



Decision Analysis Group - Update

STATUS

1. Confidential.
2. For discussion and approval.

EXECUTIVE SUMMARY

3. In January 2023, the IRB approved the creation of a Decision Analysis Group (DAG), which is set to become operational in 2023. The proposal highlighted that a DAG is necessary to plug a hole which currently exists within the disciplinary processes where there are concerns about the rationale of decisions or the explanations provided and no other mechanism to appeal or review which may risk perpetuating poor practice. The DAG provides a mechanism for reviewing decisions when concerns arise.
4. The Terms of Reference, Guidance on the Operation of the DAG, and a determination checklist that will be used by Tribunals have now been prepared and are provided for approval by the IRB. The Determination checklist will be provided to legal assessors and committee members to assist in the drafting process.

RECOMMENDATION

5. That the IRB formally approve the Terms of Reference and supporting documentation

RECAP OF THE BACKGROUND

6. Across the healthcare regulators, internal decision review groups operate to improve and enhance the standard of decision-making and recording (published records of decision) undertaken by their independent committees.
7. The General Medical Council for example operates a decision review group which is chaired by the Fitness to Practise Deputy Director and the DAG consists of senior management staff, an external representative and a panel member. The Nursing and Midwifery Council, The General Dental Council, the Health and Care Professions Council operate similar models based on the GMC. The purpose of the groups is to monitor decision making throughout all aspects of Fitness to Practise work, ensuring that it is in line with current operational guidance, legislation, and

Council policy. Information gathered during the decision review process informs panel training and guidance and will also identify performance management issues.

8. These groups are also used as a mechanism to pre-empt challenges by their Oversight Regulator (The Professional Standards Authority) who has the power to lodge an appeal in the High Court against a decision where it is considered unduly lenient and/or insufficient to protect the public or the public interest.
9. Under the old framework, Disciplinary Bye-Law (DBL) 26A.1 permitted the Investigation Committee to appeal against an order of a tribunal dismissing a formal complaint or formal complaints if it considered that:
 - a) The tribunal erred in law or in its interpretation of any bye-law, any regulation (whether made by ICAEW or otherwise) or relevant technical standard or guidance; or
 - b) The tribunal based its findings of a material mistake of fact or a series of mistakes of fact;And provided also that it is satisfied that an appeal is in the public interest and is necessary to uphold the integrity of ICAEW's disciplinary and/or regulatory function.
10. Given the narrow parameters and the fact that it can only be used where the tribunal has dismissed a formal complaint/formal complaint, this bye-law has only been used once. The new disciplinary framework widens this scope, however, there are decisions where an appeal may not be necessary but there are clear deviations from standard procedures and/or operational guidance that could and should properly be addressed by way of learning points or feedback.
11. There is currently no official mechanism in place that permits, without the risk of appearing to interfere with the independence of a committee/panel, the scrutiny of disciplinary decisions to facilitate ongoing feedback, learning and improvement in the quality of decisions made and recorded by the PSD Committees. The DAG will operate to bridge this gap.

THE PURPOSE AND OPERATION OF THE DAG

12. The main objectives of the DAG will be to:
 - a) improve and enhance the standard and quality of decision-making and recording through learning points;
 - b) support pro-active organisational learning which could include case management processes;
 - c) ensure decisions are made in line with current operational guidance, legislation, case-law, regulations and the disciplinary framework;
 - d) identify performance management issues; and
 - e) highlight and promote good practice in decision-making whilst correcting and deterring poor practice
13. Where a referral is made (referrals are dealt with below), the DAG would review records of decision made by panels/tribunals where a referral has been received in order to ensure that they are in line with current operational guidance, legislation and ICAEW Policy. The group will

also discuss any trends/themes arising from the referrals and/or learning points and/or feedback (which could be from an Oversight Body).

14. It is proposed that the group will meet on an ad hoc basis, as and when required, and will consist of both members of the Senior Management Team (or their nominated deputies) and Committee Chairs (or vice-chairs). It is envisaged that the DAG will act as one of PSD's internal quality assurance mechanisms promoting the objectives as outlined above.
15. The pool will be expanded to include regulatory committee chairs, should the process be extended after the pilot to cover decisions of regulatory committees.
16. The Secretary of the DAG will be a member of the Committees and Tribunals team and an annual report will be provided to the IRB on the number of decisions reviewed, the conclusions of the DAG and any learning points (with any urgent learning points or process issues being escalated to be considered real time by the IRB).

GROUNDS FOR REFERRALS

17. A decision of the Conduct Committee or Tribunal Committee or of an Appeal Committee could be referred to the DAG if it is considered that:

- The Committee has erred significantly in reaching the conclusion that there was a realistic prospect of the allegations being upheld by the Disciplinary Tribunal
- The Tribunal/Appeal Panel has deviated from the guidance/ procedure/ law; and/or
- The Tribunal /Appeal Panel has not provided adequate reasoning to explain its decisions on its findings on facts and/or sanction and/or costs and/or publicity; and/or
- There are public protection and/or public interest concerns raised by a decision;
- There is adverse media attention resulting from a decision
- There is adverse feedback from an oversight regulator reviewing a case
- There is a successful judicial review challenge to a disciplinary decision; and/or
- The decision is of a high quality and well-reasoned and as an example of good practice.

DAG OUTCOMES

18. The following outcomes may arise from a review by the DAG:

- Feedback in the form of learning points directly to the Investigation Committee/Tribunal/Appeal Panel and legal assessor; and/or
- Circulation of learning points and/or additional guidance to all members of a committee or committees; and/or
- Feedback to PCD (investigation/legal/committees & tribunals); and/or
- Recommendation to the IRB that guidance on sanction/policy/DBLs/IDRS/Regulations need amending; and/or
- Recommendation to the PSD Chief Officer and/or the IRB that a process should be changed; and/or

- Identification of specific training needs for staff or committee members (or both) and a recommendation for topics to be added at future training sessions for committee members and/or ICAEW staff
- A recommendation that a report should be made to RACAC if the review identifies concerns relating to a member's competence

19. The DAG may also consult on the production of guidance notes, determination tools and any other material relevant to enhancing the quality of decision-making.

20. A DAG tracker would be in place where any actions agreed following DAG are logged and followed up on to ensure that all follow up action is taken and reported back to the DAG.

TERMS OF REFERENCE

21. The IRB is invited to approve the terms of reference for the DAG and the supporting documentation to assist its operation.

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