THE HEALTH PROFESSIONS COUNCIL

Chief Executive and Registrar: Mr Marc Seale

Park House 184 Kennington Park Road London SE11 4BU Telephone: +44 (0)20 7840 9711 Fax: +44 (0)20 7840 9807 e-mail: *niamh.osullivan@hpc-uk.org*

MINUTES of the twenty first meeting of the Health Professions Council held at **10a.m. on Tuesday 7 December 2004** at Park House, 184 Kennington Park Road, London, SE11 4BU.

Mr C Lea (Vice-President and Acting Chairman) Mr J Camp Mrs S Chaudhry Mr R Clegg Miss M Crawford Mr P Frowen Professor T Hazell Dr R Jones Ms R Levenson Miss M MacKellar Mr W Munro Dr J Old Mrs. B. Stuart Dr A Van Der Gaag Professor D Waller Mr D Whitmore Mr N Willis Dr S Yule

IN ATTENDANCE:

Mr P Baker, Finance Director Mr J Bracken, Solicitor and Parliamentary Agent, Bircham, Dyson, Bell Ms S Butcher, Secretary to Committees Mr R Dunn, Director of Information Miss K Johnson, Director, Fitness to Practise Mr C Middleton, Director of Communications Ms N O'Sullivan, Secretary to Council Mr G Ross-Sampson, Project Manager Miss C Savage, Manager CPD/Aspirant Groups Mr M Seale, Chief Executive and Registrar Miss D Thompson, Human Resources Director

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Item 1.04/171 INTRODUCTION AND WELCOME

1.1 Mr Lea welcomed all members and non-members to the meeting. He noted that in the absence of Professor Brook he would be chairing the meeting.

Item 2.04/172 APOLOGIES FOR ABSENCE

2.1 Apologies for absence were received from the following Council members; Ms C Farrell, Professor J Harper, Professor J Lucas, Mrs C McGartland (and Ms H Davis), Ms J Manning (Mr Whitmore attending), Mr K Ross, Miss P Sabine (Mr Frowen attending) Mrs J Stark.

Item 3.04/173 APPROVAL OF AGENDA

3.1 The Council approved the agenda.

Item 4.04/174 MINUTES

4.1 It was agreed that the minutes of the twentieth meeting of the Health Professions Council be confirmed as a true record and signed by the Vice-President subject to the following amendment;

12.5 The Council noted that responsibility for all dietetic placements had been handed over to Higher Education Institutions as of 1 September 2004.

Item 5.04/175 MATTERS ARISING

- 5.1 <u>Item 5.1 Matters Arising- Health, Disabilities and Registration</u> <u>Professional Liaison Group</u>
- 5.1.1 The Council noted that the first meeting of the Health, Disabilities and Registration Professional Liaison Group had been held on 29 October 2004.
- 5.2 <u>Item 5.2 Minutes of the Registration Committee held on 14 May</u> 2004
- 5.2.1 The Council noted that a statement detailing the criteria on which the Registration Committee had based its approval of the tests to be used in determining an applicant's English Language Competence had been included on the agenda of the 13 October 2004 meeting of the Education and Training Committee.
- 5.3 Item 5.4 Outcome of the Consultation on the Structure of the Register
- 5.3.1 The Council noted that a special Council meeting to discuss the structure of the register would be held on 1 February 2005.

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- 5.4 <u>Item 5.5 Outcome of the Consultation on the Health Professions</u> <u>Council's Draft Election Rules</u>
- 5.4.1 The Council noted that there was no further information available regarding the appointment of lay members post the July 2005 elections.
- 5.5 Item 5.6 Regulation of New Professions by the HPC
- 5.5.1 The Council noted that the Executive was awaiting confirmation from the Institute of Medical Illustrators of the date on which they would be available to make an informal presentation to Council. It was likely that this presentation would take place on the morning of the Council meeting on 2 March 2005.

Action: CS

- 5.6 <u>Item 5.6- Any Other Business</u>
- 5.6.1 The Council noted that the register for Operating Department Practitioners had opened on 18 October 2004.
- 5.7 Item 7.3 Chief Executive's Report
- 5.7.1 The Council noted that the consultation on Continuing Professional Development had concluded.
- 5.8 <u>Item 11. 2 Membership of External Groups</u>
- 5.8.1 The Council noted that the Council and Committee Secretaries were compiling a list for Council and all committees of committee representatives on external groups. All members who had not contacted the Council Secretary with details of their membership of external groups were requested to do so.

