

Fitness to Practise Committee 21 October 2010

Mechanisms for dealing with alcohol or drug related criminal offences

Executive summary and recommendations

Introduction

In March 2010, the Council for Healthcare Regulatory Excellence (CHRE) published its fitness to practise audit report of health professional regulatory bodies' initial decisions. That report can be found at http://www.chre.org.uk/_img/pics/library/100302_FTP_Audit_Report_Feb_2010.pdf. As a result the Executive undertook a review of that report and its recommendations to identify any learning for the HPC from the CHRE's recommendations. In particular, the CHRE report recommended that other healthcare regulators adopt a similar approach to the General Medical Council (GMC) and General Chiropractic Council (GCC) when dealing with registrants convicted of alcohol or drug related offences. This paper sets out the HPC's current process for dealing with alcohol and/or drug related criminal offences and looks at the approach of three of the other healthcare regulators.

Decision

The Committee is asked to discuss the paper, in particular the conclusions set out on pages eight and nine of the attached report.

Background information

The National Clinical Assessment Service – the first eight years report (September 2009) indicates that of the detailed concerns amongst 1,472 cases, 5% relate to alcohol misuse and 3% to drugs misuse.

<http://www.ncas.npsa.nhs.uk/publications/>

Resource implications

Additional time required to deal with such cases if the HPC were to ask registrants to undergo a medical assessment

Financial implications

Additional costs of instructing medical examiners or registered medical practitioners to undertake assessments of registrants convicted of such offences

Appendices

Report – Mechanisms for dealing with alcohol or drug related criminal offences

Date of paper

4 October 2010

Mechanisms for dealing with alcohol or drug related criminal offences

1.0 Introduction

- 1.1 This paper provides information about how the HPC and other health regulators deal with cases of registrants who have been convicted or cautioned by the Police for alcohol and/or drug related offences.
- 1.2 On 1 March 2010, CHRE published its fitness to practise audit report of health professional regulatory bodies' initial decisions. As a result the Executive undertook a review of that report and its recommendations to identify any learning for the HPC from the CHRE's recommendations. On 25 March 2010, Council considered HPC's response to CHRE's report and instructed the Executive to proceed with the recommendations and to provide progress reports to future meetings of the Fitness to Practise committee. This paper deals with the recommendation to adopt as far as appropriate the practice of routine medical examinations of registrants who are convicted of drink driving or drug offences and forms part of the Fitness to Practise work plan 2010-2011.
- 1.3 CHRE comment at page 9, paragraph 3.11 of their initial decision report:

'Many of these health and performance concerns would not have come to the attention of the GMC if it did not routinely test convicted doctors for evidence of addiction' and at paragraph 3.12 that 'We understand that all applicants for registration with the GCC with a conviction for drink driving or possession of drugs are asked by the Registrar to undergo a psychiatric assessment and relevant laboratory tests, no matter how long prior to the application the offence occurred and (sic) once registered, convictions or complaints about use of alcohol or drugs are considered by the Investigating Committee, which always asks the respondent to undergo the assessment/tests.'

CHRE say that *'this is a significant tool, which identifies underlying health difficulties that may pose a risk to the public and that (sic) we think that other regulators should consider adopting this practice.'*

- 1.4 This report sets out the process adopted by three other health regulators, the General Medical Council (GMC), the General Chiropractic Council (GCC) and the Nursing and Midwifery Council (NMC). These three healthcare regulators have been specifically considered as they all require registrants to undergo some form of medical examination if convicted or cautioned for an alcohol or drug related offence.

