

Audit Committee, 22 November 2016

Internal Audit Report – Registration appeals process

Executive summary and recommendations

Introduction

As part of the Internal Audit programme agreed at the June 2016 meeting of the Audit Committee, Grant Thornton have undertaken a review of HCPC's registration appeals process.

Decision

The Audit Committee is asked to discuss the report.

Background information

See Grant Thornton's report, attached

Resource implications

None

Financial implications

Grant Thornton's annual fees are approx. £47k including VAT.

Appendices

Internal Audit Report – Partner Recruitment

Date of paper

11 November 2016

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The Health and Care Professions Council

Review of Registration Appeals Process

Last updated 07 November 2016

| Distribution | | Timetable | |
|-----------------|--|---------------------|---------------------|
| For action | Greg Ross-Sampson, Director of Operations | Fieldwork completed | 14 October 2016 |
| | Richard Houghton, Head of Registration | Draft report issued | 27 October 2016 |
| For information | Marc Seale, Chief Executive and Registrar | Management comments | 04 November 2016 |
| | Audit Committee | Final report issued | 07 November 2016 |

Contents

Sections

| | | |
|----------|--------------------------|----------|
| 1 | Executive Summary | 1 |
| 2 | Detailed Findings | 4 |

Appendices

| | | |
|----------|--|----------|
| A | Internal Audit Approach | 7 |
| B | Definition of audit issue ratings | 9 |

Glossary

The following terms are used in this report:

| | |
|------|---|
| HCPC | The Health and Care Professions Council |
| PSA | Professional Standards Authority |
| FtP | Fitness to Practice |
| ETC | Education and Training Committee |

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It is the responsibility solely of the Health and Care Professions Council's management to ensure that there are adequate arrangements in place in relation to risk management, governance and control.

1 Executive Summary

1.1 Background

As part of our 2016-17 Internal Audit Plan, it was agreed with the Health and Care Professional Council's Audit Committee and Management that Internal Audit would perform an audit of the registration appeals process. The objective of the audit was to assess whether there is a robust and transparent process in place for appeals and that they are being undertaken in accordance with the published process and timetable.

The HCPC is a regulator whose over-arching objective in exercising its function is the protection of the public. To do this, HCPC maintain a register of health and care professionals who meet their standards for training, professional skills, behaviour and health. As of 31 March 2016, the HCPC regulated c.341,000 individuals, known as registrants, from the 16 professions they regulate.

If an application for admission, re-admission or renewal to the register is refused, then the applicant has a statutory right to appeal the decision. They have 28 days to appeal against an assessment decision starting from the date of the letter rejecting the application. The appeal is not regarded as made until it has been received by the HCPC.

There are clear criteria of what is constituted as a Notice of Appeal by the HCPC and these are shown on their website for ease of access:

An appeal must be made in writing, signed by the appellant and contain the following information:

- name and address;
- a clear statement why they are making the appeal (for example, "I wish to appeal against the decision to...")

- a concise statement of the grounds of appeal; and
- details of any person appointed to represent the appellant and whether the HCPC should correspond with the representative rather than the appellant.

Appeals can be in the form of a letter or by using the Notice of Appeals form which is included on the HCPC website.

It is also the appellant's responsibility to explain the grounds of appeal to the Appeal Panel and why they believe the original decision is wrong. Appeals can be determined on the basis of documents alone but an oral hearing can be arranged if the appellant asks for one or if the Appeals Panel decides that an oral hearing would be more appropriate. If an appeal is dealt with on the documents alone, HCPC provide the appellant with a further opportunity to submit written representations to the Appeals Panel. They may do this up to seven days before the appeal is considered by the Panel. If an oral hearing is held, HCPC gives the applicant at least 28 days' notice of when and where the hearing will take place. Applicants are also entitled to be represented at a hearing by any person of their choice, other than a member or employee of the HCPC. Their representative may but does not need to be legally qualified.

Currently every decision as part of the appeals process has to be agreed by a Panel. The appeal rules require a Registration Appeal Panel to comprise:

- the Panel Chair, who must be a Council Member;
- a registrant panellist from the relevant profession;
- a lay panellist; and

- a registered medical practitioner (if the appellant's health is in issue).

Only those Council members who are not members of the Education and Training Committee (ETC) are eligible to be appointed as Panel Chairs. The panellists (both registrant and lay) are drawn from among the panellists who hear Fitness to Practise cases. On the rare occasion that a registered medical practitioner needs to be appointed to a Panel, he or she must be selected with due regard to the health issues to be considered by the Panel.

If an appeal is unsuccessful, the appellant has a further right of appeal from the Appeal Panel to a County Court in England and Wales or Northern Ireland, or in Scotland, to a Sheriff.

In January 2016, the responsibility for managing the registration appeals process moved from Fitness to Practice (FtP) to Registration. This was to allow FtP staff to concentrate on their core competencies of panel scheduling, hearing management and case management.

