

**Council 10 December 2009**

**CHRE Review of the conduct function of the General Social Care Council:  
Learning points for HPC**

**Executive summary and recommendations**

**Introduction**

On 20 July 2009 it was announced by the Secretary of State for Health that the Council for Healthcare Regulatory Excellence (CHRE) had been asked to undertake a review of the General Social Care Council's (GSCC) conduct functions. This followed a Ministerial Statement reporting that the GSCC had identified a backlog in the management of 203 complaints against social workers. The CHRE report was published on 2 November 2009 and covers the GSCC's conduct function including its effectiveness, efficiency and governance. The HPC Executive has undertaken a review of the CHRE report, of its recommendations and of the Government's response to the report to identify whether there is any learning for the HPC. The CHRE's report and the Government's response published on 4 November 2009 are provided as a link to this document.

The CHRE report into the performance of the GSCC is a review of that organisation's conduct function. The Fitness to Practise department of the HPC is responsible for the following areas of work:

- Fitness to Practise Allegations – the investigation of allegations to the effect that a registrant's fitness to practise is impaired and the management of cases through to their conclusion. This includes witness liaison, instructing lawyers and preparing and presenting cases at investigating, interim order, final and review stage.
- Hearings Management – the organisation and scheduling of all fitness to practise hearings and follow-up work related to hearing outcomes.
- Health and Character Declarations Management – the process by which HPC manages declarations from registrants and applicants on admission, readmission and renewal to the register and via the self-referrals process.

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- Prosecution of Offences – the investigation and management of offences under Article 39 of the Health Professions Order 2001. This includes field investigations and prosecuting cases in the Magistrates Court.
- Registration Appeals – the management of cases where an application or registrant has appealed against a registration decision. This includes the organisation of hearings to hear such cases.

The responsibilities of the Fitness to Practise department cover areas which do not solely fall within the conduct function which has been defined by CHRE as ‘the means through which the GSCC can take action to protect the public when a social worker is alleged to have committed misconduct. In the most serious case this can include referral for a hearing by the conduct committee which can remove the social worker’s name from the register, preventing them from practising as a registered social worker in the UK.’

This review by the HPC Executive of the recommendations therefore focuses on how HPC manage fitness to practise allegations and hearings, rather than on the Fitness to Practise department.

## **Decision**

The Council is requested to:

- i Approve the draft HPC report.
- ii Decide whether any further action that should be taken by the HPC in relation to its own fitness to practise processes. The Council may particularly wish to consider the recommendation that:
  - (a) the Fitness to Practise Committee consider at its February 2010 meeting a proposal on how the Council can assure itself as to the quality of decisions

## **Background information**

### **CHRE performance review**

In July 2009, CHRE published its 2008/09 performance review of the regulatory bodies, including its performance assessment of the HPC. Overall, the HPC received a very positive performance review with CHRE concluding that the HPC was a ‘transparent, well-organised, efficient and cost-effective regulator. It identified five areas of excellence or good practice and they are as follows:

- Communication with the public, employers and others about the role of the HPC and its work. In particular, the ‘Be Healthwise’ campaign and work to highlight the need to check whether a professional is registered.
- The regular updates provided to complainants during the fitness to practise process, the fitness to practise freephone telephone number; and fitness to

practise service standards which do not purely focus on how quickly cases are dealt with.

- Engagement with employers to help them understand when a case should be referred.
- The investigative practice training provided to all staff in the fitness to practise department.
- The actions HPC takes to ensure that it is a UK-wide regulator that is sensitive to the devolved systems of healthcare.

## **GSCC report**

The Chair of the HPC was invited by the GSCC to lead a review of the GSCC's governance and working arrangements in respect of registration and conduct committees. That report made a number of recommendations and is provided as a link in the appendices to this report.

## **Resource implications**

To be addressed in future papers

## **Financial implications**

To be addressed in future papers

## **Appendices/Links**

Where there is a web link for the relevant appendix, this has been added instead of providing the hard copy paper.

