

A more level playing field on medical complaints

Aisling Timoney provides a guide to major changes in regulatory law which will include better processes for filtering out potentially trivial or vexatious complaints against doctors

THE NEW REGULATED PROFESSIONS (Health and Social Care) (Amendment) Act has been long awaited by healthcare professionals and their legal advisers alike. It addresses some longstanding bugbears, including inefficiencies in the processes dictated by legislation and the Medical Council's previous inability to filter out trivial or vexatious complaints at an early stage.

The new legislation provides for changes in the investigations process employed by the Medical Council. The CEO of the Medical Council will take on a new role investigating complaints at a screening stage, with the help and support of a team of authorised officers.

In future, following receipt of a complaint, the CEO will have the power to decide whether a complaint is frivolous or vexatious. Previously, the Preliminary Proceedings Committee (PPC) was required to consider whether a complaint was trivial, frivolous, vexatious or made in bad faith following its investigation and before forming an opinion on whether there is sufficient cause to warrant taking further action in relation to the complaint. This new amendment should allow for the filtering out of trivial and vexatious complaints at an earlier stage in the process.

Under the new system, the CEO will appoint an authorised officer to each complaint in the same way that a case officer is currently assigned to each file. The authorised officer will have powers to investigate the complaint, including the authority to compel the production of documents and information. To date, the case officers have been limited and occasionally delayed in their ability to advance investigations because they required specific directions from the PPC to carry out each particular step.

The PPC convenes each month and if, for example, the PPC had instructed the case officer to take up records from one named hospital but it transpired that the patient had in fact attended a different hospital, the case officer had to bring the matter back before the PPC to seek amended instructions. The case officer did not have the autonomy or the authority to approach the correct hospital. Under the new regime, simple issues like this should be capable of being addressed with the CEO without delay.

The CEO will oversee complaint investigations and will forward the complaint, the investigation report and any relevant information to the PPC, which will remain the ultimate decision-maker in respect of how to proceed with a complaint.

In each complaint, the options available to the PPC are:

- To decide that no further action should be taken in relation to the complaint, ie. to close its file

Table 1: Changes brought in by the Act

The new Regulated Professions (Health and Social Care) (Amendment) Act amends five health professional regulatory Acts, namely:

- The Dentists Act 1985
- The Health and Social Care Professionals Act 2005
- The Pharmacy Act 2007
- The Medical Practitioners Act 2007
- The Nurses and Midwives Act 2011.

This means the new Act will affect how the Medical Council, Dental Council, Pharmaceutical Society of Ireland, Nursing and Midwifery Board of Ireland and CORU operate. The most notable amendments relate to registration requirements and processes and fitness to practise investigations and inquiries. The headline changes include the following:

- Two new grounds for complaint are introduced
- The CEO of the Medical Council will take a new role in investigating complaints, with the help of 'authorised officers'
- The Preliminary Proceedings Committee, which governs the first stage of the complaints process and which screens complaints, will have powers to accept undertakings
- Information about disciplinary inquiries in other jurisdictions will be admissible in evidence in fitness to practise inquiries in Ireland
- There will now be a right of appeal to the High Court against all sanctions. Previously 'minor' sanctions could not be appealed against.

- To refer the complaint to another competent body or authority
- To refer the respondent doctor to a professional competence scheme
- To refer the matter to mediation to attempt to restore the doctor-patient relationship
- To refer the matter to inquiry because it considers there is a *prima facie* case that warrants further investigation.

The PPC will have regard to the investigations and the report completed by the authorised officer in making its decision. The PPC can refer a matter back to the CEO if it considers that additional information or investigations are necessary prior to it making a decision on a complaint.

The new Act provides that any complaint made before the commencement of this Act will continue to be dealt with under the old procedures. This means that the professional standards function of the Medical Council will, for a time, be operating two different statutory regimes in parallel, until its older investigations are finalised.

Under the new Act, the PPC and Fitness to Practise Committee (FTPC), which is responsible for the second stage of the complaints process and which oversees complaints referred to inquiry, can both establish subcommittees. These subcommittees will have the powers and authority

Table 2: Additional grounds for complaint

The Act creates two new grounds for complaint, where a registrant has been (1) prohibited or (2) restricted from providing a type of healthcare in Ireland, or in another jurisdiction.

