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THE HEALTH PROFESSIONS COUNCIL

Chief Executive and Registrar: Mr Marc Seale

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NOTES of the fourteenth meeting of the Investigating Committee held at **11a.m. on Thursday 8th September 2005** at Park House, 184 Kennington Park Road, London, SE11 4BU.

Dr N Callaghan
Ms C Farrell
Mrs D Haggerty
Miss M MacKellar
Mrs J Pearce

IN ATTENDANCE:

Ms S Butcher, Secretary to Committees
Miss K Johnson, Director, Fitness to Practise
Ms Z Maguire, Hearing Officer
Ms N O'Sullivan, Secretary to Council
Mr M Seale, Chief Executive and Registrar
Ms R Tripp, Policy Manager

Item 1.05/86 INTRODUCTION AND WELCOME

- 1.1 The Chief Executive reported that the Investigating Committee meeting was inquorate. The election of the Chairman and Deputy-Chairman would therefore be deferred to the next meeting. Ms M MacKellar was nominated as temporary Chairman so that the business of the meeting could proceed. Any decisions taken could not be formally ratified due to the inquoracy. The President would remind all Council members at its next meeting on 13th September of the importance of attending its committee meetings. For the benefit of new members, committee and staff formally introduced themselves to each other.

Item 2.05/87 APOLOGIES FOR ABSENCE

- 2.1 Apologies for absence were received from the following Investigating Committee members; Ms S Chaudhry, Mr R Clegg, Mr W Munro, Mr S Taylor and Professor D Waller.

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Item 3.05/88 APPROVAL OF AGENDA

- 3.1 The Investigating Committee approved the agenda.
- 3.2 The Committee agreed that the fitness to practise panel's paper should be considered for discussion/approval and not to note. This was because it had not been formally reviewed by the committee before and merited further debate. The Committee therefore agreed to move the paper to agenda item 7.

Item 4.05/89 MINUTES

- 4.1 It was agreed that the minutes of the thirteenth meeting of the Investigating Committee be confirmed as a true record and signed by the Chairman when elected at its next meeting on Friday 11th November 2005 subject to the following amendments:
- 4.2 p1 1.2 clarify the definition of 'members' positions' with the inclusion of the word 'committee' beforehand.
- 4.3 p6 8.2 f) correct the title 'The Council for Prescribing' with 'Professions'.
- 4.4 p9 11.3 to replace 'The Director of Fitness to Practise reported that due to the high levels of cases dealt with by the Investigating panels and a lack of available resources the fitness to practise team *had not been able to review previous cases to date*' with 'in practise Mediation had not been used so far by the HPC as it was not congruent...'
- 4.5 p11 14.1 include 'Irish' before 'National Republic' for clarification.

Item 5.05/90 MATTERS ARISING

- 5.1 Item 5.2 - Matters Arising – Chairman's Report
- 5.1.1 The Committee noted that fitness to practise (ftp) themes had been identified, the details of which were included in the fitness to practise annual report. A full assessment of ftp processes within the last three years was anticipated for inclusion in the 2005/06 ftp annual report. The Committee noted that the analysis of judgements as made by ftp panels was one of the ftp team's current projects. All Chairmen of panels were now requested to complete a report on any case to answer referral made to the Conduct and Competence Committee. The Committee agreed that it would be beneficial to review a copy of the case material being considered by the Investigating Panels. It was agreed that this would also be provided in an anonymised format at the next meeting of the committee. The meeting would go into private session to consider this material.

Action: KJ5.2 Item 6 – Matters Arising – Chairman’s Report

- 5.2.2 The Committee noted that legal assessors were no longer used on Investigating panels as this was not a requirement of the Health Professions Order 2001. The Committee noted that although Investigating Committee members were no longer permitted to act as panel members it would be useful if they could attend the training sessions provided for panel members. It was agreed that members should be offered places on the next training sessions planned.