- Council for Healthcare Regulatory Excellence Report and Recommendations to the Secretary of State for Health on the conduction function of the General Social Care Council – [http://www.chre.org.uk/img/pics/library/091104\\_CHRE\\_GSCC\\_review\\_\(Final\\_report\).pdf](http://www.chre.org.uk/img/pics/library/091104_CHRE_GSCC_review_(Final_report).pdf)
- Department of Health Response to the Report and Recommendations of the Review of the Conduct Function of the General Social Care Council - [http://www.dh.gov.uk/prod\\_consum\\_dh/groups/dh\\_digitalassets/@dh/@en/@ps/@sta/@perf/documents/digitalasset/dh\\_107881.pdf](http://www.dh.gov.uk/prod_consum_dh/groups/dh_digitalassets/@dh/@en/@ps/@sta/@perf/documents/digitalasset/dh_107881.pdf)
- An Independent Review of the General Social Care Council's Governance Framework and Working Arrangements for the Registration and Conduct Committees- <http://www.gsccl.org.uk/NR/rdonlyres/4019D028-BE29-44FF-892C-F7F5AE8A2C1C/0/C050905aAnnexAIndependentreviewofGSCCsRegistrationandConductcommitteesFinalreport.pdf>
- CHRE performance review 2008/09 - [http://www.hpc-uk.org/aboutus/council/councilmeetings\\_archive/index.asp?id=455](http://www.hpc-uk.org/aboutus/council/councilmeetings_archive/index.asp?id=455)

- Case Management System project plan - <http://www.hpc-uk.org/assets/documents/10002B2220091022FtP-enc6-casemanagement.pdf>
- Weekly statistics template
- Fitness to Practise Management Information Pack - <http://www.hpc-uk.org/assets/documents/10002B1F20091022FtP-enc3-directorreport.pdf>
- Management Information Commentary
- Net regulate status training manual
- Accuracy check list
- Case to Answer check list
- Final hearing follow up check list
- Fitness to Practise Operating Guidance 'Investigating and Drafting Allegations'
- Fitness to Practise Operating Guidance 'Structure of a file'
- Audit check list
- Structure of the Fitness to Practise department
- Fitness to Practise Department Service Standards- <http://www.hpc-uk.org/assets/documents/10002B2320091022FtP-enc7-servicestandards.pdf>
- Fitness to Practise Operating Guidance 'Risk Profiling'
- Case Assessment form
- Practice Note 'Drafting Fitness to Practise Decisions' - [http://www.hpc-uk.org/assets/documents/10002B35PRACTICENOTE\\_DraftingFTPdecisions.pdf](http://www.hpc-uk.org/assets/documents/10002B35PRACTICENOTE_DraftingFTPdecisions.pdf)
- Indicative Sanctions Policy - [http://www.hpc-uk.org/assets/documents/10002B35PRACTICENOTE\\_DraftingFTPdecisions.pdf](http://www.hpc-uk.org/assets/documents/10002B35PRACTICENOTE_DraftingFTPdecisions.pdf)
- Practice Note 'Interim Orders' - [http://www.hpc-uk.org/assets/documents/10001DDBPRACTICE\\_NOTE\\_Interim\\_Orders.pdf](http://www.hpc-uk.org/assets/documents/10001DDBPRACTICE_NOTE_Interim_Orders.pdf)
- Case Manager Job Description
- Case Manager induction

- Fitness to Practise Operating Guidance Index
- Practice note 'The Standard of Acceptance for Allegations' - <http://www.hpc-uk.org/assets/documents/1000289CAllegations.pdf>
- Practice note 'Powers to Require the Disclosure of Information' - [http://www.hpc-uk.org/assets/documents/10001DDDPRACTICE\\_NOTE\\_Powers\\_to\\_Require\\_the\\_Disclosure\\_of\\_Information.pdf](http://www.hpc-uk.org/assets/documents/10001DDDPRACTICE_NOTE_Powers_to_Require_the_Disclosure_of_Information.pdf)
- Practice note 'Case to Answer' Determinations- [http://www.hpc-uk.org/assets/documents/10002478PRACTICE\\_NOTE\\_CasetoAnswer.pdf](http://www.hpc-uk.org/assets/documents/10002478PRACTICE_NOTE_CasetoAnswer.pdf)
- Investigating Panel decision template
- Practice note 'Finding that Fitness to Practise is Impaired' - <http://www.hpc-uk.org/assets/documents/1000289FFindingthatFitnessToPractiseisImpaired.pdf>
- Practice note 'Disposal of cases via Consent' - [http://www.hpc-uk.org/assets/documents/10002473PRACTICE\\_NOTE\\_ConsentOrders.pdf](http://www.hpc-uk.org/assets/documents/10002473PRACTICE_NOTE_ConsentOrders.pdf)
- Risk Register - [http://www.hpc-uk.org/assets/documents/10002AD9audit\\_committee\\_20090629\\_enclosure09riskregisterupdate.pdf](http://www.hpc-uk.org/assets/documents/10002AD9audit_committee_20090629_enclosure09riskregisterupdate.pdf)

**Date of paper**

30 November 2009

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## **Introduction**

This report has been prepared by HPC's Director of Fitness to Practise with the assistance of the HPC's Executive Management Team (EMT). The report:

- Identifies the issues raised in the Council for Healthcare Regulatory Excellence (CHRE) report of General Social Care Council published on 4 November 2008.
- Identifies HPC's current position in relation to each issue.

