

One of the most difficult experiences for any professional is to be the subject of an investigation by their

regulator. The Health Professions Council's (HPC) Fitness to Practise annual report (April 2010–March 2011) reveals a slight decrease in the overall number of concerns raised across each of the professions regulated by the HPC. However, more concerns were raised by members of the public than ever before and there is an increase in the number of concerns that proceeded to a final hearing – a total of 315 during 2010–2011.

To put matters into context, the HPC's Fitness to Practise caseload involves a small number of individuals in proportion to the total number of registrants; approximately 0.35%. There are 13,086 SLTs registered with the HPC, representing just over 6% of the HPC's total registrants. Only 0.19% of SLTs were subject to complaints during 2010–2011 and only 10 out of the 315 cases which proceeded to a hearing involved an SLT.

Despite these statistics, and although the HPC is keen to emphasise the low number of complaints and investigations in proportion to the number of registrants, it is important to be aware of those crucial next steps should you receive correspondence notifying you of a complaint from the HPC.

An HPC letter arrives

If you receive a letter from the HPC, do not ignore it. As an RCSLT member, the first and most important step is to contact the College, reporting the HPC correspondence and the nature of the complaint, as soon as possible. The RSCSLT will guide you through the broker and insurer notification requirements, and solicitors may be instructed to act on your behalf.

Although no statistics are available to indicate how many of the SLTs who were the subject of an investigation were legally represented, or indeed how many engaged fully with the HPC investigation, general HPC statistics and experience show that legal advice and representation from the outset can significantly reduce the chances of a complaint proceeding to a full hearing, and an adverse outcome at the hearing itself.

Given the stress and anxiety that an HPC investigation can cause, having the benefit

of legal advice and representation will also provide much needed support during this process.

Why act quickly?

If you had an accident in your car you would notify your insurer immediately. You must treat a letter from the HPC in the same way. In circumstances where there is a delay in you notifying the RCSLT of your claim for legal assistance, this may result in cover being declined.

Once insurance cover is confirmed, legal specialists in defending healthcare professionals before their regulatory bodies (such as Berrymans Lace Mawer) may assist you. They will notify the HPC that they act on your behalf and will correspond with them directly. This assistance will often include drafting on your behalf a written response to the complaint on the basis of your instructions, for consideration by the HPC's Investigating Committee Panel.

This is the first stage of the investigation process, when your side of the story and your response to the complaint can be considered. Advice from your lawyer will also include an assessment of the likely outcome, how best to approach the investigation should the case proceed to a

It could be you...

Solicitors Judith Duffin and Elizabeth-Anne Larsen outline the crucial next steps to take, should you be the subject of a Health Professions Council complaint