Action: KJ5.3 Item 7.4 Matters Arising – Meetings attended by the Director of Fitness to Practise

- 5.3.1 The Committee noted that it would be beneficial to include more detail in the minutes about the meetings that had taken place with organisations listed such as the Council for Healthcare Regulatory Excellence (CHRE), Kingsley Napley and so on.

Item 7.05/91 DIRECTOR OF FITNESS TO PRACTISE REPORT

- 7.1 The Investigating Committee received the Director of Fitness to Practise Report.
- 7.2 For the benefit of the new committee members the Director of Fitness to Practise provided an overview of her departments work and staffing structure as detailed in the report.
- 7.3 The Committee noted that the fitness to practise department had four key functions these were to deal with fitness to practise issues, registration appeals, protection of title and health and character declarations. The Committee noted that the number of outstanding registration appeals had now been reduced to 35. The Committee noted that the registration panel met also to review health and character declarations, the Director of Fitness to Practise would report directly to the Education and Training Committee regarding these.
- 7.4 The Committee noted that in accordance with the Health Professions Order 2001 hearings were required to be held in a registrants own home country. Every opportunity was also made to locate hearings in as close a proximity to the witnesses involved in order to facilitate their attendance at hearings and alleviate the stress involved.
- 7.5 The Committee noted that it was within the Investigating panel’s remit to review incorrect or fraudulent entries to the register. The Director of

Fitness to Practise reported directly to Council with regard to registration appeals, currently four cases were to be scheduled for a hearing.

- 7.6 The Committee noted that a large number of health and character declarations had been received. The increase correlated to the time of year at which time graduates applied for registration. Complaints about the use of protected titles had increased with particular regard to the chiropody profession. The communications campaign recently carried out by HPC on yell.com was pinpointed as a contributory factor to this increase whereby the lay public were encouraged to find out whether their health professional was bone fide. The Committee noted that such unregistered practitioners were sent a standardised letter stating that if they continued to use a protected title they were in contravention of the law.
- 7.7 The Committee noted that the Council for Healthcare Regulatory Excellence (CHRE) had found that the decision taken in one HPC case as unduly lenient and referred it to the High Court.
- 7.8 The Director of Fitness to Practise reported that she had attended a meeting with the Bichard Regulators Group that had formed in response to the Soham murders enquiry. A report would be provided to the November meeting of the committee regarding the work of this group. A mutual protocol had also been established between the HPC and the NHS Counter Fraud and Security Management Service. The protocol was signed by Marc Seale, Chief Executive on the 13th July 2005 and was designed to ensure the effective and timely deployment of information between both organisations.
- 7.9 The Committee noted that the Council for Healthcare Regulatory Excellence (CHRE) held a fitness to practise forum every two months to discuss matters of mutual concern to regulators (new case laws, the Jellett Case and panel member training). Directors/representatives of the fitness to practise departments from all of the nine healthcare regulators attended this forum. The next meeting was scheduled for Friday 16th September 2005.
- 7.10 The Committee noted that the IT department were currently in the process of developing an FTP tracking system and was anticipated to be operational in the next couple of months. The Director of Fitness to Practise reported that she would be meeting with the Healthcare Commission regarding the establishment of an operational procedure for dealing with lay complainants within best practise guidelines. An FTP Benchbook was also being designed so that all practice notes would be available in an easily accessible format. The Director of Fitness to Practise reported that she was reviewing the standard Benchbooks as used

by the various magistrates' courts so that the benchbook which was produced would be in line with current best practice.