## **CHRE issue: The absence of an effective case management system and systems for allocation of cases (p10 and 11)**

### **CHRE recommendation 1 (p11)**

We recommend that an effective case management system to support the conduct function should be implemented as a matter of urgency. This must then be supported by oversight by managers who must be responsible for the allocation of cases and ongoing management of the caseload to ensure that appropriate and timely action, including risk assessment, is taken at each stage.

#### **Key CHRE issue/s**

- The GSCC does not have a reliable and fully functioning case management system.
- The use of existing case management system (OSCAR) by different sections of the conduct team was inconsistent.
- No systematic tracking and monitoring of cases, managers have not undertaken any oversight of investigation officers.
- A number of unallocated cases; cases not allocated because it was believed case managers were 'too busy' with their existing case load.

#### **Government response**

The GSCC is making progress against this recommendation.

#### **Current HPC position**

##### **Case Management System**

A number of systems are currently used to manage the functions within the Fitness to Practise department. Those systems include separate databases for the Health and Character, Prosecution of Offences, Registration Appeals, Witness Management and Fitness to Practise processes.

HPC are currently undertaking a major scoping project to review our electronic case management systems. This project is an analysis of the current business processes and systems to ensure that they remain fit for purpose. A full scale review of the existing processes and procedures and a business case for any changes will be produced at the conclusion of the project.

We have completed a number of key milestones in the project which have included:

- Reviewing the existing systems
- Reviewing the existing reporting requirements
- Reviewing the existing processes and procedures

- Mapping all processes within the responsibility of the fitness to practise department
- Reviewing the risks within the existing solution
- Capturing high level functional requirements
- Capturing high level non functional requirements
- Reviewing best practice
- Gathering internal and external feedback on ideal functionality
- Receiving advice from statisticians
- Determining potential suppliers
- Undertaking an option selection process
- Creating a request for proposal
- Assessing and reviewing requests for proposals from selected vendors
- Undertaking vendor selection exercise
- Reviewing vendor presentations
- Writing a business case for the propose solution

It is anticipated that the build of the case management system will begin early in the next financial year.

### **Use of Existing Case Management System**

- HPC have a number of internal operating guidance documents which provide guidance to fitness to practise department employees on various aspects of their work. Included within that guidance is information on using the various systems operated by the department.
- In 2008/09 we undertook a major project to review the statuses used by the fitness to practise department on net regulate (HPC's registration system). As part of that project, a training manual was produced setting out how to use the system.
- There are a number check lists used by the department which set out what systems should be updated as part of the follow up to a case. A copy of the relevant check list is kept on the case file.
- On a monthly basis, we run an accuracy check on the data within the Fitness to practise case management database to ensure that we are producing accurate management information reports.
- As part of the induction process, new employees are trained on the use of the various systems used by both the HPC and the Fitness to Practise department.

### **Tracking and Monitoring of Cases/Oversight of Investigation Officers**

- Weekly statistics are produced which set out the case load of each case manager and the stage in the process those cases are at.
- We produce monthly statistics which set out amongst other things, the age of cases and the length of time they have taken to conclude and the number of ongoing cases.

- The fitness to practise department produce on a monthly basis management information commentary. This document is sent to EMT and members of the Fitness to Practise department management team and highlights key areas concerning the operations of the department. It includes commentary on resourcing and the reasons for how long cases are taking to conclude.
- On a monthly basis we review our forecasting model to identify what our ongoing resource needs are. In September 2009 we established that additional employees were required to support the work of the department. In 2009-10, there was a budgeted headcount of 31. We have recently recruited 2 extra hearings officers and are recruiting for an extra administrator and two extra case managers. Whilst that recruitment is ongoing, we have one temporary administrator and two temporary case support officers working within the department. As part of the planning for 2010-11 we are assessing our case management needs and this may include case support officers to provide the case managers with extra administrative support. This would potentially enable them to focus more on the “case management” of their caseload.
- On a monthly basis, the lead case managers hold an individual meeting with their case managers to check on the progress of their case load.
- We produce a monthly list of cases which are over 5 months old to double check on the action that has been taken on those cases.
- Once a week, a “chase list” is produced which provides a list of the cases where no action has been taken in the previous month. The case manager is then required to take action on those cases.
- All no case to answer files and a random sample of case to answer files are audited to ensure that the process and procedure have been followed.
- We hold monthly meetings with the solicitors instructed to prepare and present cases on HPC’s behalf to review the progress of cases. We also receive on a fortnightly basis a Kingsley Napley work in progress report so as to ensure all cases are being actioned in a timely manner.
- Internal audits have demonstrated that HPC Case Managers are acting in accordance with defined processes and procedures.