2.0 The HPC's current process

- 2.1 All referrals to the Fitness to Practise Department that concern a criminal conviction or Police Caution for alcohol or drug related offence are dealt with through either the fitness to practise or self referrals process and the matter will usually be considered by a panel of the Investigating Committee or Registration Committee.
- 2.2 If the HPC is notified that a registrant has been convicted or cautioned of any criminal offence the matter is dealt with under Article 22 (1) of the Health Professions Order 2001 (the 2001 Order) and will be considered by a Panel of the HPC's Investigating Committee for them to determine whether or not there is a case to answer.
- 2.3 If the HPC is notified of a conviction or caution for any criminal offence by the registrant concerned then the matter is usually dealt with as a registration issue in line with the HPC's health and character policy, which states that the matter will be considered by a panel of HPC's Registration Committee who would then make a recommendation about whether the matter should be referred to the fitness to practise process or not.
- 2.4 There is currently no requirement for a registrant to undergo a health assessment prior to either a self referral or fitness to practise case being considered by the Investigating or Registration Committee in these types of alcohol and/or drug related cases. There is currently no policy or legislative provision that allows for this.

3.0 Cases received

- 3.1 Between 1 April 2009 and 31 March 2010, the Fitness to Practise Department received 26 cases that related to alcohol and/or drug related criminal convictions or cautions. The table below provides more detail about these 26 cases:

Profession	Driving with excess alcohol	Possession of class A drugs	Possession of class B drugs	Possession of class A and class B drugs	Total
Biomedical Scientist	0	0	1	0	1
Chiropodist/podiatrist	2	1	1	0	4
Dietitian	1	0	0	0	1
Occupational therapist	1	0	0	0	1
Operating department practitioner	1	0	0	1	2
Paramedic	3	1	0	0	4
Physiotherapist	5	0	1	0	6
Practitioner psychologist	0	0	0	1	1
Radiographers	4	1	1	0	6
Total	17	3	4	2	26

4.0 Decisions that have been made in these cases

4.1 In ten cases, panels of the Investigating Committee determined that there was 'no case to answer.' Thirteen of these cases were referred to the Conduct and Competence Committee and one case to the Health Committee. One case was closed prior to proceeding to an Investigating Committee as it was found that the matter had already been considered as a self referral through the HPC's health and character policy. One case is due to be considered by the Investigating Committee shortly.

Allegation details	Case closed - no case to answer	Case closed	Conduct and Competence Committee	Health Committee	Investigating Committee - Pre-ICP	Total
Driving with excess alcohol	6	1	8	1	1	17
Possession of class A drugs	1	0	2	0	0	3
Possession of class B drugs	2	0	2	0	0	4
Possession of class A and class B drugs	1	0	1	0	0	2
Total	10	1	13	1	1	26

The current status of the 14 referred cases is set out below:

Current remit:	Current status:
Conduct and Competence Committee	<p>X 4 cases not yet ready to fix for final hearing</p> <p>X 4 cases listed for final hearing within the next 4 months (between Sept 2010 – Jan 2011)</p> <p>X 1 case ready to fix – being listed</p> <p>X 1 case – one year caution at final hearing</p> <p>X 1 case – two year caution at final hearing</p> <p>X 1 case – nine month suspension at final hearing</p> <p>X 1 case – 12 month suspension at final hearing</p>
Health Committee	X 1 case listed for final hearing in Jan 2011

5.0 Self referral cases received

5.1 Between 1 April 2009 and 31 March 2010, the HPC received 21 self referrals from registrants that related to drink drive and/or drug related criminal offences. Eight of these cases were referred into the fitness to practise process. Nine cases were closed by a Registration panel and four cases were closed off in line with the HPC's health and character policy. Of the eight cases that were referred into the fitness to practise process, five of these are included in the 26 cases referred to above.

6.0 What does the Health Professions Order 2001 provide for?

6.1 There is no provision in the 2001 Order to compel registrants to undergo a health assessment or produce medical documents in these types of cases. Article 25 of the Order) provides that:

*'For the purpose of assisting them in carrying out functions in respect of fitness to practise, a person authorised by the Council may require any person (**other than the person concerned**) who in his opinion is able to supply information or produce any document which appears relevant to the discharge of any such function, to supply such information or produce such a document.'*

It is important to recognise here that the only person who can not be ordered to provide information or documents is the registrant concerned.