Item 6.04/176 PRESIDENT'S REPORT

6.1 The Council noted that in the absence of the President there would be no President's report.

Item 7.04/177 CHIEF EXECUTIVE'S REPORT

- 7.1 The Council received a paper from the Executive.
- 7.2 The Council noted that the fifth report from the Shipman inquiry would be published on 9 December 2004. A paper would be presented to Council regarding the report.

Action: MJS

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7.3 The Council noted that the Council for the Regulation of Healthcare Excellence (CHRE) had referred the decision of an HPC Fitness to Practise panel to the High Court. The case would be heard on 13 December 2004. The Chief Executive would provide a report to Council regarding the outcome of the case.

Action: MJS

- 7.4 The Council noted that Miss L Pilgrim, Secretary to Committees had resigned and would be leaving her post on 16 December 2004.
- 7.5 The Council noted that there had been an overspend on operating expenses since the last meeting. The Executive had put in place a number of remedial measures to ameliorate the situation.
- 7.6 The Council noted that the number of registration appeals was declining in percentage terms.
- 7.7 The Council noted that the number of applications for grandparenting onto the register appeared to have peaked. It was possible that there would be a surge of applications just before the end of the grandparenting period. The Executive was considering the operational implications of this situation. At the close of the grandparenting period Council would have to consider whether a significant number of practitioners had adopted new titles in order to avoid regulation and if these titles should be protected.
- 7.8 The Council agreed that the Chief Executive should write to all the Professional Bodies to remind them that the grandparenting period came to an end on 8 July 2005.

Action: MJS

Item 8.04/178 SCHEME OF DELEGATION

- 8.1 The Council received a paper from the Executive for discussion/approval.
- 8.2 The Council noted that the purpose of the scheme of delegation was to facilitate the efficient and effective functioning of the Health Professions Council.
- 8.3 The scheme was designed to ensure that, so far as possible, the Council and its Committees set policy and strategy and that the Executive implemented that policy and strategy and was responsible for all operational matters.

The Scheme set out:

• those decisions which the Council had reserved to itself;

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- those decisions which it had delegated to its Education and Training Committee
- those decisions which it had delegated to the Chief Executive and Registrar, some of which could also be exercised by nominated officers of the Executive or by persons nominated by the Chief Executive;
- those decisions which it had delegated to other nominated officers of the Executive.
 - 8.4 The Executive, under the direction of the Chief Executive, remained responsible for day to day administration of the Council's affairs and nothing in the Scheme applied to any decision which was administrative in nature.
 - 8.5 The Council noted that the Scheme of Delegation could be changed in the future in accordance with the needs of the organisation.
 - 8.6 The Council agreed the Scheme of Delegation.

Item 9.04/179 COUNCIL ELECTIONS

- 9.1 The Council received a paper from the Executive for discussion/approval.
- 9.2 The Council noted that the Health Professions Council (Election Scheme) Rules 2004 had been agreed by the Privy Council. Following this the Rules would be laid in Parliament for 21 days and would come into effect in late December 2004.
- 9.3 Subject to the Rules being brought into force by an Order in Council there were a number of decisions which the Council was required to take.
- 9.4 The Council agreed the following;
 - (i) that the Chief Executive/Registrar would be appointed as the Returning Officer as of 7 January 2005 until the close of the 2005 election process;
 - (ii) that all statements of expenditure would be published on the HPC website.
- 9.5 The Council noted that Electoral Reform Services would be running the election on its behalf and would be completely independent of the Council in carry out this process.

