrant to consent to such an application taking place, thereby avoiding the costs of a hearing.

There is focused monitoring of cases that are subject to an interim order via monthly meetings and through management reporting.

General Social Care Council Appeals

When HCPC became responsible for the regulation of Social Workers in England in August 2012, we also became responsible for the conduct of 9 live appeals against GSCC decisions.

Article 12 of the General Social Care Council (Transfer of Register and Abolition – Transitional and Saving Provision) Order of Council 2012 provided that

(1) Section 68 of the Care Standards Act 2000(1) (appeals to the Tribunal) continues to have effect in relation to a decision of the GSCC made before 1st August 2012 in relation to a transferred person or a person subject to a removal order as if that section had not been amended by paragraph 16 of Schedule 15 to the Health and Social Care Act 2012.

(2) But from 1st August 2012—

- (a) the respondent to an appeal under that section made or continued by virtue of paragraph (1) is to be treated as being the HCPC rather than the GSCC, and*
- (b) the HCPC (or its relevant committee) is to be treated as having made the decision in question, and as having the power to implement the decision of the Tribunal (or any decision made on a further appeal from the Tribunal).*

In each matter, we instructed BDB to review the file on our behalf with a decision then made by the Director of Fitness to Practise as to how the appeal should be conducted. The table below sets out the outcome in each of those cases

Type of Case	Outcome
Appeal against removal from GSCC Register	Dismissed
Appeal against removal from GSCC Register	Dismissed
Appeal against removal from GSCC Register	Ongoing
Appeal against removal from GSCC Register	Ongoing
Appeal against GSCC Suspension Order	Allowed
Appeal against GSCC Suspension Order	Allowed
Appeal against GSCC Suspension Order	Allowed
Appeal against GSCC Interim Order	Dismissed
Appeal against GSCC decision to refuse registration	Allowed

The costs of conducting such appeals have been covered by the DH Grant.

Article 39 Offences

Decision

This paper is to note only, no decision is required.

(1) 2000 c.14. Section 68 was amended by S.I. 2007/3101.

Background Information

Provided for in the paper

Financial Implications

The costs of defending a high court appeal are normally in the region of £15,000-£25,000. When a case is remitted back for redetermination, all of the normal costs associated with scheduling and presenting a hearing are incurred.

In cases where HCPC is successful in defending an appeal, steps will be taken to recover the costs of those appeals (if it is appropriate to do so)

Costs of Appeals, remitted panels, KN costs

Resource Implications

The activity involved in managing such cases, forms part of the responsibilities of the Director of Fitness to Practise, Head of Case Management and PA to the Director

Date of Paper

04 February 2013