6.2 Any Investigating Committee panel may ask for a medical assessor to be present at the panel to give specific medical advice to the panel on the case concerned, where that panel feels they would not be able to make a decision without such advice. However, the Investigating Committee do not have any powers to ask that medical assessor to undertake a medical assessment of the registrant concerned, they can only consider the documentation alone (see Assessors and Experts Practice Note – October 2009).

6.3 Only the Health Professions Council (Health Committee) (Procedure) Rules 2003 (incorporating amendments made up to 1st July 2009) allows for that Committee to invite a registrant to undergo a medical examination. The majority of fitness to practise cases involving criminal convictions or Police Cautions for alcohol or drug related offences are dealt with by the Conduct and Competence Committee due to the type of allegation. Article 22(1) of the Health Professions Order 2001 sets out the types of fitness to practise allegations the HPC can consider. Specifically Article 22 (1) (a) (iii) states:

'This article applies where any allegation is made against a registrant to the effect that –

(a) his fitness to practise is impaired by reason of –

(iii) a conviction or caution in the United Kingdom for a criminal offence, or a conviction elsewhere for an offence which, if committed in England and Wales, would constitute a criminal offence'

6.2 Rule 4 of the Health Professions Council (Conduct and Competence Committee) (Procedure) Rules 2003 (incorporating amendments made up to 1st July 2009) allows for referral of a case from the Conduct and Competence Committee to the Health Committee if it appears that an allegation it is considering would be better dealt with by the Health Committee.

7.0 The General Medical Council (GMC) process

7.1 This section of the paper sets out the GMC process for dealing with alcohol and drug related offences. This information was obtained directly from senior managers within the GMC, who were able to fully explain their current policy and process.

7.2 In relation to drink drive convictions, the GMC will always investigate these under their fitness to practise procedures. Health Assessments by two consultant psychiatrists are mandatory in such cases. These

cases will typically be concluded by way of a Warning (which is published on a List of Registered Medical Practitioners -LRMP, that lasts for 5 years but does not constitute impaired fitness to practise) or by an undertaking which is a supervisory arrangement whereby a Doctor's health is monitored on an ongoing basis. Undertakings signify health concerns and that the Doctor's fitness to practise is impaired. The most serious cases may be referred to a Fitness to Practise Panel but the GMC commented that this is not a typical outcome.

- 7.3 Any drug related criminal offences are also investigated under the GMC's Fitness to Practise procedures and Health Assessments will typically be undertaken to assess whether the Doctor has an underlying health problem.
- 7.4 The GMC stated that they have more convictions for drink driving than any other conviction type.
- 7.5 In the case of applicants for GMC registration, drink driving offences and drug related cautions/convictions can be either declared by the applicant or notified to them by a third party, e.g. employer, Police, medical school. The GMC are of the view that most are self declared but don't have any figures to confirm this.
- 7.6 The GMC stated that the majority of offences are dealt with under the GMC's minor offences guidance as they are single occurrences. The GMC's usual procedure would be to obtain a statement from the applicant about the circumstances of the offence, evidence of the offence (CRB check and/or certificate of caution/conviction), and, where relevant a letter from the applicant's GP confirming whether they have any drink or drug addiction issues. Cases are logged on a spreadsheet set up for this purpose and a decision is signed off by two Assistant Registrars. The Assistant Registrar may grant the application, refuse the application, seek further information from the applicant or a third party, or refer to a Registration Panel for advice.

8.0 The General Chiropractic Council (GCC) process

- 8.1 This section of the paper sets out the GCC process for dealing with alcohol and drug related offences. This information was obtained directly from the GCC, who were able to fully explain their current policy and process.
- 8.2 Individuals applying for registration to the GCC (including initial, retention, restoration to the Register as well as transfer from non practising to practising registration) must, as part of their registration application, give details of any convictions or cautions they have received irrespective of when they occurred.
- 8.3 In all cases where there is a drink or drug related offence the GCC's Registrar insists that the applicant attends a consultant psychiatrist for

a health assessment. This is to determine whether or not there is an underlying health problem that would cause concern to the Registrar, who must be as sure as possible that the applicant is both physically and mentally fit before registering them.