Appeal numbers are, in the context of overall registration applications, relatively low with only 42 appeals received since 1 January 2016 to the date of review (61 appeals were heard in 2015). That said, the Registration Team have continued to evolve the way the appeals process is practically managed and how delegated responsibilities relating to appeals are discharged in practice. Changes to the published process have recently been recommended to Council for approval purposes. These changes, which are published on the HCPC website under the Registration Appeal Practice Note, relate to the role and responsibilities of a Council Panel in relation to appeals.

1.2 Scope and objective

The objective of this audit was to:

- assess the end to end registration appeals process and undertake walkthrough testing of a number of cases to establish if the process, set roles and timeframes are being adhered to
- identify any areas for improvement in the appeals process.

As discussed and agreed with the Director of Operations and Head of Registration, we focused our testing on cases received since 11 January 2016 (the date the responsibility for managing the appeals transferred to the Registration team from FtP). We tested 15 appeals as part of our review. Our sample covered all types of panel decisions including a 'Direction'. We also observed a Registration Appeals Panel meeting on 10 October 2016.

Further details on responsibilities, approach and scope are included in Appendix A.

1.3 Overall assessment

Our audit concluded that the HCPC has well designed processes for Registration Appeals. For the sample we tested, these were found to be operating effectively including adherence to the published timeframe. The Panel Chairs we spoke to expressed their confidence in the Registration Appeals team and commented on the high quality service provided. In addition, they advised that the process was, in their opinion, more efficient specifically highlighting the timeliness of the process and information governance.

We identified three areas for improvement, of which one was rated as 'medium' relating to the lack of verification of employer references provided by the appellant as part of their appeal.

The table below details the key findings from our audit.

1.4 Key findings

| Risk / Process | High | Medium | Low | Info. |
|--------------------------------------|------|----------|----------|-------|
| Verification of character statements | - | 1 | - | - |
| Authorisation of Panel decisions | - | | 1 | - |
| Panel Chair role and training | - | - | 1 | - |
| Total | - | 1 | 2 | - |

Further details of our findings and recommendations are provided in Section 2 of this report.

Refer to Appendix B for definitions of internal audit issue ratings.

1.5 Basis of Assessment

For the samples we tested, our audit also found that:

- A refusal letter for registration had been provided in all cases.
- A Notice of Appeal had been received in all cases. Only two of the 15 cases reviewed had been received outside of the agreed 28 days’ period, but an adequate explanation was documented and retained on file.
- All required information and declarations had been appropriately provided.
- Any potential conflicts of interest were assessed and documented by the Registration Appeals Manager.
- Independent legal advice had been sought and documented for all appeals, as part of the Case Conference process.
- The agreed timeframe for advising the appellant of the hearing date was met in all cases.
- The location of the panel hearing was appropriate in accordance with the location of the appellant.

- The appellant was advised of the panel’s decision within the agreed timeframe for all cases reviewed.

1.6 Acknowledgement

We would like to take this opportunity to thank the staff involved for their co-operation during this internal audit. Their details can be found at Appendix A.

2 Detailed Findings

2.1 Provision of third party statements for the purpose of appeal

| 1. | Medium | Verification of character statements | |
|---|---------------|--|---|
| Finding and Implication | | Proposed action | Agreed action (<i>Date / Ownership</i>) |
| <p>As part of the Notice of Appeal process appellants are asked to provide any documents that they intend to rely upon for the purpose of appeal. This can include references from the appellant’s existing/previous line manager or senior management.</p> <p>Current procedures do not require these references to be verified for accuracy prior to submission to the Appeals Panel for consideration. However, during our interviews with the two Panel Chairs they advised us that they had assumed these are verified.</p> <p>Failure to verify third party reference could allow erroneous statements to be provided and considered by the panel members in reaching their decision.</p> | | <p>Registration Appeals staff should contact the referee of any employment based references provided by the appellant to ensure that they are genuine.</p> <p>The corresponding procedural guidance should be updated to reflect this additional step.</p> | <p>This process has been updated and will be implemented on or before the 14 November 2016.</p> <p>Ashley Antonio-Mortley, Registration Appeals Manager</p> |

2.2 Panel Decisions

| | | |
|-----------|------------|---|
| 2. | Low | Authorisation of Panel Decisions |
|-----------|------------|---|

| Finding and Implication | Proposed action | Agreed action (<i>Date / Ownership</i>) |
|---|--|---|
| <p>Currently every decision as part of the appeals process has to be agreed by a Panel. If the appellant chooses to have a hearing they are provided with a hard copy of the panel decision at the end of their hearing. This details the decision made, how the decision was reached and if the appeal has been unsuccessful, the details about a further right of appeal.</p> <p>This document and reasoning for the decision are provided and explained to the appellant by a Registration Appeals Co-ordinator. This happens on the day of the appeal hearing and immediately after the Panel Chair has delivered the panel’s decision. For privacy purposes (all Panel meetings are public meetings) the appellant is taken to a separate room to provide this feedback. No Panel members are present at this meeting.</p> <p>We consider that the panel decision should be signed by the Panel Chair to verify that it is accurate and in accordance with the panel’s findings and recommendations. Both Panel Chairs we spoke to during the audit agreed that this would strengthen the existing controls. This is currently not a requirement of the HCPC procedures.</p> <p>Failure to sign the panel decision letter presents an opportunity for it to be amended prior to being issued to the appellant. It should be noted that we did not identify any instances of this as part of our testing.</p> | <p>The Panel Decision document should be signed by the Panel Chair prior to being issued to the appellant.</p> | <p>This process has been updated and will be implemented on or before the 14 November 2016.</p> <p>Ashley Antonio-Mortley, Registration Appeals Manager</p> |