### **Unallocated cases**

- Cases are initially assessed by a lead case manager and then allocated accordingly. HPC does not have unallocated cases.

## **CHRE issue: Performance management (p11 and 12)**

### **CHRE recommendation 2 (p12)**

We recommend that KPIs (Key Performance Indicators) should be developed to measure clear regulatory outcomes. In the short term, the KPIs should reflect the improvements required to the conduct function and will, therefore, enable the GSCC to report on progress against a valid and effective improvement plan. In the longer term, the KPI's should focus on the progress of cases and the demonstration of public protection.

#### **Key CHRE issue/s**

- Lack of a robust performance management framework incorporating key performance indicators for the quality and efficiency of the way cases were handled.

#### **Government response**

Any effective regulatory body must be supported by appropriate and challenging KPI's.

#### **Current HPC position**

##### **Performance Management Framework**

- The HPC is committed to ongoing assessment of its performance as a regulator. As in all areas of its work, there are a number of key indicators used to assess and manage the fitness to practise department. These include :
  - o the number of allegations received;
  - o the number of allegations where an investigating panel determine that there is a case to answer;
  - o the number of cases that a case manager can manage/investigate; and
  - o the length of time cases take to conclude.
- In addition, the FTP department well established mechanisms to ensure that all individuals that interact with the department receive a high level of service and that cases are progressed with in a timely manner.
- In the 2008/09 CHRE Performance Review, CHRE highlighted the FTP department's external service standards as an area of "excellence or good practice" (CHRE 2008/09, paragraph 19.2). CHRE further commented in paragraph 19.12, that the standards *"do not focus purely on how quickly cases with. Instead they focus one ensuring that everyone who comes into contact with the Fitness to Practise Department is given the same level of service. We welcome these changes as they increase accessibility to the complaints system and the transparency of the complaint process"*.

- In order to monitor the progress of cases through the process against set timeframes, we have developed internal measuring tools that we expect cases to meet. At key stages of the investigation and adjudication, cases are expected to reach certain stages within pre-determined time periods. These are not designed to apply rigidly as each case is unique, but are based on a percentage of cases reaching a point in set time frame. This also aids in the monitoring and management of the department's work load.
- Regular one-to-ones are held with all members of the department.
- At its meeting in October 2009, the Fitness to Practise Committee asked the HPC Executive to draft a paper for the February 2010 meeting providing further detail and explanation of the time taken for a case to progress through the various stages.
- IPSOS MORI has been commissioned by the HPC to undertake a piece of research to explore what complainants expect in terms of information provision and an outcome and the length of time taken for a case to conclude. It is anticipated that this piece of work will establish recommendations to improve existing information and case handling and future FTP communications strategies.
- At its away day in October 2009 the Council considered the question 'How can we be sure that our fitness to practise process is reflecting our commitment to justice and fairness.' The feedback from that discussion included discussion around what justice and fairness meant, the role of the legal assessor and the suggestion that a further qualitative review of concluded cases was undertaken to provide further analysis of this.

## **CHRE issue: The management of the conduct function by the executive (p12-14)**

### **CHRE recommendation 3 (p14)**

We recommend that all decisions affecting the progress of cases should be taken on a public protection basis.

#### **Key CHRE issue/s**

- The Director of Regulation is responsible for too many functions
- Failure to proceed with conduct cases regardless of public protection implications because of budget restriction.
- Decision taken by EMT not to make any formal commitment to schedule any more conduct hearings until the next financial year.
- No challenge by the Council of the decision not to conduct any more conduct hearings.
- Budget within conduct and committee services strictly limited to the budgets allocated, with no flexibility to be provided in the event of an increase in workload.
- Cases not referred for an interim suspension order unless they were extremely serious.
- Marked drop in the number of interim orders in the period reviewed.
- Decisions about risk in relation to public protection should not be led by financial restraint.

#### **Government response**

The Government will work with the GSCC to make the necessary changes to its rules to provide a clear focus on improving quality to ensure public protection.

#### **Current HPC position**

##### **HPC Executive Responsibilities**

- HPC's Director of Fitness to Practise is responsible for the fitness to practise function (including hearings) the Director of Education for the education function and the Director of Operations has oversight of the registration function. The Directors concerned also represent those functions at the HPC Executive Management Team (EMT) meetings.

