

<b>Title of report</b>	Quality Assurance process for Fitness to Practise Panel Members
<b>Public/confidential</b>	Public
<b>Action</b>	For decision
<b>Date of Publication</b>	Before meeting
<b>Purpose of Report</b>	To provide Council with information about the quality assurance process for Fitness to Practise Panels and options as to how to improve the process.
<b>Recommendations</b>	<p>The Council is asked to approve Option 1 as detailed in the appendix:</p> <ol style="list-style-type: none"> <li>1. the creation of a Quality Assurance Sub-committee</li> <li>2. authorise the recruitment of candidates to put forward to Council for appointment to the Sub-committee, alongside Corporate Governance arrangements in respect of the Sub-committee.</li> </ol>
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<b>Link to Strategic Plan</b>	<p>The information in this report links to:</p> <p>Outcome 1 - The right people are on the Register.</p>
<b>Link to the Risk Register</b>	Risk 1 - Failure in our registration or fitness to practise processes lead to public protection failure.
<b>Equality Impact Assessment (EIA)</b>	An EIA was not developed as the outcome of this report is an operational matter which does not directly impact any of the three requirements of Public Sector Equality Duty or protected groups either positively or negatively. Any recruitment subsequently instituted will follow appropriate practices to ensure a fair process.

<b>Documents attached</b>	Appendix 1: Table of options
<b>Background papers</b>	Corporate Governance Report, Item number 42/2019

## **1. BACKGROUND**

- 1.1 In order to provide a framework for independent decisions about the fitness to practise of workers, Council created a Fitness to Practise Committee made up of a Council Member and a pool of co-opted Panel Members. Each Fitness to Practise Panel which adjudicates on the fitness to practise of a worker is a Sub-committee of the Fitness to Practise Committee. The Committee meets every three years.
- 1.2 This arrangement enables the SSSC to carry out its statutory public protection responsibilities in a way that complies with the law and ensures the Panel remains sufficiently independent of the Council. The Council remains accountable for the decisions made at Panels by Panel Members. As the Council cannot interfere with Panel decisions, in order to be satisfied that the decisions and proceedings are of the appropriate quality, the Council must look to the sufficiency of the selection, training and quality assurance of Panel Members.
- 1.3 This report sets out proposals to improve the arrangements in respect of quality assurance, which in turn will enhance the existing arrangements for recruitment and training.

## **2. CURRENT POSITION**

- 2.1 There is no formal process in place to quality assure decisions made by Panels or to review their skill in managing the Panel process. The Fitness to Practise Committee has no oversight of these areas.
- 2.2 Workers have the right to appeal decisions made by Fitness to Practise panels to the Sheriff Court. This right does not extend to the SSSC or any other party. In the last three years 914 hearings concluded. Eleven workers lodged appeals. The court dismissed eight appeals, one was upheld and two remain open. The number of appeals is too limited to rely upon this method alone as providing sufficient assurance about the quality of Panel Member decisions, particularly given that the Fitness to Practise Department have no right to appeal a decision they do not agree with.
- 2.3 Panel Members provide peer reviews to each other by completing brief feedback on their fellow panel members after every hearing. Panel Members receive a summary of the feedback quarterly. This is a new process which has only been in place for six months.
- 2.4 If there is a serious concern about a Panel Member, the Chief Executive refers the matter to the Special Appeals Committee. The Chief Executive has only implemented this process on one occasion.
- 2.5 The Head of Hearings holds both development days for all Panel Members, and regular meetings with the Panel Chairs. These forums do permit a mechanism of addressing any matters which have come to her attention, but there is no formal structure and no method of dealing with particular Panel Members.

