

Present

Sally Irvine (Chair)
Ann Curno
Ian Hamer

In attendance

Harry Cayton
Michael Andrews
Tim Bailey
Lisa Foley

It was decided at the start of the meeting that Sally Irvine would be the Chair of the Scrutiny Committee. She welcomed everyone to the first meeting.

1. Proposed membership, terms of references and frequency of meetings

- 1.1 It was agreed that a vice chair would be unnecessary due to the small number of members. In the absence of the Chair, either one of the other members would take on the role.
- 1.2 Members agreed that this Committee would be very helpful to CHRE and its Council and would act as a transparent body whose role would be to support CHRE in its Scrutiny responsibilities.
- 1.3 The Scrutiny Committee had previously included three CHRE Council members and a Patient and Public representative. Current Committee members were asked to consider new arrangements, taking into account the reduced number of Council members.

Members considered whether it was necessary to have any external members but decided that as the three members were all lay this was not necessary. However, they felt that they might wish to co-opt additional external members in due course for particular purposes. It was agreed that the quorum for a meeting would be two.)

The members confirmed the current membership, with the option to review the use of external resources as necessary in future.

- 1.4 The Committee considered the draft Terms of Reference. Members agreed that their work should encompass the four main strands of CHRE's scrutiny work which were: review in final fitness to practice decisions, audit of initial fitness to practice decisions, performance reviews of the regulators, and consideration of complaints about the regulators.
- 1.5 The Terms of Reference were approved, with amendments as follows:
 - a) *Para 3b* – remove b with a view to consider the addition of an external representative as necessary

- b) *Para 4* – delete whole item
- c) *Para 6* – remove ‘and Vice Chair,’ as it was agreed to be unnecessary
- d) *Para 7* – The quorum would now be 2 members, not 3
- e) *Para 8* – amend to say ‘The Scrutiny Committee is permitted to co-opt’ instead of just the Chair
- f) *Para 10* – Change to say ‘the Scrutiny Committee will meet approximately 3 times a year’ instead of 4
- g) *Para 14* – Change wording ‘The Scrutiny Committee is required to:’
- h) *Para 14a* – Change wording to ‘assure on behalf of the Council the quality assurance of the operations work of the Scrutiny and Quality Team...’
- i) *Para 14d* – Add ‘d. Commissioning research’

- 1.6 The Committee considered how often they should meet. As the Performance Review would be completed by July, it would be best discussed in September after the report is published and made available to regulators and the public. The first round of audits would be completed by April 2010, and it was felt that progress should be considered in January 2010. It was agreed a meeting in May 2010 would also be beneficial for an in-depth look at contentious Section 29 cases. Meeting dates were proposed as in Item 5 below. It was agreed this process would be reviewed in mid-end January 2010. It was also felt that the Chair of CHRE’s Council should be invited to attend meetings should she wish to do so.

ACTION: LF

- 1.7 The Committee invited CHRE’s Audit Committee to consider changing its name to the Audit and Risk Committee to make clear its responsibility for CHRE’s risk register.
- 1.8 It was agreed that a review of the Committee’s cost effectiveness and value for money should be added as a regular item on future meeting agendas to aid in budgeting.

ACTION: LF

2. Proposals for research/audit of the work of the scrutiny function

- 2.1 The Chief Executive explained that he had invited the former Scrutiny Committee to meet prior to the establishment of the new Council to provide assurance on scrutiny processes. From the meeting in November 2008, a substantial academic piece of research had been proposed on Section 29.

The Committee members agreed that it was too early to determine whether this research should be commissioned. It would be important to discuss this at a future meeting, taking into account CHRE’s

proposed relationship with the Office of the Health Professions Adjudicator (OHPA) and its role in Section 29.

- 2.2 A question was raised around how CHRE would work with OHPA. The Head of Scrutiny and Quality explained that the White Paper *Trust Assurance and Safety* states that CHRE should audit how the regulatory bodies utilise their power to appeal against decisions of OHPA. This information would be likely to be incorporated into the Performance Review. The Committee members agreed it would be helpful to see a briefing on the implications of OHPA for CHRE at the next meeting and that this issue would then be taken to the Council.

