

Fitness to Practise Committee 14 February 2013

Mediation update

Executive summary and recommendations

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 will consist of six cases or last a period of six months (whichever is sooner). It is anticipated that the pilot will begin in mid-2013 and will involve cases where there has either been a case to answer or no case to answer decision made by a panel of the Investigating Committee. The attached paper provides an update of the work undertaken to date.

Decision

The Council/Committee is asked to note the attached paper.

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 Head of Case Management is leading the pilot project.

Financial implications

Budget has been allocated to the pilot in the 2013-14 budget for mediator and venue costs.

Appendices

Mediation update

Date of paper

04 February 2013

Mediation update

1. Summary of work to date

The majority of the work to date has been preparatory in advance of the pilot. Although the pilot will only take place for a limited period of time and involve a limited number of cases, the process needs to be thorough in order to test its feasibility and value for the longer term, if any. The following areas of work have been undertaken to date.

1.1. Contact with other organisations

Contact has been made with a number of other organisations who either have mediation processes in operation or may be able to offer assistance. The following organisations have been contacted:

- Irish Medical Council
- Bar Council
- RIBA
- College of Nurses Ontario
- College of Physiotherapists Ontario
- Scottish Legal Complaints Commission
- Civil mediation board
- Kings Fund

1.2. Meetings

Meetings have taken place to explore the issues that may arise with the use of mediation and discuss the model that will be put in place at HCPC. Meetings have been held with the following:

- Charlie Irvine, Strathclyde University
- Jonathan Bracken
- Clive Lewis, Civil Mediation Council

1.3. Case review

A review has been undertaken of 66 cases considered at Investigating Committee in October 2012 to assess whether mediation could be suitable either where there was a case to answer or no case to answer decision reached. This review will also feed into the criteria being developed to identify cases.

1.4. Training

The Head of Case Management attended a mediation course in October 2012. Training has been arranged for all managers within the FTP department to attend an Understanding Mediation course in February 2013 to ensure there is an understanding of the principles of mediation in advance of the pilot.

2. Approach

As the planning for the pilot has progressed and number of conclusions have been reached about the approach that will be taken in some areas of the pilot. A summary of the key areas is as follows:

- Following discussion with Jonathan Bracken and legal advice previously provided to the Committee and Council, the pilot will apply to cases where either a case to answer or no case to answer decision has been reached by and Investigating Committee Panel. Where there is a case to answer the existing legislative provisions will be used in relation to screeners undertaking mediation with the possibility to refer the case to a final hearing should mediation fail. Where there is no case to answer the nature of the pilot will allow for this as per legal advice received which states *'the HPC could undertake further work on this proposal under its existing powers, including conducting a limited trial of such a process as a pilot project.'*
- A mediation company will be used to provide experienced mediators to undertake the mediation sessions. They will not be involved in the identification of cases or the administration of the process, but will provide the expertise in relation to conducting the mediation itself. This will ensure the credibility of the pilot and the independence of the mediation process.
- The criteria for cases considered for mediation will be broad to ensure that cases are not ruled out without proper consideration. This will aim to ensure that cases are not ruled out unnecessarily, which can be a common issue in mediation schemes.
- A panel will only be notified of the outcome of the mediation process where a case to answer decision has been made to ensure that the case does not need to be referred to a final hearing. The Committee will only be told whether or not mediation was successful, and not the content of any agreement reached. This will uphold the confidential nature of the mediation process.
- The mediation process will be kept confidential with only the fact that a case has been referred to mediation and whether it was successful recorded on the case file. This again upholds the confidential nature of mediation and will aim to encourage participation and give confidence in the process.
- No HCPC representative will be present at the mediation itself, but someone will be available for the mediator to contact to discuss any issues that arise and receive HCPC input where required. This will ensure that HCPC's interests are taken into account, but also that the process is confidential and independent.
- A mechanism will be in place to refer cases back to the fitness to practise process where new material information is provided in the course of mediation that raises new and serious fitness to practise concerns.

3. Work to be undertaken January 2013 – March 2013

| Task | When |
|---|----------------------------|
| Develop eligibility criteria for the cases that will be considered for mediation and process for identification. | November – January 2013 |
| Test criteria and identify cases that would fall into the remit of mediation. | December – January 2012-13 |
| Develop operational approach and process to management of cases referred to mediation including and necessary CMS changes. | November – February 2013 |
| Develop materials: <ul style="list-style-type: none"> - Standards for mediators - Training material for mediators - Contract for mediators - Communication material for complainants and registrants - Agreement to mediate - Settlement agreement - Finalisation letter - Reflection document - Feedback questionnaire - Guidance for ICP panels - Guidance for CMs and LHO | November – February 2013 |
| Develop communication plan in place around the pilot and its purpose | November – March 2013 |
| Develop pre and post evaluation measures to assess the impact of the mediation process for the parties using established evaluation tools including the costs of the scheme. | November – February 2013 |
| Identify and engage mediators and provide training | January – April 2013 |
| Training for the FTP team provided externally and internally | February 2013 |
| Training for panel members considering cases at ICP | March 2013 |
| Six month follow up on the success or otherwise of the process for both parties. | Late 2013 |