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Item 10.04/180 ETHNIC MONITORING

- 10.1 The Council received a paper from the Executive for discussion/approval.
- 10.2 The Council noted that the paper described how the HPC was meeting or was going to meet the general duty under the Race Relations (Amendment) Act and set out the functions and policies which had been assessed as relevant to the general duty.
- 10.3 The paper also set out arrangements for the following;
 - (i) Assessing the likely impact of future policies on the promotion racial equality;
 - (ii) Monitoring policies for adverse impact on the promotion of race equality;
 - (iii) Training in connection with the duties under the Act.
 - (iv) In addition specific employment duties were described within the document.
- 10.4 The Council welcomed the paper. The Council noted that the collection of information on the ethnic composition of registrants and applicants was a positive step and that it was important that it should be promoted as such to all stakeholders. In accordance with good practice this information should be collected on a form which was separate from the application form.
- 10.5 The Council noted that consideration should be given to the placement of advertisements for employee and partner posts in a wider range of publications to ensure that advertisements reached as diverse a range of people as possible.
- 10.6 The Council noted that there were no circumstances in which the public interest or the HPC's statutory obligations to protect the public would require the HPC to adopt a policy or procedure that could be seen as discriminatory. The Council agreed that reference to such a situation should be deleted from the paper.
- 10.7 The Council noted the importance of training with regard to diversity issues for both Council members and employees of the HPC.
- 10.8 The Council agreed the strategy and timetable outlined in the paper.

Action: DT

Item 11.04/181 MANAGING YOUR FITNESS TO PRACTISE

11.1 The Council received a paper from the Executive for discussion/approval.

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- 11.2 The Council noted that the HPC's disabilities, health and registration policy recommended that the Council produced guidance for registrants on managing their fitness to practise.
- 11.3 The document under consideration had been agreed for consultation by the Education and Training Committee.
- 11.4 The Council noted that it would be useful to make reference in the document to the independent or voluntary sector as an employer of HPC registrants.
- 11.5 The Council agreed the following;
 - (i) that a consultation should be held on the document;
 - (ii) subject to the outcome of the consultation that the document should be amended;
 - (iii) that the revised document should be edited by the Plain English Campaign and Crystal Marked;
 - (iv) that the revised document should be published on-line and in hard copy.

Action: RT

Item 12.04/182 MINUTES OF THE PROFESSIONAL LIAISON GROUP FOR HEALTH, DISABILITY AND REGISTRATION

12.1 The Council received the minutes of the first meeting of the Professional Liaison Group for Health, Disability and Registration held on 29 October 2004.

Item 13.04/183 PROFESSIONAL LIAISON GROUP FOR HEALTH, DISABILITY AND REGISTRATION – REVISED WORKPLAN

- 13.1 The Council received a paper from the Executive for discussion/approval.
- 13.2 The Council noted that the first meeting of the Professional Liaison Group (PLG) for Health, Disability and Registration had been held on 29 October 2004.
- 13.3 The PLG had been set up to advise the Council on meeting the Standards of Proficiency for specific professions, with specific impairments or health conditions.
- 13.4 The PLG had agreed to amend its remit so that it could draft more general guidance for the Council giving anonymised examples.
- 13.5 The Council agreed the revised workplan for the PLG.

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Item 14.04/184 PANEL CHAIRMEN

- 14.1 The Council received a paper from the Executive for discussion/approval.
- 14.2 The Council noted that currently members of the Fitness to Practise Committees acted a Chairmen of Fitness to Practise Panels.
- 14.3 A clear division was required between the strategic policy making role, which was exercised by committee members, and the partners who implemented the policy set by Council. A key element of good corporate governance was that the audit role of Council and its committees was separated from the implementation of the policy set by the Council.
- 14.4 The Council noted that Article 6 of the European Convention on Human Rights required tribunals to be 'independent and impartial' and that the Council had an obligation to ensure that, so far as possible in the context of professional self-regulation, that impartiality and independence was achieved and was seen to be achieved, in order to avoid any suggestion of bias.
- 14.5 The Council noted that the new rules for the General Medical Council and the Nursing and Midwifery Council specifically excluded Council members from sitting as fitness to practise panel chairmen.
- 14.6 The Council noted that the matter under consideration was a decision to be taken by Council. This was not a decision for the Fitness to Practise Committees.
- 14.7 The Council agreed that it was important that partners acting in the capacity as chairmen of panels were given the opportunity to provide feedback on the fitness to practise process to the Council. This could take the form of bi-annual review days for panel chairmen, a report of which could be fed back to the Fitness to Practise Committees.
- 14.8 The Council agreed the following;
 - (i) that the use of Council members as fitness to practise panel chairmen was to be phased out within the next twelve months;
 - (ii) that panel members who were not Council members and had appropriate experience be appointed to a list of panel chairmen;
 - (iii) That those persons on the list of panel chairmen be permitted to chair fitness to practise panels once they had received appropriate training.

