

Move to ‘right touch’ regulation in new Council procedures

Recent Medical Council changes should lead to frivolous complaints being weeded out earlier and remove the need for some issues to progress to fitness to practise level, writes Stephen O’Leary

THE MEDICAL COUNCIL’S ROLE is to protect the public by promoting and better ensuring high standards of professional conduct, education, training and competence among doctors. One aspect of this protection role is dealing with complaints made against doctors.

There is no doubt that it is a stressful and worrying time for any professional who receives a letter from their regulator informing them that a complaint has been made against them. Fortunately, most complaints against doctors are dealt with at the Preliminary Proceedings Committee (PPC) stage, which involves a paper-based investigation.

Recent changes to the Medical Practitioners Act 2007 have given the PPC wider powers to accept undertakings and to censure doctors, which should result in complaints being disposed of more quickly, and without the need for the PPC to refer certain complaints to the Fitness to Practise Committee for inquiry.

Complaints in numbers

Before addressing the recent changes to the complaints process, it is worth looking at the numbers involved. According to the Medical Council’s annual report for 2023,¹ which is the most recently published, there were 29,488 doctors on the register. The Medical Council received 353 complaints that year against 391 of those doctors. Each of these complaints must be considered by the Preliminary Proceedings Committee.

The PPC is the committee responsible for giving initial consideration to complaints and determining whether further action is warranted; for example, referral of the complaint to the Fitness to Practise Committee for a sworn oral inquiry. In 2023, the PPC made a decision in respect of 286 cases, with no further action being taken in 225 of those cases and with 61 cases being referred to the Fitness to Practise Committee.

Recently, a new process for managing the initial stages of Medical Council complaints came into effect. Under the new process, the Medical Council’s CEO will first review the complaint. If the CEO believes the complaint is not genuine, or it is ‘frivolous or vexatious’, it may be rejected. This is a welcome change, as previously almost all complaints had to go through the PPC stage without any such initial review.

At the other end of the spectrum, if the complaint involves a serious criminal conviction, it will be sent by the CEO

straight to the Medical Council for immediate consideration. In most other cases, the CEO will assign an authorised officer to investigate the complaint. The doctor will be notified of the complaint while the authorised officer carries out an investigation which could include:

- Asking the complainant for more details or documents
- Asking the complainant to confirm parts of their complaint by signing a legal statement
- Interviewing the complainant or other people
- Requesting records (including medical records)
- Consultation with experts, if required.

The doctor will then be given an opportunity to respond to the complaint and to provide their own response. After the investigation, the CEO will pass all the information gathered during the investigation to the PPC. It is the role of the PPC to investigate the complaint, and the PPC will decide if there is enough cause to take further action. When considering the complaint, the PPC may:

- Ask for more information for further investigation(s)
- Suggest informal resolution or mediation
- Decide no further action is warranted
- Refer the doctor to the Fitness to Practise Committee
- Request an undertaking from the doctor.

This last option, the power to request an undertaking from the doctor, is new and is a significant change to the complaints process.

Undertakings to the PPC

Prior to the recent changes, the PPC had no power to request an undertaking even in a case where a doctor may have been willing to offer one. In keeping with its new powers, we understand the Medical Council has recently prepared draft guidance on how the PPC will approach and manage undertakings.

The PPC may request the doctor subject to the complaint to do one, or more than one, of the following:

- If appropriate, undertake not to repeat the conduct which was the source of the complaint
- Undertake to be referred to a professional competence scheme and to undertake any requirements relating to the improvement of the practitioner’s competence and performance which may be imposed
- Consent to undergo medical treatment
- Consent to being censured by the Council.

It is clear from the above that the range of undertakings available to the PPC is broad, from a simple undertaking not to repeat specific conduct to a much more stringent undertaking concerning professional education and competence.

If a doctor gives an undertaking or consent as requested, regardless of how serious the undertaking or consent is, the investigation of the complaint shall be considered completed and the PPC shall not refer the matter to the Fitness to Practise Committee. In such circumstances the PPC shall submit to the Medical Council a report specifying the nature of the complaint that resulted in the investigation and the measures included in the undertaking or consent.

If a doctor refuses or fails to give an undertaking or consent requested by the PPC, as they are of course entitled to do, then the PPC may proceed to deal with the complaint as if the request for an undertaking or consent had not been made.

Any undertaking requested by the PPC must be "...workable, measurable, attainable and proportionate. Undertakings should address the specific concerns about the doctor."

According to the draft guidance prepared by the Medical Council, while the PPC is not required to determine that there is a prima facie case before requesting an undertaking, it does state that where the PPC's request is for a censure, it is particularly important that the complaint would likely reach the threshold for a referral to inquiry.

The following matters (though not an exhaustive list) may be of relevance in the PPC determining whether undertakings and/or consents are appropriate in a particular case:

- The seriousness of the concerns raised in the complaint
- The nature of the allegations, for example communication issues or once-off/human errors may be suited to undertakings if the practitioner has an otherwise good record
- The timing of the complaint, eg. if the complaint relates to historic issues
- The extent to which the complaint relates to repeated conduct
- The likelihood of the practitioner complying with the undertakings, including any history of non-compliance
- Previous findings/sanctions – If a practitioner has been subject to a previous sanction by the Council, the PPC may have regard to that sanction
- The level of insight demonstrated by the practitioner – A practitioner who demonstrates an understanding of their failings and the need to limit their practice or undertake retraining or other remedial measures may be more likely to comply with undertakings
- Whether the practitioner is practising or intends to practise in the future
- In light of any health issues, any concerns regarding the practitioner's capacity to consent or to comply with an undertaking(s).

Unless there are exceptional circumstances, undertakings will not be appropriate in complaints alleging dishonest or fraudulent behaviour regarding professional practice, ie. falsifying records; abuse of patients or abuse of a patient's trust or violation of a patient's autonomy or other fundamental rights; inappropriate sexual relations; certain criminal behaviour; reckless and wilfully unskilled practice or reckless disregard of clinical responsibilities; or

where there has been a breach of conditions or undertakings to the Council.

The benefit of the PPC being able to request an undertaking is that more serious cases, such as those where there may be a prima facie case of poor professional performance, will be adequately addressed at an earlier stage, without the matter having to be referred to a Fitness to Practise Inquiry. This ensures that complaints will be dealt with as efficiently as possible, which benefits both the public, and the doctor subject of the complaint.


“ It is to be hoped that the new processes... will result in frivolous or trivial complaints being dismissed at the earliest opportunity, possibly without any input from the doctor. ”

Conclusion

It is always stressful having to deal with a Medical Council complaint. It is to be hoped that the new processes introduced by the Medical Council will result in frivolous and vexatious complaints being dismissed at the earliest opportunity, possibly even without any input from the doctor involved.

The changes to the PPC process, with the CEO being able to instruct the authorised officers to investigate and manage the complaints process, should reduce the length of time it takes to conclude the investigation and for the complaint to be considered substantively by the PPC.

The ability of the PPC to request undertakings should reduce the number of cases being referred to inquiry by the Fitness to Practise Committee as the PPC will be able to deal with more serious complaints appropriately and promptly, and thus both ensuring the public is adequately protected and the complaints process is as quick as possible for the doctor.

If you receive notification of a Medical Council complaint, you should contact your indemnifier for advice. 

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Reference

1. Medical Council annual report and financial statements 2023. www.medicalcouncil.ie