ACTION: HC and MA

- 2.3 Discussion arose over the process of considering Section 29 cases. The Head of Scrutiny and Quality explained that the number of cases going to court had been reducing. The team looked at approximately 1400 cases a year. Most were fairly straightforward, allowing the staff to make a quick decision.
- 2.4 A Committee member raised a question over the value of CHRE's involvement with Section 29. Many regulatory bodies felt that they received valuable feedback from CHRE in the form of a 'learning points' document. However, concern had been raised over whether the involvement was disproportionate.
- 2.5 It was agreed that CHRE's upcoming Sexual Boundaries Seminar in May would be a starting point for a case study using thematic research. The members requested a paper to consider how the regulators dealt with cases involving sexual misconduct.

ACTION: MA

3. Arrangements for consideration of Section 29 cases at case meetings

- 3.1 This item had arisen at the first meeting of the Council in January 2009 where it had been agreed that more research must be done before deciding upon arrangements for a new Section 29 case panel. Currently, former Council members had been appointed to consider cases at case meetings for a transitional period of 12 months. As the number of cases had been falling, the current Committee were asked to consider whether CHRE should dispense with case meetings altogether, leaving CHRE's staff to make decisions on all cases, thereby making the process much more cost effective and efficient.
- 3.2 Committee members discussed the pros and cons of retaining a Section 29 panel. The new proposed process would involve more internal staff meetings, informed by legal advice (including Counsel advice if necessary). The Chief Executive, in his role as a Council member would then take the decision of whether or not to exercise CHRE's discretion to refer the case to Court.

The role of the Scrutiny Committee would be to review the process and scrutinise the decision made by the staff. It was agreed that future Committee agendas should include a report on any cases arising since the previous meeting which had been considered at such a staff case meeting. Members agreed that this suggestion should be recommended to the Council at the May 2009 meeting.

ACTION: MA

- 3.3 The Committee decided to refer the matter to Council and subsequently the Council agreed that the current Section 29 panel members should be told of the Committee's decision by way of a personal letter from the Council Chair.

ACTION: LF

4. Statistical information

- 4.1 The members considered two reports; the Section 29 statistical report and a report on complaints covering the period from 1 April 2008 to 31 March 2009. Section 29 statistical reports were completed on a six-monthly basis and were posted on the CHRE website. Reports on complaints were produced on a quarterly basis.
- 4.2 The Head of Scrutiny and Quality explained that further to the Health and Social Care Act of 2008 the deadline for Section 29 case decisions had been extended from 28 days to 40.
- 4.3 Committee members raised a question about why Section 28 (power to consider complaints) had not been enacted. The former Council had discouraged the Department of Health from enacting the power as they felt it would not add value to CHRE's work or what the regulatory bodies did. It would also require considerable resources. They felt that there had been more value in using complaints to raise good practise with the regulators. An example was mentioned in which the outcome of a complaint resulted in the General Dental Council changing its processes with regard to fitness to practise cases.
- 4.4 The members queried the process for enacting Section 28 if the current Council were to have a different view to the previous Council. The decision was a matter for the government, not CHRE. The process would include a three-month consultation, followed by drafting of new regulations by the Department of Health.
- 4.5 The Committee members agreed it would be helpful to clarify CHRE's position and processes with regard to dealing with complaints from the public. Recommendations were made by Committee members that the criteria on which CHRE will accept complaints should be more

clearly defined and that this information should be posted on the CHRE website.

ACTION: HC MA and EK-D

- 4.6 It was suggested that the issue of Section 28 should be taken to the Council at some point, but the consensus of the Committee was that CHRE should not be seen as a complaints focussed organisation.

5. Dates of future meetings

5.1 Dates for future meetings were arranged as follows:

- 16 June 2009
- 9 September 2009
- 11 January 201
- 4 May 2010

All meetings will take place from 11:00 – 13:00 at the CHRE office.