- 7.11 The Director of Fitness to Practise reported that she had presented two interim orders and that she would be presenting to four conduct and competence panel hearings.
- 7.12 The Committee reviewed the fitness to practise statistics and noted that a further ten allegations had been received by the Investigating Committee. A 28 day right of observation for registrants was in place this was noted to lengthen the process but was a necessary requirement of the HPO 2001. October 2004 was noted to have been a very busy time for the Investigating Committee as a total of 31 allegations had been received. A total of 99 cases pending were in the remit of the Investigating panels in July 2005. No cases had been heard for the arts therapists' profession. The data was noted to be useful when assessing how many partners were required for each profession.
- 7.13 The Committee noted that the number of cases referred by the general public was comparatively low. The Director of Fitness to Practise was therefore in discussions with the Healthcare Commission to consider ways in which the public could be made aware of the existence of the HPC. The review of ftp brochures was currently underway to ensure their clarity and promote a fuller understanding of the HPC's role in its protection of the public.
- 7.14 The Director of Fitness to Practise reported that she would provide the ftp practise notes at its next meeting for the committee members' information.

Action: KJ

Item 8.05/92 ELECTION OF THE CHAIRMAN AND DEPUTY-CHAIRMAN

- 8.1 The Investigating Committee received a paper from the Secretary to the Committee.
- 8.2 The Committee noted that as it was in-quorate the election of the Chairman and Deputy-Chairman would be deferred to the next Investigating Committee meeting scheduled for 11th November 2005.

Item 9.05/93 THE ROLE OF FITNESS TO PRACTISE PANELS

- 9.1 The Investigating Committee received a paper from the Director of Fitness to Practise for discussion/approval.

- 9.2 The Committee noted that the paper would now be considered for discussion/approval as formally agreed at the start of the meeting.
- 9.3 The Committee noted that in April 2005 the fitness to practise committee requested the production of a paper to explain the workings of the fitness to practise panels.
- 9.4 The Committee noted that it was not the purpose of the fitness to practise committees to consider allegations but that this work was undertaken by panels comprised of partners. A clear division was required between the strategic policy making roles of Council and its Committees and the partners who implemented the policy set by the Council.
- 9.5 The Committee noted that there were four key areas considered by the fitness to practise panels; allegations, interim orders, review of orders and restoration. The committee noted that due to the current high work load Investigating panels were meeting at least 4 times a month. It was anticipated that this level of work would continue until Christmas.
- 9.6 The Committee noted that Council members were no longer permitted to chair fitness to practise panels. This measure was taken as it was important to ensure that as far as possible impartiality was achieved and any suggestion of bias removed.
- 9.7 The Committee discussed the practise notes produced. In particular the Committee noted that the sanctions practise note was continually revised as it was a dynamic document and changes were made as of when required.
- 9.8 The Committee noted that some amendments were needed to the paper under review as it was important to differentiate further between the role of fitness to practise panels and fitness to practise committees. The Committee agreed that the three key functions on page one needed to be bulleted. The Committee noted that the method by which the fitness to practise committees reviewed their functions should also be included in the amended paper.
- 9.9 The Committee noted that all amendments would be incorporated into a new document and brought back to the Investigating Committee for their approval.
- Action: KJ**
- 9.10 When committees reviewed papers and ratified changes these were incorporated however changes were not made to the original documents as put on the website. The Committee noted that a chronological procedure

was followed; the original documents were a good reference point and were part of an open and transparent policy as operated by the HPC. The Committee noted that amended documents may be reviewed on three or four separate occasions where members would therefore see a paper's work in progress.

Item 10.05/94 HEALTH PROFESSIONS COUNCIL (PRACTICE COMMITTEE) (CONSTITUTION) RULES ORDER OF COUNCIL 2003

- 10.1 The Investigating Committee received a paper from the Director of Fitness to Practise for discussion/approval.
- 10.2 The Director of Fitness to Practise recommended that all three sets of rules for the committees were read in cross-reference with each other (items 10, 11 and 12 of these minutes.) This was because amendments had been made as detailed in the HPC Practice Committees and Registration Amendment Rules Order of Council 2005.
- 10.3 The Committee noted that there were no standing orders for the fitness to practise committees but that their equivalent was provided via the HPC Practice Committees Constitution Rules Order of Council. These detailed the membership requirement of the fitness to practise committees, Chairman and Vice-Chairman processes, the tenure, vacancy procedures, and the standards for members and established the quorum required at each meeting in order for decisions to be made. Any changes made to the Rules had to be approved by parliament and not by Council. The Health and Conduct and Competence Committee rules were very similar whilst the Investigating Committee Rules were different in their context. The Committee noted one amendment that had been made to 8 (1) where the practice committees were now only required to meet twice a year and not four times as required previously.