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14.9 The Council noted that members of Council would continue to act as chairmen of registration appeals panels as this was a requirement of the Rules.

Item 15.04/185 AMENDMENT TO RULES

- 15.1 The Council received a paper from the Executive for discussion/approval.
- 15.2 The Council noted that before the end of the second transitional period on 8 July 2005 there was a need to revise some of the statutory Rules. As well as making revisions which could not be avoided this would provide an opportunity for the Council to propose changes which would be desirable in the light of experience or to seek powers which were not originally granted to the HPC but which had since been included in the Rules of other regulators.
- 15.3 The Council agreed that the Executive commence the process of identifying Rule changes which were necessary or which would be desirable and draft a consultation document on those proposed changes to the Council for its approval. This would be presented to the March or May 2005 meeting of Council.

Action: MJS

Item 16.04/186 FITNESS TO PRACTISE COMMITTEE MEMBERSHIP

- 16.1 The Council received a paper from the Executive for discussion/approval.
- 16.2 The Council noted that Article 19(2) of the Health Professions Order 2001 (the Order) set out the required membership of the Fitness to Practise Committees. As currently constituted the Investigating Committee and the Conduct and Competence Committee did not meet the membership requirements set out in the Order.
- 16.3 The Council agreed the following;
 - (i) that the Executive work with the President to agree a revised membership for both Committees which conformed with the requirements of the Order, taking into account as far as possible the opinions of the Committee Chairmen and current members.
 - (ii) that the revised membership should be circulated to the Council electronically for ratification.
- 16.4 The Council noted that there were vacancies on all three practice committees for registered medical practitioners. Interviews would be held on 22 December 2004. The Council agreed that as far as possible

DateVer.Dept/Cm	teDoc TypeTitl 2004	-12-13aCNLMINDe	cemberCouncilmir	utesDraft		
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the individuals appointed should have experience in the field of psychiatry.

Action: NO'S

Item 17.04/187 COUNCIL MEMBERS' LIABILITY

- 17.1 The Council received a paper from the Executive for discussion/approval.
- 17.2 The Council noted that the paper set out details of liability, how personal liability could exist, indemnity, discharging personal liability and protecting against personal liability. The paper had been drawn up jointly by the external auditors, BDO Stoy Hayward and the HPC solicitors Bircham, Dyson, Bell.
- 17.3 The Council agreed the paper 'The Liability of Council Members' and authorized the Executive to include it in the Council Members' Information Pack.

Item 18.04/188 COUNCIL MEMBERS' CODE OF CONDUCT

- 18.1 The Council received a paper from the Executive for discussion/approval.
- 18.2 The Council noted that a draft code of conduct had been considered at the Council 'away day' and that a further draft which had been revised following these discussions had been circulated to Council members for comment.
- 18.3 The Council agreed the Council Members' Code of Conduct, to be adopted immediately. The document would be added to the HPC website and the Council members' information pack.
- 18.4 The Council noted that Council standing orders would be amended to reflect the adoption of this document.

Action: NO'S

Item 19.04/189 COUNCIL MEMBERS' INFORMATION

- 19.1 The Council received a paper from the Executive for discussion/approval.
- 19.2 The Council noted that a draft information document had been considered at the Council 'away day' and that a further draft which had been revised following these discussions had been circulated to Council members for comment.

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- 19.3 The Council agreed the text of the document. This would be added to the HPC website and the Council Members' Information Pack.
- 19.4 The Council noted that the Health Professions Order 2001 stated that 'no member may be appointed for more than three consecutive terms'. The advice received was that the time limit only applied after the transitional phase and that any time served in the transitional period would not count towards the term limit. The first elections and appointments after the second transitional period would be staggered by the Privy Council so that equal proportions of members would serve initial terms of 1,2, 3 and 4 years. As those terms would be after the transitional provisions ceased to apply they would count towards the term limit. Consequently the term limit would apply after a first term of anywhere between 1 and 4 years and a further two terms of 4 years. Thus members – whether they had been on the Council before July 2005 - or not would be able to serve between 9 and 12 years before the time limit applied.