## **Budget restrictions**

- As part of the monthly review of the fitness to practise management statistics, the Director of Fitness to Practise reviews the resource requirements of the department. The forecasting model provides the FTP team with a model to identify its resource needs (including financial and human resources). As set out in recommendation 1, further human resources have been allocated to the department as a result of this review.
- On a six and nine month basis, the HPC Executive undertakes a budget reforecast. As a result of this reforecast, it is been identified the FTP budget will be increased by approximately £300,000 (or 5%) within the budget year 2009/10.
- 175 substantive cases were concluded in 2008/09. Between April and October 2009. 136 substantive cases have concluded between April and October 2009. At the end of October 2009, there were a further 128 cases listed for hearing, with another 29 cases in the process of being listed by the scheduling team. At the end of October there 74 cases being prepared for hearing by Kingsley Napley which weren't ready for listing. Of those cases, 2 are over 5 months since referral with the remaining 72 cases being between 0 and 4 months since referral. Our service level standards provide that we are informed at the maximum 4 ½ months after a case has been referred by the Investigating Committee. We are planning on reviewing our arrangements for fixing cases to ensure that the HPC is meeting its obligations to deal with cases expeditiously.

## **Interim Orders**

- Budget considerations are never a factor in determining whether a case should be referred for a hearing to consider an interim order application. All decisions are made purely on public protection grounds. This can clearly be demonstrated by the 3 applications that have been made to the High Court to further extend the period for which an interim order has effect.
- HPC has clear guidance on making an application for an interim order. All cases are risk assessed on an initial and ongoing basis to determine whether it is necessary to apply for an interim order or to apply for an early review of that order. 26 applications for an interim order have been made between April and October 2009. Between April 2008 and March 2009 30 applications were made.

## **CHRE issue: Division of work across more than one site (p14 and 15)**

### **CHRE recommendation 4 (p15)**

We recommend that the two geographically distinct teams and the external investigators should be managed and operated as a single team. Managers need to take a coherent approach with consistent oversight of the function. All processes, deadlines, performance management, allocations and record keeping should be consistent. There should be more regular, formal and structured engagement within the conduct team at the different locations.

### **Key CHRE issue/s**

- The work of the conduct team is undertaken from two locations.
- Little co-ordination and synchronicity between the three GSCC conduct teams.
- No formal combined team meetings and no mechanisms for knowledge sharing.

### **Government response**

All conduct cases should be treated consistently but it is for the GSCC to consider how best this is achieved at an operational level.

### **Current HPC position**

#### **Single location**

- The fitness to practise directorate is based on one site and is organised into three separate teams. The Director of Fitness to Practise has overall responsibility for the work of the department. The directorate is separated into a Case management team, a Hearings team and an Administration team. The Head of Case Management leads the Case management team and Administration team and the Head of Adjudication leads the Hearings and Scheduling team. The Administration team currently comprises of three administrators who are managed by the Administration Manager. The team is responsible for administrative needs of the department. The Hearings and Scheduling team are responsible for clerking and fixing all panel proceedings. The Case management team currently comprises of three case teams comprised of 4-6 case managers and each led by a Lead Case Manager. The Case management team is responsible for investigating and managing all HPC case work.

## **Team meetings and knowledge sharing**

- As the size of the case management team has grown, we have recently undertaken a review of the structure and nature of department team meetings to ensure that they remain effective. Along with the individual meetings that take place with team members, each case team has a monthly meeting where they discuss issues and make suggestions for improvement. After those meetings have taken place, the lead case manager's feedback to the Head of Case Management and any matters are taken forward where necessary. All members of the case management team meet after the individual team meetings to receive that feedback and strategic and operational briefings. The case managers also meet on monthly basis to identify any logistical or operation issues with the cases that are due to be presented to investigating panels in that month.
- Ad hoc departmental briefings take place to inform the department on key areas of work such as the work plan, budget and briefing on how to manage the operational issues around the regulation of new professions.
- There is a number of fitness to practise operating guidance documents which provide guidance to the department on various aspects of their work.
- A directorate "Away Day" takes place every year.

## **CHRE issue: The skills and experience of the staff and the quality of the guidance and training they receive (p15)**

### **CHRE recommendation 5 (p15)**

We recommend that a conduct team skills audit and development plan should be produced. This should review all staff members' current competencies and identify the competencies required for each role. Where there are discrepancies, training needs should be identified and appropriate training should be provided.

#### **Key CHRE issue/s**

- Investigators appointed who did not have experience of undertaking investigations, knowledge of regulation or experience in managing case work.
- Inadequate initial training and guidance provided by the GSCC.

#### **Government response**

It is vital that any regulatory body has the right people with the right skills progressing cases.

#### **Current HPC position**

##### **Competencies**

- All HPC employees have job descriptions which set out the job's main purpose, the employee's position in the organisation, the scope of the role, dimensions and limits of authorities, essential and desirable skills, knowledge and abilities and the duties and key responsibilities of the role. HPC job interviews are based solely on the skills and competencies specified in the job description to ensure that the right people are appointed.
- All HPC employees have a yearly performance appraisal which evaluates and measures their achievements against set objectives. The HPC appraisal process covers a review of the individual's performance in the previous year, performance criteria for the coming year, career aspirations and development plans.
- All new HPC employees are subject to a mandatory probationary period. This enables the HPC to review the employees performance in the initial period and provide them with the appropriate training to undertake their role.