Item 11.05/95 HEALTH PROFESSIONS COUNCIL (INVESTIGATING COMMITTEE) (PROCEDURE) RULES ORDER OF COUNCIL 2003

- 11.1 The Investigating Committee received a paper from the Director of Fitness to Practise to note.
- 11.2 The Committee noted that in the document reference was made to 'the committee'. For the purposes of clarity this referred to a fitness to practise panel and not a fitness to practise committee.
- 11.3 The Committee noted that these rules detailed the procedures by which the fitness to practise team and panels should undertake their work. The Committee noted how documents should be served. The requirement for a

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Solicitor to represent the Council at a hearing was changed so that Presenting Officers could now perform these functions. This was because the use of a Solicitor for this purpose was not a requirement of the Health Professions Order. The procedure rules also detailed in what instances a case could be referred to the Conduct and Competence Committee, how to serve allegations and when preliminary meetings could be called if considered appropriate by the committee chairman. Additionally, the committee noted how to conduct hearings in the absence of the health professional, the procedure for the disposal of cases and when and how to review orders and applications for restoration to the register.

Item 12.05/96 THE HEALTH PROFESSIONS COUNCIL (PRACTICE COMMITTEES AND REGISTRATION) (AMENDMENT) RULES ORDER OF COUNCIL 2005

- 12.1 The Investigating Committee received a paper from the Director for Fitness to Practise to note.
- 12.2 The committee noted the further amendments that had been made to the practice committees Rules. In Rule 4 of the Investigating Committee Rules and Rule 2 of the Conduct and Competence Committee Rules and the Health Committee Rules the committees could now consider and determine together two or more allegations against the same health professional or allegations against two or more health professionals, where it would be just to do so. Provision had also been made for vulnerable witnesses in proceedings before all of the fitness to practise panels.
- 12.3 So to ensure that the quality of evidence given by vulnerable witnesses was not impaired accommodation had been made via the use of video links, interpreters and screens.

Item 13.05/97 COUNCIL MEMBERS' INFORMATION

- 13.1 The Investigating Committee received a paper from the Secretary to the Committees to note.
- 13.2 The Secretary to the Committee reported that the Council members' information document had been included for their use.

Item 14.05/98 SCHEME OF DELEGATION

- 14.1 The Investigating Committee received a paper to note from the Director of Fitness to Practise to note.

- 14.2 The Committee noted the scheme of delegation which had been put together to distinguish between the strategic policy making roles of Council and its Committees and the partners who implemented the policy set by Council.

Item 15.05/99 ANY OTHER BUSINESS

- 15.1 There was one item of any other business which concerned how many external meetings and or functions council members could attend in a year as representatives of the HPC. The Committee noted that six such meetings could be attended and that a form requesting permission to attend was available from the Secretariat department. If Council members wished to attend meetings held by their professional bodies on a regular basis then permission had to be requested from Council. The committee noted that the general protocol was that registrant members attended such meetings on an ad hoc basis and that Council members were not at HPC to represent their profession. It was agreed that it would be useful if the forms could be re-distributed to all Council members for their information. The Committee noted that this was an agenda item for the Council meeting in Northern Ireland on 5th October 2005.

Action: SB/NOS

Item 16.05/100 DATE AND TIME OF NEXT MEETING

- 16.1 The Investigating Committee noted an amendment to the time of the next meeting which would be at 10:50a.m.and not 11:00am on Friday 11 November 2005.

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