Item 20.04/190 STANDARDS OF EDUCATION AND TRAINING FOR COUNCIL AND COMMITTEE MEMBERS

- 20.1 The Council received a paper from the Executive for discussion/approval.
- 20.2 The Council noted that the Health Professions Order 2001 (the Order) stated that 'the Council shall make standing orders which provided for 'establishing standards for the education and training of members'. This provision was reflected in the Council standing orders and in the standing orders of all the statutory and non-statutory committees.
- 20.3 The Council agreed the standards of education and training for Council and committee members subject to the inclusion of a reference to the Disability Discrimination Act.

Action: NO'S

20.4 The Council noted the importance of training members and HPC employees on the Council's duties under the Disability Discrimination Act. It was agreed that training would be provided for Council members with regard to this.

Action: RT

Item 21.04/191 CURRICULUM GUIDANCE PROFESSIONAL LIAISON GROUP

21.1 The Council received a paper from the Executive for discussion/approval.

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- 21.2 The Council noted that the paper set out the framework for the drafting of curriculum guidance for 13 professions. The Guidance would consist of generic and profession-specific elements.
- 21.3 The Council noted that the membership of the PLG would comprise of a core group of six council members, including one lay member. All Council members could put their names forward for membership of the Group.
- 21.4 The Education and Training Committee had agreed that the Chairman of that Committee should chair the proposed PLG.
- 21.5 A two day event would be held during which 'satellite groups' would provide profession-specific advice.
- 21.6 The Council noted that importance of gaining the support of the professional bodies in the design of this process.
- 21.7 The Council noted that it was essential that the core membership of the proposed PLG covered the different types of programme delivery which lead to entry to the register across the professions. It was essential that all HPC regulated professions would be included in either the core or the satellite groups.
- 21.8 The Council noted that the budget for the Group had been incorporated in the Health Professions Council 2004/5 budget.
- 21.7 The Council agreed to approve the paper and to ratify the setting up of a Curriculum Guidance Professional Liaison Group.
- 21.8 The Council agreed that the above comments should be fed back to the Education and Training Committee.

Action: RT

Item 22.04/192AMENDMENTS TO STANDARDS OF EDUCATION AND TRAINING

- 22.1 The Council received a paper from the Executive for discussion/approval.
- 22.2 The Council noted that the Standards of Education and Training (SETs) did not include the level of qualification for entry to the Register for Operating Department Practitioners. It was proposed that the qualification should be Diploma of Higher Education in Operating Department Practice. With the opening of the HPC register for Operating Department Practitioners there was a need to amend the SETS. In accordance with Article 14 of the Health Professions Order 2001 the Council was required to consult on any amendment to its

	DateVer.Dept/Cm	teDoc TypeTitl 2004	-12-13aCNLMINDe	cemberCouncilmir	utesDraft	
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Standards. Due to the minor nature of the amendment a consultation period of 6 weeks was proposed.

- 22.3 The Council noted that the Education and Training Committee had agreed at its last meeting to recommend to the Council that a consultation be undertaken to alter the Standards of Education and Training (SET 1. Level of qualification for entry to the Register) to include the ODP qualification of Diploma of Higher Education in Operating Department Practice. The Consultation would be for a period of 6 weeks.
- 22.4 The Council ratified the recommendation of the Education and Training Committee.

Action: FN

Item 23.04/193PRACTICE NOTE – ALLEGATIONS

- 23.1 The Council received a paper from the Executive for discussion/approval.
- 23.2 The Council noted that the Investigating Committee had agreed at its last meeting to recommend the practice note on allegations to the Council for ratification.
- 23.3 The Council noted that provision should be made to assist those who had difficulty writing English in preparing their allegation.
- 23.4 The Council ratified the recommendation of the Investigating Committee.

Item 24.04/194 PRACTICE NOTE – SANCTIONS

- 24.1 The Council received a paper from the Executive for discussion/approval.
- 24.2 The Council noted that the Health Committee and the Conduct and Competence Committee had agreed at their last meetings to recommend the revised practice note on sanctions to the Council for ratification. The practice note had originally been agreed by Council in October 2003.
- 24.3 The Council ratified the recommendation of the Health Committee and the Conduct and Competence Committee.