## Guidance and Training

- All employees undertake an organisation and department wide induction. The organisation wide induction includes spending time with members of the various departments. As part of the work plan for 2009-10, we have reviewed the induction for the case management team to ensure that they are receiving the appropriate training to enable them to undertake their role.
- All new employees meet the Chief Executive for an informal meeting. Topics covered include: the importance of HPC's culture, the importance of our fitness to practise responsibilities and the key role employees have in improving processes.
- There is a number of internal fitness to practise operational guidance documents in place which provide department employees with guidance on various aspects of their work. Those guidance documents include for example, operating guidance on obscene image storing, physical evidence management, instructing and seeking advice and adjournment requests.
- Along with their inductions and on the job training, Fitness to Practise department employees have received training in:
  - o BTEC in Investigative Practice
  - o Building Profession Specific Knowledge
  - o Getting Organised
  - o Contact Management
  - o Dealing with people with mental health issues or high levels of stress
  - o Vexatious and Abusive Complaints
  - o Conflict Management
  - o Personal Security
  - o Time Management

## Other

- The Fitness to Practise department are currently reviewing the requirements within the case management team to determine whether the team require more administrative support to enable them to undertake their roles in the most effective and efficient manner.
- HPC is registered to ISO 9001:2008 standard, and is externally audited twice a year by the British Standards Institute to ensure we continue to meet its requirements. ISO 9001 is one of several mechanisms HPC has in place to effectively manage processes. HPC is the only UK health regulator with ISO 9001:2008 registration.

## **CHRE issue: The need for a full fitness to practise process (p15 and 16)**

### **CHRE recommendation 6 (p16)**

We recommend that the GSCC and DH should review the current primary and secondary legislation relating to the conduct process and replace it with a fitness to practise process which allows it to assess both competence and conduct.

#### **Key CHRE issue/s**

- No specific statutory powers to deal with allegations relation to the professional competence of social workers.
- GSCC should replace the test of misconduct with one of whether the social worker's fitness to practise is impaired.
- GSCC should take a more active role identifying and pursuing cases where there are concerns about social workers.
- Employers do not readily supply information to the GSCC.
- Some employers do not co-operate with the GSCC's investigations.

#### **Government position**

The Government will give further consideration to the implications of moving to a system which considers "fitness to practise" rather than conduct, in view of the different context in which social workers work.

#### **Current HPC position**

##### **The legislative framework**

- Article 22(1) of the Health Professions Order 2001 (the "2001 Order") provides for the types of allegations the HPC can consider when determining whether a registrants' fitness to practise is impaired. We can consider allegations to the effect that a registrants' fitness to practise is impaired by reason of:
  - o misconduct,
  - o lack of competence,
  - o a conviction or caution in the United Kingdom for a criminal offence, or a conviction elsewhere for an offence which, if committed in England and Wales, would constitute a criminal offence,
  - o his physical or mental health,
  - o a determination by a body in the United Kingdom responsible under any enactment for the regulation of a health or social care profession to the effect that his fitness to practise is impaired, or a determination by a licensing body elsewhere to the same effect,

- the Independent Barring Board including the person in a barred list (within the meaning of the Safeguarding Vulnerable Groups Act 2006 or the Safeguarding Vulnerable groups (Northern Ireland) order 2007), or
  - the Scottish Ministers including the person in the children's list of the adults' list (within the meaning of the Protection of Vulnerable Groups (Scotland) Act 2007).
- Article 22(6) of the 2001 Order provides that '*if an allegation is not made under paragraph (1) but it appears to the Council that there should be an investigation into the fitness to practise of a registrant or into his entry in the register it may refer the matter in accordance with paragraph (5) and this Order shall apply if it were an allegation made under paragraph (1)*' The powers of the Council set out in this paragraph have been delegated to the Chief Executive and Registrar and means that the HPC can investigate a matter even if a complaint is not made to use in the usual way (for example, media reports or information provided by a person who does not wish to make a formal complaint). Between April and October 2009, this power has been exercised on 45 occasions.
  - As part of its discussions at the away day in October 2009, the Council discussed issues around whether the HPC should consider moving towards consideration of fitness to practise in the round which would mean for instance considering both misconduct and health. The current legislation means that these two grounds are considered by separate committees.