This means that the available grounds for complaint are now:

- Professional misconduct
- Poor professional performance
- A relevant medical disability
- Failure to comply with a relevant condition
- Failure to comply with an undertaking/to take an action specified in a consent
- Contravention of the Act
- Conviction inside or outside the State for a serious criminal offence
- Prohibition/restriction on providing a type of healthcare in Ireland or another jurisdiction.

to perform the same functions as the overall committee. This should expedite the complaints process considerably, because it provides scope for more frequent subcommittee meetings to be held at staggered intervals.

Information from the Courts/Gardaí

The CEO may, whenever he or she considers it necessary, request in writing that the registrar or clerk of a court that has convicted a medical practitioner of an offence in the State provides a certificate of conviction.

The new Act clarifies that spent convictions within the meaning of section 5 of the Criminal Justice (Spent Convictions and Certain Disclosures) Act 2016 are not material matters. In relation to a complaint heard, being heard or to be heard by the FTPC, whenever he or she considers it necessary, the CEO may also request in writing information concerning the criminal record of the respondent medical practitioner from An Garda Síochána.

Power to request information from other regulatory bodies

The CEO also has power to request information in relation to a material matter from other regulatory bodies in Ireland or in another jurisdiction. This includes information about:

- The imposition of conditions on registration
- The suspension, withdrawal or removal of any registration
- The refusal to grant registration
- Conviction for a serious crime.

This new provision will enhance co-operation between the Medical Council and its international counterparts. It will also facilitate co-operation between the various regulators in Ireland, which makes particular sense in situations where the same set of background facts has given rise to complaints against various healthcare professionals to their respective regulators.

Undertakings and consents

Under the Act, the PPC can request undertakings from registrants which would dispose of complaints against those registrants at an early stage. An undertaking is a formal, binding and written commitment by the respondent medical practitioner and breach of an undertaking is a ground for complaint. The following are particular types of undertakings that can be requested:

- Not to repeat the conduct complained of
- To be referred to a professional competence scheme
- To consent to undergo medical treatment
- To consent to being censured.

Again, this is a welcome development because it provides for early disposal by way of an undertaking at the conclusion of the investigation stage of the process. Under the existing system, only the FTPC can accept an undertaking from a respondent medical practitioner. This means that the inquiry process is at a much more advanced stage by the time an undertaking can be offered.

This amendment under the new Act should help to save Medical Council hearing time and resources, legal costs and most importantly, alleviate stress and strain on parties to the complaint. An undertaking will not be subject to review or confirmation by, or appeal to, the High Court.

Admissibility of details of disciplinary inquiries in other jurisdictions

The Act also provides for the admissibility of documents from disciplinary or judicial proceedings in other jurisdictions in disciplinary proceedings here. This practical amendment resolves a procedural conundrum. In the past, if a doctor was investigated and sanctioned for, say, professional misconduct in another jurisdiction, by another medical regulator, the Irish Medical Council had to carry out its own investigation here.

In order to impose a sanction or restriction on that doctor's practice here, the Irish Medical Council had to reconstitute the inquiry and evidence, incurring considerable time, expense and delay. This is a sensible amendment that means, for example, that the Medical Council can now have regard to the transcript and report of an inquiry in another jurisdiction.

Right to appeal minor sanctions to the High Court

The Medical Council must impose a sanction if, following an inquiry, there is an adverse finding against a respondent doctor. The available sanctions include:


- A range of formal warnings or reprimands (referred to as, in ascending degrees of severity: 'advice,' 'admonishment,' 'censure')
- A reprimand in the form of censure plus a fine of up to €5,000
- The imposition of conditions
- Suspension of registration
- Cancellation of registration
- Prohibition on reapplying for registration.

Until now, the less serious sanctions (reprimands) could not be appealed to the High Court. It was only possible to appeal to the High Court against the imposition of conditions or suspension/cancellation of registration.

Now respondent doctors will have the right to appeal within 21 days against any sanction, not just those sanctions at the more serious end of the spectrum. The potential remedy of judicial review will continue to be available as before.

Publication of sanctions

The draft Bill originally required publication of information in all matters where sanctions were imposed. Following stakeholder consultation and debate in the Oireachtas, this was amended.

Under the new Act, the Medical Council is only required to publish details of minor sanctions where it is satisfied that there is a public interest argument in favour of this. 

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