Item 25.04/195 EDUCATION AND TRAINING COMMITTEE STANDING ORDERS

25.1 The Council received a paper from the Executive for discussion/approval.

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- 25.2 The Council noted that at the 13 October 2004 meeting of the Education and Training Committee, it was agreed that the standing orders of the Committee should be amended to allow the Committee to meet not less than 4 times a year.
- 25.3 The Council ratified the recommendation of the Education and Training Committee.

Item 26.04/196 DATES OF COUNCIL MEETINGS 2005/6

- 26.1 The Council received a paper from the Executive for discussion/approval.
- 26.2 The Council noted that at its September meeting it had agreed dates of Council meetings for the coming year from 1 April 2005 to end of March 2006. In order to fit in with the election cycle the Executive was proposing that the Council and committee meeting year would run from July to July of each year.
- 26.3 The Council agreed that the Council and committee meeting year would run from July to July of each year.
- 26.4 The Council agreed the additional meeting dates set out in the paper.

Item 27.04/197 DATES OF COMMITTEE MEETINGS 2005/6

- 27.1 The Council received a paper from the Executive for discussion/approval.
- 27.2 The Council noted that the statutory and non-statutory committees had agreed meeting dates up until July 2006.
- 27.3 The Council agreed the dates as set out in the paper.

Item 28/04/198 MINUTES OF THE FINANCE AND RESOURCES COMMITTEE HELD ON 23 NOVEMBER 2004

- 28.1 The Council received the minutes of the Finance and Resources Committee held on 23 November 2004.
- 28.2 The Council noted the decision by the Finance Committee that rates for partners would remain at their present levels for the future and that no allowances for preparation time should be paid.
- 28.3 The Council noted that the spend for Professional Liaison Groups(PLGs) for the remainder of the financial year was to be reported as an adverse variance and that provision for spend in 2005/6 was to be included in the 2005/6 budget.

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- 28.4 The Council also noted that no attendance allowance would be paid to non-Council members of PLGs or their employers. This would be reviewed again in time for the 2006/7 budget.
- 28.5 The Council noted that under the provisions of the Health Professions Order 2001 the HPC could not be VAT registered. Therefore Council or Committee members could not charge for VAT on the attendance allowances they received. The Finance Director was seeking advice from BDO Stoy Hayward (HPC's auditors) and would be drafting a letter to HM Customs and Excise regarding this matter.

The Council agreed to note the following items on the agenda;

Item 29/04/199 FREEDOM OF INFORMATION ACT

Item 30.04/200 MINUTES OF A MEETING OF THE EDUCATION AND TRAINING HELD ON 13 OCTOBER 2004

Item 31/04/201 MINUTES OF A MEETING OF THE HEALTH COMMITTEE HELD ON 22 SEPTEMBER 2004

Item 32.04/202 MINUTES OF A MEETING OF THE INVESTIGATING COMMITTEE HELD ON 23 SEPTEMBER 2004

Item 33.04/203 MINUTES OF A MEETING OF THE INVESTIGATING COMMITTEE HELD ON 11 NOVEMBER 2004

Item 34.04/204 MINUTES OF A MEETING OF THE CONDUCT AND COMPETENCE COMMITTEE HELD ON 12 OCTOBER 2004

Item 35.04/205 MINUTES OF A MEETING OF THE CONDUCT AND COMPETENCE COMMITTEE HELD ON 16 NOVEMBER 2004

Item 36.04/206 RESOLUTIONS AGREED SINCE THE LAST COUNCIL MEETING

Item 37.04/207 COUNCIL MEMBERSHIP

Item 38.04/208 ANY OTHER BUSINESS

37.1 There was no other business.

Item 39.04/209 DATE AND TIME OF NEXT MEETING

38.1 The next meeting of the Council would be at 11a.m. on Wednesday 2 March 2005

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Thursday 12 May 2005

Thursday 7 July 2005

Friday 8 July 2005 (Annual Meeting)

Tuesday 12 July 2005

Monday 18 July 2005

Tuesday 13 September 2005

Wednesday 5 October and Thursday 6 October 2005 'away day'

Tuesday 6 December 2005

Wednesday 1 March 2006

Thursday 11 May 2006

Thursday 6 July 2006

Friday 7 July 2006 (Annual Meeting)

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