2.3 Role of the Panel Chair

| | | |
|-----------|------------|--------------------------------------|
| 3. | Low | Panel Chair role and training |
|-----------|------------|--------------------------------------|

| Finding and Implication | Proposed action | Agreed action (<i>Date / Ownership</i>) |
|--|--|---|
| <p>Current practice states that Appeal Panel chairs must also be a Council member.</p> <p>There is no separate role profile for Panel Chairs. It is undertaken as part of their Council member role. The Panel Chairs we spoke to stated that it would be beneficial to develop a specific role profile clearly outlining the role and responsibilities.</p> <p>The Panel Chairs also stated that further training on the role would support the process. This could include training on the roles and responsibilities of all involved in the appeals process and some simulated experiences of dealing with potentially difficult/aggressive appellants.</p> <p>Failure to provided clarity on the role, with associated training, may lead to inconsistent practices.</p> | <p>The HCPC should develop a specific role profile for the Registration Appeals Panel Chair. This should be supplemented with refresher training including simulated experiences of managing difficult appellants.</p> | <p>A specific role profile will be created for the Panel Chairs and implemented on or before the 21 November 2016.</p> <p>The content of refresher training will be reviewed and any enhancements will be included within the refresher training scheduled for 2017.</p> <p>Ashley Antonio-Mortley, Registration Appeals Manager</p> |

A Internal Audit Approach

Approach

Our role as internal auditor is to provide objective and independent assurance to the Audit Committee and Management that risks are being managed successfully for each of the areas being audited.

As part of our 2016-17 Internal Audit Plan, it was agreed with the Health and Care Professional Council's Audit Committee and Management that Internal Audit would perform an audit of the registration appeals process. It was agreed that the audit would assess whether there is a robust and transparent process in place for appeals and that they are being undertaken in accordance with the published process and timetable.

We achieved our audit objectives by:

- Meeting with audit sponsors and other key contacts to gain an understanding of the processes in place and the risk areas, building upon information gained through the audit planning process
- Reviewing key policies, procedures and other documents to support management's representations
- Observing an Appeals Panel.

The findings and conclusions from this review will support our annual opinion to the Audit Committee on the adequacy and effectiveness of internal control arrangements.

Additional information

Client staff

The following staff were consulted as part of this review:

- Richard Kennett, Panel Chair
- Robert Templeton, Panel Chair
- Marc Seale, Chief Executive and Registrar
- Gregory Ross-Sampson, Director of Operations
- Richard Houghton, Head of Registration
- Claire Harkin, Registration Operations Manager
- Claire Pryor, Registration Appeals Manager
- Amy Bellchambers, Registration Appeals Co-ordinator
- Ellen Hooper, Registration Appeals Co-ordinator

In addition, we met two members of staff from the law firm Bircham Dyson Bell:

- Jonathan Bracken, Special Counsel
- Garvey Hanchard, Senior Associate

Documents received / examined

The following documents were received or looked at during the course of this audit:

- Practice Statement for Registration Appeals
- Explanation to Council on transfer of registration appeals from FTP to Registration, May 2015
- Proposed changes to the Registration Appeals process, September 2016
- Reporting to Council document, September 2016
- List of all Registration Appeals handled by the Registration Appeals team from January 2016
- Appeal documentation contained on the Charter IT system
- Appeal documentation for sample of 15 cases selected
- Appeal bundles for all cases heard at Monday 10 October 2016 Appeals Panel
- Policy and procedural guidance including standard documentation/letters
- Professional Standards Authority – Annual review of HCPC performance 2015/16.

Locations

The following location was visited during the course of this review:

- Health and Care Professions Council
Park House
184 Kennington Park Road
London SE11 4BU

B Definition of audit issue ratings

Audit issue rating

Within each report, every audit issue is given a rating. This is summarised in the table below.

| Rating | Description | Features |
|--------------------|--|---|
| High | Findings that are fundamental to the management of risk in the business area, representing a weakness in control that requires the immediate attention of management | <ul style="list-style-type: none"> • Key control not designed or operating effectively • Potential for fraud identified • Non-compliance with key procedures / standards • Non-compliance with regulation |
| Medium | Important findings that are to be resolved by line management. | <ul style="list-style-type: none"> • Impact is contained within the department and compensating controls would detect errors • Possibility for fraud exists • Control failures identified but not in key controls • Non-compliance with procedures / standards (but not resulting in key control failure) |
| Low | Findings that identify non-compliance with established procedures. | <ul style="list-style-type: none"> • Minor control weakness • Minor non-compliance with procedures / standards |
| Improvement | Items requiring no action but which may be of interest to management or best practice advice | <ul style="list-style-type: none"> • Information for department management • Control operating but not necessarily in accordance with best practice |



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