

COUNCIL

FTP Audit of Decisions

Meeting: 26 February 2020

Status: For noting

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Purpose

1. To provide independent assurance that decisions made within Fitness to Practise (FtP) cases are in compliance with legislation, rules and decision-maker guidance, and that they meet the overarching GOC objective of protecting the public.

Recommendations

2. Council is asked to:
 - note the findings of the 2018-19 audit; and
 - note the actions taken by the GOC in respect of the learning points arising.

Strategic objective

3. This work is included in our 2019/20 Business Plan and contributes towards the achievement of the following strategic objective: a targeted approach to regulation.

Background

4. The Professional Standards Authority (PSA) carries out an annual performance check on the healthcare regulators to assess their effectiveness in protecting the public and promoting confidence in the profession.
5. Each health and care regulator is asked to provide the PSA with the evidence of how they have met the Standards of Good Regulation for each of the core regulatory functions, which the PSA considers along with other information, before producing the PSA annual performance review report that is published and submitted to Parliament.
6. This annual audit has been conducted in order to comply with the eighth PSA fitness to practise standard, namely that *“All fitness to practise decisions made at the initial and final stages of the process are well reasoned, consistent, protect the public and maintain confidence in the professions”*.

Analysis

7. The audit was conducted by RadcliffesLeBrasseur (RLB), solicitors. This was the third annual audit conducted by RLB pursuant to a three-year contract.

Audit Scope and Methodology

8. This audit included decisions made between 1 April 2018 and 31 March 2019. Although all categories of decision are reviewed, the audit focuses primarily on higher-risk decisions, for example cases closed by case examiners and by the Investigation (IC) and Fitness to Practise Committees (FTPC), and decisions of the FTPC not to issue an interim order, following an application by the GOC. The decisions of the case examiners, the IC and the Registrar are higher-risk as matters are considered on documents alone, and there is no public hearing.
9. For the first time, we asked the auditor to include a small sample of decisions taken by the GOC Registrar at Triage stage. This was one of the risk management mechanisms we committed to when we introduced Acceptance Criteria in November 2018. In future audits, as we have subsequently enhanced the Criteria, and introduced a new Triage process, we will be increasing the sample of Triage decisions included in the audit.
10. The audit was conducted with reference to the following questions:
 - did the relevant Committee/case examiners/Registrar have enough information available to make the decision concerned?
 - were relevant procedural requirements complied with, including providing the registrant with a suitable opportunity to make representations, and the complainant with an opportunity to comment on the registrant's representations?
 - did the decision comply with the Council's published guidance?
 - was the decision well-reasoned such that a member of the public would be able to read the determination and understand the reasoning?
 - did the decision meet the requirements of the GOC's equality and diversity policy?
11. The categories for which the audit was conducted, and the sample sizes, are outlined below:

		total number	number audited (%)
REGISTRAR DECISIONS			
1.	Decisions of the Registrar to open a fitness to practise investigation	267	10 (4%)
2.	Decisions of the Registrar not to open a fitness to practise investigation	226	11 (5%)
CASE EXAMINER DECISIONS			
3.	Decisions of the Case Examiners to take no further action	111	22 (20%)
4.	Decisions of the Case Examiners to issue a Registrant with advice	40	8 (20%)
5.	Decisions of the Case Examiners to issue a warning	30	6 (20%)
6.	Decisions of the Case Examiners that they are minded to issue a warning	45	4 (9%)
7.	Decisions of the Case Examiners to request further information	20	3 (15%)
8.	Decisions of the Case Examiners to refer to the Investigation Committee for Performance Assessment	1	1 (100%)
9.	Decisions of the Case Examiners to refer to the Investigation Committee for Health Assessment	5	3 (60%)
10.	Decisions of the Case Examiners to refer a matter to the FTPC	36	5 (14%)
11.	Decisions in cases reviewed under Rule 15 of the Fitness to Practise) Rules 2013	3	2 (67%)
12.	Decisions in cases reviewed under Rule 16 of the Fitness to Practise Rules 2013	14	3 (21%)
INVESTIGATION COMMITTEE DECISIONS			
13.	Decisions on Performance or Health Assessments	5	3 (60%)
FTPC DECISIONS			
14.	Decisions of the FTPC not to issue an interim order	13	4 (31%)
15.	Decisions of the FTPC to take no further action	15	10 (67%)
16.	Decisions of the FTPC to issue a warning	6	6 (100%)
OTHERS			
17.	Appeal Case	0	0
18.	PSA Letters	0	0

