

COUNCIL

Review of consultation responses - Rule 15 Fitness to Practise Rules

Meeting: Public 24 October 2012

Status: for decision

Lead responsibility:
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Executive Summary

1. This paper contains a summary of the responses received to the consultation on the proposed amendments to Rule 15 of the proposed new fitness to practise rules (part of the bigger piece of legislative change around the Fitness to Practise Rules).
2. Council are asked to approve the recommendation of the Executive that the power to review a decision not to refer an allegation for a formal hearing is delegated to the Case Examiners.
3. The Project Sponsor is Mandie Lavin, Director of Regulation and the project lead is Kisha Punchihewa, Head of Fitness to Practise. External legal advice is provided by Rosemary Rollason of Russell Jones & Walker (part of Slater & Gordon Lawyers).

Strategic Objective

4. Modernisation of the Fitness to Practise process is one of the GOC's key strategic objectives. This particular paper is linked to the legislative reform programme.

Background

5. The 2005 Rules enable the Investigation Committee to review a decision not to refer an allegation to the Fitness to Practise Committee. The 2005 Rules provide that the Committee will not review such a decision unless it considers that the Council has erred in its administrative handling of the case and a review is necessary in the public interest and/or there is new evidence or information which makes such a review necessary for the protection of the public, for the prevention of injustice to the registrant, or otherwise necessary in the public interest.

6. At the meeting in September 2011, the GOC's Council considered the responses to the public consultation to the proposed new fitness to practise rules. Council approved all bar one of the proposals to reform the current fitness to practise rules. Following our analysis of the consultation responses, we listened to the responses in connection with Rule 15. It was clear that the professional bodies were of the view that the powers contained in Rule 15 of the new rules should not be delegated to the registrar. Council determined to amend draft Rule 15 of the amendments to the fitness to practise rules having considered the responses to the consultation. At the meeting on 26 January 2012, Council agreed the form of the consultation. Council will be aware the fitness to practise rules apply to England and the devolved nations.
7. In February 2012 the GOC opened a consultation on this discrete point. The consultation was open for three months; the GOC took a targeted approach which meant that we wrote directly to those who had responded to the consultation seeking their further views whilst also publishing the consultation on the GOC website.

Analysis

Consultation Question: do you agree with the provision for the case examiners, rather than the Investigation Committee, to be able to review a decision not to refer?

8. We received one response as a result of the publication of the consultation on the GOC website and a second response from the Optical Confederation. The Optical Confederation represents 12,000 optometrists, 6,000 dispensing opticians, 7,000 optical businesses and 45,000 ancillary staff.
9. The member of the public (a registrant) who responded was wholly in favour of the proposal. The Optical Confederation welcomes the proposed change providing for another body other than the registrar to review decisions but considers that the decision should remain with the Investigation Committee. Their concerns can be summarised as follows:- (i) there is no explicit reference in the rules that the decision made by the case examiners must be unanimous and (ii) there is no provision within the rules to prevent the original case examiners reviewing their original decision.
10. The Executive welcomes the time taken by those who responded to the consultation. The Executive has carefully considered these responses. Council will be aware that one of the ambitions of the GOC in bringing in the proposed new fitness to practise rules is to improve the pace and

efficiency of the fitness to practise process. These changes are intended to enable the GOC to respond to legitimate demands that we process cases faster. Our aim is to ensure that regulation is fair and proportionate and not over burdensome. With this in mind the GOC remains committed to the case examiner system.

11. The Executive has considered the wording of the proposed new rules as well as the current process whereby the Investigation Committee will review its original decision under Rule 15 of the 2005 Rules. Both the Council and the Executive have been clear that the quality of the work of the Investigation Committee has not been a matter of concern but the administration and listing of cases at 10 monthly meetings has made the process lengthy and at times has caused undue delay. Any review of a previous decision not to refer an allegation to the Fitness to Practise Committee must be made carefully and in a timely fashion taking into consideration any stresses upon the public, whose health and safety we are here to assure, alongside those registered with the GOC.
12. The Executive, having listened and carefully considered the responses, makes the following recommendations to Council:
 - The case examiners will be the decision maker in the Rule 15 review;
 - That although it is implicit in Rule 15, as currently drafted, it will be made clear that the decision of the two case examiners to review must be unanimous, failing which the original decision not to refer will stand;
 - That it would be good practice for the reviewing case examiners to be different from those who originally considered the case: but this can be covered in Guidance rather than the Rules; and
 - That guidance will be formulated to assist the case examiners with this aspect of their work.

Communications

13. We have referred to briefing sessions in the implementation plan (see January 2012 paper). We see these as planned stakeholder engagement events where we can discuss the impact of the rules and the effect they will have on issues such as the time a case is live within the fitness to practise process, how a registrant without any representation can understand the rules or how this will assure public safety.

14. We will include in our communications programme a specific focus on communication and stakeholder work in the devolved nations. This is an area where Fiona Peel has offered assistance.
15. We have also prepared draft guidance for registrants; members of the public and relevant committees.

Risks (reform programme)

16. Council will be aware that the Department of Health has raised the possibility, but no more than that, of a section 60 order. Should a section 60 order proceed we will wish to consider the implications of that for this work.
17. The GOC had some difficulty recruiting a full Investigation Committee in 2009 and this may be repeated in 2012. This is relevant as members of the current Investigation Committee may wish to apply to be a Case Examiner; we will therefore need to ensure that the Investigation Committee remains quorate as it is still a central plank of the initial decision making process.
18. There is potential to engage with the professional bodies and to engage their support in ensuring that the profession is aware of these changes, and also in canvassing their support in publicising the recruitment campaign. The reform programme is more likely to be successful if they are supportive.
19. There is potential for complex legal argument about the transitional provisions and transfer from the old to the new system. There will need to be dialogue with the professional bodies about these issues. There is the potential for legal challenge in every FTP reform process. The implementation programme will incorporate time for dialogue to minimise and manage any disputes.

Recommendations

20. The case examiners will be the decision maker in the Rule 15 review.
21. That although it is implicit in Rule 15, as currently drafted, it will be made clear that the decision of the two case examiners to review must be unanimous, failing which the original decision not to refer will stand.
22. That it would be good practice for the reviewing case examiners to be different from those who originally considered the case: but this can be covered in Guidance rather than the Rules.

23. That guidance will be formulated to assist the case examiners with this aspect of their work.

Timeline for future work

24. The GOC is in discussion with the Department of Health as to the timeline for the overarching reform programme. Council will be aware that there have been changes in relation to resources at the Department and this will necessarily affect the work streams and priorities.

Attachments

25. Copies of the responses can be provided on request.

Screening:

Please refer to the project plan, Equality and Diversity Impact Assessment, Human Rights Act Impact Assessment and delete Yes or No below to confirm that each aspect has been appropriately considered.

Are there any implications for the GOC's reserves		NO
Are there any other financial implications – i.e, a change to budget		NO
Are there any legal implications		NO
Are there any resource implication		NO
Are there any equality and diversity implications		NO
Will the report need to be published in Welsh		NO
Are there any Human Rights Act implications		NO