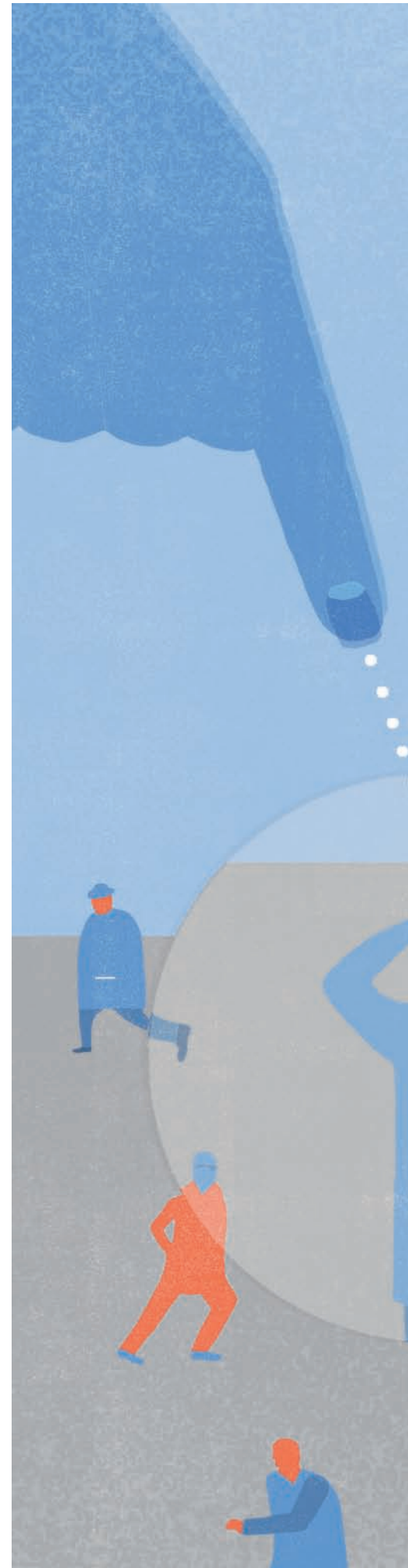




ILLUSTRATION Maggie Li for YCN

public hearing and what evidence should be gathered on your behalf.

Will I automatically face a hearing?

Our experience of dealing with HPC cases demonstrates that it is much more likely for the case to escalate to a final hearing, and indeed have an adverse outcome at that hearing, if HPC correspondence is ignored or is dealt with without proper advice and assistance. Engagement, insight and remediation (where appropriate) is key.

As with other healthcare regulators, the HPC is working hard to be more visible to the public. The recent launch of the HPC's iPhone app demonstrates the continued effort to emphasise its primary function of public protection, making it easier for patients to check that a healthcare professional is registered and, crucially, providing easy access to details of how to complain.

It is often the case that complaints are referred directly to the HPC by the patient even though they may be more suited to local resolution. As this may be the first time that you are aware of any dissatisfaction or complaint, it is important to report and seek legal assistance so that the complaint can be dealt with proactively.

Protection against complaints

As mentioned, a very small percentage of SLTs are the subject of complaints to the HPC. Nevertheless, if you are keen to reduce the risk of being involved, there are a number of ways that you can protect yourself in your professional practice to ensure you do all you can to avoid becoming one of the statistics.

You will not be surprised to hear that the importance of note keeping cannot be underestimated (RCSLT, 2006). Although the method by which SLTs take notes varies across NHS trusts and private practice it is important that notes are thorough and contemporaneous.

The system by which information is shared requires that chronological and accurate notes are put on the patient's file as soon as they are completed. Although thorough note keeping may sometimes be challenging, given your busy schedule, notes should be prepared as soon as possible after the therapy session with all relevant details noted fully and accurately to ensure that their validity cannot be questioned. Bear in mind that SLTs often rely on their predecessors to have included relevant information regarding previous treatment

sessions to analyse the progress of the treatment plan in place.

For example, if an employer, a patient or a patient's relative raises an issue that calls into question whether the proposed therapy was recommended, resolution of that complaint can be swift if the notes are thorough and comprehensive. Any issues of consent can be resolved by proof that treatment was offered and rejected when clearly indicated in the notes prepared at the time of the therapy session. This would negate any potential suggestion that notes may have been prepared retrospectively.

The patient's notes are often the key ingredient to investigating a complaint. Thorough, contemporaneous and thoughtful notes, discussing treatment recommendations are likely to provide the strongest evidence in the defence of any complaint, demonstrating your competence and professionalism.

Part of the job

Unfortunately, dealing with complaints, regardless of whether it may progress to the HPC, is part of a healthcare professional's practice. If you can deal with the complaint appropriately and quickly, and obtain early advice and assistance, then you maximise your chances of a successful outcome.

To contact the RCSLT, tel: 0207 378 1200. For further details on the RCSLT's insurance facilities, visit: www.rcslt.org/members/rcslt_insurance/intro ■

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References & resources

Health Professions Council. *Fitness to Practise Annual Report: April 2010-March 2011*. Available online: www.hpc-uk.org/assets/documents/10003700FTPAnnualReport2011.pdf
Royal College of Speech and Language Therapists. *Communicating Quality 3*, RCSLT's guidance on best practice in service organisation and provision. London: RCSLT, 2006, 143-152.

Note:

Berryman Lace Mawer's healthcare team has over 20 years' experience of advising insurers, medical defence organisations, professional regulatory bodies, independent clinics, healthcare practitioners, care homes, alternative therapy providers, treatment and diagnostic centres, bringing together the skills and expertise required to protect a diverse range of legal and reputational objectives.