12. The cases to be audited were selected randomly by RLB. This assured the independence and objectivity of the process.

Audit Findings

13. The auditor's overall finding was that *'the findings made in this audit demonstrate substantial compliance with the Council's statutory obligations. They also demonstrate compliance with the Council's own procedural requirements and guidance. We have identified a small number of cases where there were errors in decision making but we did not regard those as material.'*
14. The auditor also highlighted a decision of the FTPC not to impose an interim order, which he considered was not adequately reasoned.
15. The report contains many positive observations. These include:

Triage

- *We reviewed ten triage decisions to open an investigation. We regarded the decision to open an investigation as appropriate in each case.*
- *We reviewed eleven triage decisions not to open an investigation. These covered a range of themes, including health and conduct, and related to both business registrants and individuals. We did not regard any of these decisions as contentious.*

Case Examiners / Investigation Committee

- *In general, the real prospect test was correctly stated in the Case Examiners' decisions and was correctly applied.*
- *In previous audits we had noted some issues with the application of the first stage of the realistic prospect test where allegations were framed as a "failure" to undertake a particular action. This issue appears to have been effectively addressed by Case Examiners. In this audit we noted a number of cases in which the Case Examiners had clearly and appropriately considered the issue of culpability in this context and had made express reference to the relevant provisions in the Guidance.*
- *Our review of determinations demonstrated Case Examiners engaging well with the evidence and setting out their assessment clearly.*
- *We reviewed 5 decisions to refer cases to the FTPC. In each case we regarded the decision as appropriate and well-reasoned.*
- *[Rule 16] We reviewed 4 decisions in this category...In 3 of the cases the referral to the FTPC was cancelled. We regard the decisions made as appropriate.*
- *Decisions of the Investigation Committee were generally brief. This is a reflection of the sparing and appropriate use of the Case Examiners power of referral. We did not have any specific concerns about the Investigation Committee's decisions.*

Fitness to Practise Committee

- *We reviewed nine cases where the Fitness to Practise Committee determined to take no further action with respect to a Registrant. The decisions were generally clear and well-reasoned.*
- *We reviewed six cases where the Fitness to Practise Committee determined to issue a warning. The decisions were generally clear and well-reasoned.*
- *We reviewed a number of cases where the Committee had received expert evidence from both parties and where there appeared to be a dispute between the experts. On each occasion the Committee provided an appropriate explanation for the way in which they dealt with the expert evidence.*

Learning Points

16. The report also contains a number of learning points. Where these relate to decision-making, they were addressed at FTPC member training in September 2019, and at case examiner/IC training in November 2019. The lead auditor attended the November 2019 training session to walk through the learning points with case examiners and IC members.
17. The learning points, and actions taken, are set out at Annex 1. In summary, there are 22 learning points, of which the GOC accepts 21 and partially accepts one.
18. The actions arising from the learning points are:

Action Points		Status
1	Review/Update staff allegation-drafting guidance	Complete
2	Staff Training regarding updated allegation-drafting guidance [Q4 19-20]	Pending
3	Case Examiner and Investigation Committee training	Complete. All points addressed at CE/IC Training November 2019
4	Ensure CEs are given evidence of requests to registrants for representations.	Complete
5	FTPC training	Complete. All points addressed at FTPC training September 2019

Finance

19. There is an approved budget for the cost of the audit. The cost of the audit across the totality of the three-year contract has been within the allocated budget.

Risks

20. The potential risks identified within the audit report have been addressed. The only action outstanding is further training for staff in respect of allegation-drafting, but allegation reviewers have been briefed on the points arising.
21. The 2018-19 audit was presented to Audit and Risk Committee on 10 February 2020

Equality Impacts

22. An impact assessment (EIA) has not been completed in respect of this audit.

Devolved nations

23. There are no issues for the devolved nations identified in this audit.

Other Impacts

24. No other impacts have been identified arising from this audit.

Communications

External communications

25. The overall assurance level arising from the 2018-19 audit will be communicated to the PSA.

Internal communications

26. The key points from the audit have been communicated to:
- Fitness to Practise Committee members
 - Investigation Committee members
 - Case Examiners
 - GOC (Fitness to Practise) staff.

Next steps

27. The current three-year contract has now been fulfilled and we are in the process of procuring a provider for a new three-year contract.

Attachments

Annex 1: Summary of Learning Points and GOC Management Response