### **Provision of information**

- Article 25(1) of the 2001 Order provides '*For the purpose of assisting them in carrying out functions in respect of fitness to practise, a person authorised by the Council may require any person (other than the person concerned) who in his opinion is able to supply information or produce any document which appears relevant to the discharge of any such function, to supply such information or produce such a document*'. The Council has provided the Director of Fitness to Practise with delegated authority to allow individuals to use this power. The power can not be used to obtain information which a person is prohibited from disclosing by or under any other enactments or which they could not be compelled to supply or produce in civil proceedings. However, it is not the case that the Data Protection Act 1998 prevents employers and others from disclosing information about patients to the HPC as section 35(1) of that Act exempts personal data from the non-disclosure provisions where disclosure is required by or under any enactment. Furthermore, the Caldicott Guardian arrangements for data protection adopted within the NHS are extra-statutory arrangements which do not prevent disclosure to HPC under the Order.

## **CHRE issue: The powers of the conduct committee and the role and training of its members (p16 and 17)**

### **CHRE recommendation 7 (p17)**

We recommend that the conduct committee should be given the power to use all of the sanctions now available to the fitness to practise committees/panels of the majority of the health professional regulators. The DH should consider this in the context of CHRE's work on harmonising sanctions across health professional regulation.

### **CHRE recommendation 8 (p17)**

We recommend that the relevant legislation should be amended so that appeals against decisions made by the conduct committee are heard by the High Court rather than the Care Standards Tribunal (CST).

### **Key CHRE issue/s**

- There are a limited range of sanctions available to the GSCC's conduct committee.
- The CST apply a lower threshold in overturning decisions than the High Court.

### **Government position**

- The GSCC should have greater flexibility in terms of the sanctions its panels have at their disposal.
- The Government would like further evidence on the rationale for moving appeals to the High Court.

### **Current HPC position**

#### **Sanctions**

- Article 29 of the 2001 Order sets out the types of orders a Fitness to Practise Committee can make when they have determined that an allegation that a registrants' fitness to practise is impaired is well founded. They can decide to:
  - o undertake mediation;
  - o take no further action;
  - o caution the person concerned;
  - o make an order imposing conditions of practice;
  - o make an order directing the Registrar to suspend the registration of the person concerned, or
  - o make an order directing the Registrar to strike the person concerned off the register.

- HPC have the full range of sanctions that CHRE suggest panels making decisions should have at their disposal.
- The ***Indicative Sanctions Policy*** sets out the Council's policy on how sanctions should be applied by Practice Committee Panels in fitness to practise cases and is intended to aid Panels in their deliberations and assist them in making fair, consistent and transparent decisions.
- To further aid panels in their deliberations, the HPC has a practice note entitled '***Drafting Fitness to Practise Decisions***' which provides information on drafting decisions and examples of conditions of practice.

### **Appeals against decisions**

- Article 38 of the 2001 Order provides that any order or decision of the Health or Conduct and Competence Committee (other than an interim order) shall lie to the appropriate court. The appropriate court means either the Court of Session, the High Court of Justice in Northern Ireland or the High Court of Justice in England and Wales.

## **CHRE issue: Cases only being referred to a conduct committee hearing if it felt that the outcome will be removal (p18)**

### **CHRE recommendation 9 (p18)**

We recommend that the GSCC should adopt a lower threshold of referral of cases to the conduct committee. Cases should be referred if there is a realistic prospect of a sanction being imposed. This must be incorporated into the relevant guidance for staff. The availability of conditions as a sanction would greatly aid a proportionate approach to fitness to practise.

#### **Key CHRE issue/s**

- GSCC was applying too high a threshold for the referral of cases to the conduct committee.
- The audit identified cases which should have been referred on for an investigation with a view to conduct committee.
- Cases were only referred if it was felt that removal of the social worker's name from the register would be the likely outcome.
- 61% of cases resulted in a removal from the register.

#### **Government position**

The Government would expect any regulatory body to investigate cases and take forward those cases where there was a realistic likelihood of a sanction being imposed.

#### **Current HPC position**

##### **Threshold for referral**

- Article 26(3) of the 2001 Order provides that where an allegation is referred to the Investigating Committee, it shall consider, in the light of the information which it has been able to obtain and any representations or other observations made to it, whether in its opinion, there is a case to answer. The test to be applied by a Panel in deciding whether there is a case to answer is whether, based upon the evidence before it, there is a "realistic prospect" that the HPC will be able to establish at a hearing that the registrant's fitness to practise is impaired. The key language here is whether there is a **realistic prospect that fitness to practise is impaired**. No consideration is given here as to what sanction should be imposed. Further, the legislation specifically provides for a separate consideration of impairment and sanction and that even if an allegation is proved to be well founded that a panel can take no further action. Further guidance is provided on this issue in the practice note 'Finding that Fitness to Practise is Impaired' and sets out that Panels should take a sequential approach in their decision making which asks them:

- to determine whether the facts as alleged are proved;
- if so, then determining whether the proven facts amount to the 'ground' of the allegation;
- if so, hearing further argument on the issue of impairment and determining whether the registrant's fitness to practise is impaired; and
- if so, hearing submissions on the question of sanction and then determining, what, if any sanction to impose.

