

Present

Sally Irvine (Chair)
Ann Curno
Ian Hamer

In attendance

Harry Cayton
Mike Andrews
Tim Bailey
Lisa Foley

1. Apologies

1.1 There were no apologies received for this meeting.

2. Minutes of the meeting held on 28 April 2009

2.1 Subject to minor amendments, the minutes were agreed as an accurate record of the previous meeting.

3. Matters arising from the minutes of meeting held on 28 April 2009

3.1 Para 3.2 – At its previous meeting, the Council had approved the new process for consideration of Section 29 cases. Former panel members were notified of the changes in a letter from the Council Chair and they had returned positive feedback about the way forward. A new process and procedures document would be circulated following the meeting.

ACTION: MA

4. Revised terms of reference

4.1 The Committee approved the revised Terms of Reference subject to amendments and proposed that this should be formally approved by the Council at its next meeting.

ACTION: LF

5. CHRE's relationship with the Office of the Health Professions Adjudicator (OHPA)

5.1 CHRE's relationship with OHPA was discussed in detail. It was government policy that OHPA would start operating in 2011. In reality it was unlikely that many cases would reach OHPA before 2012. CHRE would not have the power to appeal against any OHPA decision (though the regulator would) but could review the regulators' decisions and reflect this in their Performance Reviews.

The Committee felt it was important for CHRE to maintain its influence on the fitness to practice processes of the regulators.

- 5.2 The Committee decided that this topic should be discussed fully by the wider Council as it was a serious matter of concern. It was thought that perhaps a general statement around OHPA's usefulness and effectiveness for regulators (as determined in the performance reviews) might be useful to release into the public domain.
- 5.3 Members asked that a section on raising awareness around public interest implications to both politicians and the public should be added to the paper and it could then be discussed at the next Council meeting.

ACTION: MA

6. Consideration of sexual misconduct cases by the regulators

- 6.1 Statistics were provided around how the regulators have dealt with fitness to practise cases involving sexual misconduct and the outcomes of such cases compared with other types.
- 6.2 The performance review had flagged that different regulators were approaching sexual misconduct cases in different ways and that there had been more unevenness in terms of outcomes, despite all regulators taking these cases very seriously.
- 6.3 Guidance on Sexual Boundaries had been produced and circulated to all regulatory bodies.
- 6.4 Although the Committee members felt that no other types of cases currently needed to be examined in this way, they were pleased to see that such statistics were readily available and could be drawn upon in future if a need were to arise.

7. Paper from former members on Section 29 appeals

- 7.1 Former Council (and s29 panel) members had expressed concerns around the statutory tests applied by the High Court in s29 case meetings.
- 7.2 The concerns were centred around main legal arguments in appeals considered by the Courts being more focused on the undue lenience test and not at all on protection of the public. Current Committee members were provided with the judgement from the recent Dr Khanna case as an example for discussion. The members agreed with the executive and former Council members that the outcome of this case was likely to influence future judgements.

8. Response to recommendation in Section 29 Scrutiny Committee research reports

- 8.1 Recommendations arising from three research reports (commissioned by the previous Scrutiny Committee) were presented to allow the current Committee to decide whether they might find similar research useful.
- 8.2 The first report from Professor Jonathan Montgomery, which was written shortly after CHRE started, focused on initial cases and how they were dealt with in accordance with procedures and on the decisions that CHRE made. Several recommendations were made and implemented following this report.

- 8.3 The second report from Professor Montgomery was about decisions taken at case meetings and whether or not they were consistent. No specific recommendations had arisen from this report, but the consensus had been that decisions were consistent, apart from one.
- 8.4 The third report, from Vivienne Harpwood, looked at decisions made by CHRE staff members and whether the correct decisions were being referred to members and the result was that they had been.
- 8.5 Both the Chief Executive and Head of Scrutiny and Quality felt that CHRE would benefit from a research report that looked at the implementation of the audit of initial stages of fitness to practise. As this was an area with new processes and procedures, the risk was increased.
- 8.6 As the internal auditors had allocated six days to the Scrutiny Committee and a small amount of money had been set aside in the budget for research, it was suggested that a proposal be taken to the next Committee meeting with a view to commission such research early next year.

ACTION: MA / TB

9. Consideration of complaints

- 9.1 At the previous meeting, it had been suggested that clarification was needed for public awareness around the types of complaints CHRE could take forward under its complaints policy. The proposed text for such a new page on CHRE's website was agreed subject to the following comments. The last item under 'Complaints we can accept' in the table should make reference to s29 deadlines and it should be written in Plain English prior to publication on the website.

ACTION: MA

- 9.4 At a recent meeting with the Department of Health, it was decided that enacting Section 28 powers for CHRE should be deferred until results from the audits of initial fitness to practise have been completed. This would help to identify particular areas of weakness in regulators' handling of complaints, which in turn would help CHRE to see where the most work was needed.
- 9.5 The Committee agreed that no further action should be taken around s28 at this time, but suggested that the Council should discuss the matter in its private session.

ACTION: LF

10. Cost effectiveness and value for money

- 10.1 It had been agreed at the Committee's previous meeting that cost effectiveness would be a standing item on the agenda. The Head of Scrutiny and Quality explained that although the Scrutiny Committee did not have a specific budget, its value for money should be monitored regularly.

11. Any other business

11.1 The Chair noted that the agenda of the next meeting (9 September 2009) should contain the following:

- Comments from Council meeting around OHPA considerations;
- Complaints;
- Research in terms of audit activity;
- Any relevant s29 matters.