- 8.4 Once registered, drink/ drug related criminal convictions/ cautions or complaints about use of alcohol or drugs are considered by the GCC's Investigating Committee, which always ask the registrant to undergo a health assessment/tests.

9.0 The Nursing and Midwifery Council (NMC) process

- 9.1 In July 2010, the NMC issued a policy¹ for dealing with nurses and midwives who have received a caution or conviction for an alcohol or drug related offence. The policy states that it applies in respect of nurses and midwives applying for admission, renewal or readmission to the Register
- 9.2 For first offences, the nurse or midwife will be invited to provide a reference from their GP, a nurse practitioner or occupational health physician, confirming they are medically fit to practise.
- 9.3 For second and subsequent offences the nurse will be invited to a medical assessment undertaken by a Medical Examiner (ME). The ME will examine the applicant and provide a comprehensive written report indicating their opinion regarding the health of the applicant. The report is to help in the decision of whether the person is fit to practise, either generally or in a limited way, and may include recommendations about the forward management of the case.

10.0 What are the costs?

- 10.1 Last year the HPC received 26 fitness to practise cases that related to alcohol and/or drug related criminal offences and 21 self referrals. If the HPC were to adopt a similar approach to the GMC or GCC and ask that in all 47 cases of fitness to practise and self referral cases, registrants concerned should undergo an independent health assessment, it's likely that this would have a significant cost implication to the HPC as well as potentially causing delay to the case.
- 10.2 It's difficult to estimate the cost of a health assessment as the time required to by the practitioner to undertake such an assessment will vary due to the nature of the alcohol or drug related offence. The

¹ <http://www.nmc-uk.org/Documents/Registration/drug%20and%20alcohol%20policy.pdf>

amount of time spent assessing each registrant will vary as will the length of any report produced.

- 10.3 If an average assessment by a registered medical practitioner were to cost in the region of £1,600 this would amount to a cost of £75,200 per annum to deal with the 47 fitness to practise and self referral cases received last year.
- 10.4 Additional costs would also be incurred by the HPC if it were to adopt a similar approach to the NMC when considering applications for registration where the individual concerned has received a caution or conviction for an alcohol or drug related offence. Currently, such cases are considered by a Registration Panel to determine whether or not the applicant should be registered. Additional costs would be incurred if a medical assessment by a Medical Examiner is also to be undertaken.

11.0 Conclusions

- 11.1 The HPC received a small number of cases last year that related to criminal convictions or Police Cautions for alcohol or drug related offences. In total, 772 fitness to practise cases were received and only 26 of these related to alcohol or drug related criminal offences, which amounts to 3% of all the cases received.
- 11.2 In considering the HPC's mechanisms for dealing with alcohol or drug related offences, the Committee may wish to take into account the following:
- whether it would be disproportionate to require every registrant involved in such cases to undergo a medical assessment given the potential costs involved to do so
 - that the HPC cannot currently compel a registrant to consent to a medical assessment in such cases
 - the wider implications - for example, a conviction or Police caution for a drink drive/ drug related offence does not necessarily indicate that a registrant has an underlying health issue
 - any implications of drawing such inferences in these types of cases
 - HPC Panels consider all allegations thoroughly, but in cases such as these, also take into account whether the evidence provided demonstrates that the registrants' ability to practice safely and effectively has been compromised. The brochure '*Managing your fitness to practise*' provides further guidance on this subject.
 - The approach that HPC takes in this area aims to be fair, balanced and proportionate
- 11.3 However, the Committee should also take into account that an assessment by an independent medical practitioner at an early stage

would mean that the HPC is able to clearly establish whether or not a registrant is suffering from an underlying health issue which may not be initially apparent.