### 3. APPROACH OF OTHER REGULATORS

3.1 There are a number of approaches currently taken by other regulators.

Nursing and Midwifery Council (NMC)	<p>Panel Members carry out peer reviews.</p> <p>An internal Decisions Review Group and Quality Outcomes Group review decisions of panels. These groups refer decisions to the Professional Standards Authority (PSA) if they consider that the decision is of insufficient standard. The PSA then has the power to appeal the decision.</p>
Medical Practitioners Tribunal Service (MPTS)	<p>The MPTS was set up as a separate entity from the General Medical Council (GMC) to ensure separation of the functions of investigation and decision-making. The GMC currently has the right to appeal decisions of the MPTS (the Government has said it intends revoking this right). The PSA also has the power to appeal decisions. The separation between the GMC and the MPTS means there is less risk associated with scrutiny of decisions.</p> <p>The MPTS Statutory Committee has responsibility for ensuring high standards of decision making. It meets quarterly and reports via the MPTS Chair to the GMC Council twice a year, and to Parliament via Privy Council once a year.</p> <p>The MPTS has 360-degree feedback for panel members and provides members with quarterly and annual performance reports.</p>
The General Teaching Council for Scotland (GTCS)	<p>Internal Sub-committee that reviews and reports on hearing decisions quarterly.</p>

### 4. PROPOSALS

4.1 The three areas we believe would most benefit from improved arrangements:

- review of Panel decisions to identify and address learning points
- observation of hearings to identify and address learning points
- a more independent mechanism to investigate and address issues with individual Panel Members prior to referral to the Special Appeals Committee.

4.2 Any arrangements put in place to address the quality of decisions and decision-making need to consider the principle of 'apparent bias', and the need for those making decisions at Fitness to Practise Panels to be at arm's length from Council.

#### 4.3 Options (with full details at Appendix 1):

Option 1 – Create a Quality Assurance Sub-committee of the Fitness to Practise Committee	<p>This option provides an independent route to scrutinise decisions, observe hearings and investigate issues relating to Panel Members.</p> <p>By appointing a Sub-committee from existing or former members, they have the expertise and knowledge of our proceedings to identify and address issues.</p> <p>As part of our formal governance framework they also have the authority to address those issues.</p>
Option 2 – Appoint external legal and social service consultants to provide advice	<p>This option provides an independent route to scrutinise decisions and observe hearings and make recommendations</p> <p>It cannot provide a clear mechanism to then deal with any issues identified in a way which does not weaken the independence of Panel Members.</p>
Option 3 – Continue with current arrangements	<p>The feedback through Sheriff Court appeals shows that on the whole the decisions made are fair.</p> <p>We could continue without improving the current arrangements.</p>

## 5. RECOMMENDATION

5.1 We seek approval from the Council to implement Option 1 and:

- create a Quality Assurance Sub-committee
- provide authority for the recruitment of candidates to put to Council for appointment to the Sub-committee, alongside Corporate Governance arrangements in respect of the Sub-committee.

## 6. RESOURCE IMPLICATIONS

6.1 Option 3 has no resource implications. The resource implications of Options 1 and 2 are set out in the Appendix. If approved by Council, we will build resource into the budget for 2020/21 to accommodate the preferred option.

## **7. LEGAL IMPLICATIONS**

- 7.1 Introducing a system of quality assurance has the potential to weaken the independence of Panels, thereby creating a potential ground of appeal. The options proposed have sufficient safeguards that this risk should not materialise.

## **8. STAKEHOLDER ENGAGEMENT**

- 8.1 This is an internal process and does not require external consultation. Panel Members are aware we are considering how to formalise quality assurance arrangements. If approved, we will engage with Panel Members around the detail and implementation.

## **9. IMPACT ON PEOPLE USING SOCIAL SERVICES AND ON CARERS**

- 9.1 This will have a positive impact on those using social services and carers. The intention is that it will result in better decisions and an improved hearing process, including for those who are witnesses.

## **10. CONCLUSION**

- 10.1 There is currently no process beyond the appeal to the Sheriff Court which can satisfy Council Members that Fitness to Practise Panel Members are fairly exercising the authority delegated to them, or that performance of Panel Members within hearings is satisfactory.
- 10.2 Appeals, complaints and negative publicity due to poor decision-making or unacceptable performance within hearings could have a detrimental impact on the protection of people who use services and the reputation of the SSSC. Strengthening the arrangements will provide some mitigation against these risks.

<b>Option</b>	<b>Description</b>	<b>Benefits</b>	<b>Risks</b>	<b>Cost</b>
<p>Option 1</p> <p>Quality Assurance Sub-committee</p>	<p>Create a Sub-committee of the Fitness to Practise Committee.</p> <p>Appoint a small number of current or former Legally Qualified Chairs and Social Service Members to the Sub-committee.</p> <p>The Sub-committee's remit being to review written decisions identified by the Head of Hearings as meriting review, and to observe hearings, thereafter addressing any issues arising with the relevant Panel Members, or making general recommendations to the Head of Hearings regarding training.</p> <p>If there were an issue with a Panel Member which could not be resolved, the matter would be escalated to the Special Appeals Committee.</p>	<p>It would provide an independent insight into our decisions and procedures.</p> <p>The Sub-committee can be authorised to address any issues they identify directly with individual Panel Members, maintaining independence.</p> <p>The Sub-committee Members, as current or former Panel Members know and understand our process and the workforce we regulate.</p>	<p>Panel Members may not accept peer review of their decisions or observation of them in hearings and may resign affecting our ability to hold hearings.</p>	<p>The Head of Hearings would instruct the Sub-committee.</p> <p>The work carried out would be capable of increasing or decreasing in response to budget pressures.</p> <p>We propose that Members receive a slightly increased rate to that when sitting as a Panel Member, to reflect the responsibility of the role and attract experienced Panel Members to apply.</p> <p>Costs are based on £840 per day (£700 plus VAT where applicable) for legal members of the Sub-committee, and £225 per day for social service members of the Sub-committee.</p> <p>An estimate of £22,860 per annum would permit review of two decisions per month and the observation of every member at least once every three years.</p>

Option	Description	Benefits	Risks	Costs
Option 2 External Consultants	<p>We appoint external legal and social service consultants to review decisions and observe panels.</p> <p>The consultants would then make recommendations to the Head of Hearings.</p> <p>As they would not be part of formal governance structures, they would not be able to make decisions or address issues direction with Panel Members.</p>	<p>It would provide an independent insight into our decisions and processes.</p> <p>As the consultants would have no decision-making power and would not be peers of Panel Members, it may be a more acceptable method for Panel Members.</p>	<p>It may not be possible to appoint consultants who have experience of our Rules and process, and workforce which may result in less tailored and helpful outcomes.</p> <p>Being external to our governance framework they could only make recommendations to the Head of Hearings, who would then have to address the issues raised. This does not provide the same level of independence as Option 1.</p>	<p>The Head of Hearings would instruct the consultants.</p> <p>The work carried out would be capable of increasing or decreasing in response to budget pressure.</p> <p>Costs are approximate and based on our estimate of tendered rates from legal firms and the same costs for social service consultants as at Option1.</p> <p>£29,700 for the same level of review and observation as at Option 1.</p>



Option	Description	Benefits	Risks	Costs
<p>Option 3</p> <p>Continue with current arrangements</p>	<p>When issues come to her attention, the Head of Hearings addresses these in a general way through development days or meetings with the Chairs. No formal arrangements for addressing specific issues exist short of referring a Panel Member to the Chief Executive, for referral to the Special Appeals Committee.</p>	<p>The current arrangements have been in place for many years without causing any particular issue with Panel Members.</p> <p>They maintain the required independence as there is very little oversight or scrutiny of Panel decisions or conduct.</p>	<p>In the absence of sufficient scrutiny there are issues unaddressed that may lead to a poor decision, or management of a hearing and compromise the safety of people using services and the reputation of the SSSC.</p>	<p>No costs</p>