This separation is an important feature in ensuring that fitness to practise processes are fair and proportionate and based upon the principles of rehabilitative and restorative justice. It also demonstrates the HPC's commitment in ensuring that the fitness to practise processes are not designed to punish the registrant but to take the action that is necessary to protect the public.

- A condition of practice order is an available order under Article 29 of the 2001 Order.

### **Referral of cases**

- The current case to answer rate is that 60% of cases received between April and October have been referred to a substantive panel to determine whether the registrant's fitness to practise is impaired.
- When a complaint is received in the appropriate form, steps are taken to establish that the allegation meets the other requirements of the standard of acceptance, by confirming that the complaint relates to:
  - a current HPC registrant; and
  - the fitness to practise of that registrant.

### **Outcome of cases**

- Of the 175 cases concluded at final hearing in 2008/09, the outcomes were as follows:
  - 66 striking off orders (38%)
  - 25 suspension orders (14%)
  - 13 conditions of practice orders (7%)
  - 25 caution orders (14%)
  - 1 amended entry (0.6%)
  - 4 no further action (2.1%)
  - 40 not well founded (23.5%)
  - 1 voluntary removal (0.6%)
- The HPC produce an annual fitness to practise report which provides further statistical information on the cases that have been considered by the committees.
- Of the 136 cases concluded at final hearing in 2009/10, the outcomes were as follows:
  - 40 striking off orders (29.5%)
  - 23 suspension orders (17%)

- 7 conditions of practice orders (5%)
  - 25 caution orders (18.5%)
  - 2 entries removed (1.5%)
  - 7 no further action (5%)
  - 30 not well founded (22%)
  - 2 voluntary removals (1.5%)
- The HPC Executive is currently undertaking a review of the not well founded decisions made by panels to determine whether there is any learning to be drawn from those decisions.

## **CHRE issue: Risk Assessments (p19)**

### **CHRE recommendation 10 (p19)**

We recommend that with immediate effect all new cases are risk assessed including being signed off promptly by a person with sufficient competence and authority. Ongoing risk assessments should be completed within similar timescales. The risk assessment should include consideration of whether there is a need for an ISO.

#### **Key CHRE issue/s**

- All cases should be risk assessed as a matter of priority.
- Risk assessments should be signed off by someone with sufficient experience.
- No documented evidence that an interim order had been considered.

#### **Government position**

The Government agrees with this recommendation.

#### **Current HPC position**

##### **Risk assessments**

- All new allegations are risk assessed as a matter of course. Our operating guidance provides the case managers with further guidance on this process. We have a case assessment form which is completed for every case.
- Risk assessment is part of the induction training for new case managers.

##### **Consideration of interim orders**

- Applications for interim orders are initially considered by lead case manager on initial assessment and allocation of the case. The decision to apply for an interim order is then authorised by the Head of Case Management or Director of Fitness to Practise.
- Interim order applications are generally scheduled within 7 days of making the decision to apply for such an order.
- A panel can also make a recommendation that an interim order is applied for and at the conclusion of a substantive case, consideration is always given to whether it is necessary to apply for an interim order to cover any period of appeal.

## **CHRE issue: Poor record keeping and file maintenance (p19)**

### **CHRE recommendation 11 (p20)**

We recommend that comprehensive guidance on good file management should be given to all staff, and that managers should ensure that it is complied with routinely and that all files are capable of being audited.

#### **Key CHRE issue/s**

- Many cases at the pre-investigation and investigation stages had considerable delays.
- Poor record keeping.

#### **Government position**

The Government will be monitoring the GSCC's progress in this area.

#### **Current HPC position**

##### **File management**

- HPC fitness to practise operating guidance includes guidance on how files should be structured.
- Each individual within the team has a requirement to achieve good file management within their annual goals and objectives.
- Our comments at recommendation one provides more detail on the role of the lead case managers in auditing case files.
- As part of our review of our case management system we are also looking at mechanisms to support the team in the management of their hard copy and electronic case files.

##### **Delay**

- More information can be found at recommendation one on the action that is taken to ensure cases are managed expeditiously.

The Fitness to Practise Committee asked the Executive at its October 2009 meeting to provide recommendations and options to the committee on what date it needs to receive to undertake its monitoring and oversight role.

## **CHRE issue: Over- reliance on local investigations and lack of co-operation from employers (p20)**

### **CHRE recommendation 12 (p20)**

We recommend that the GSCC should attempt to strengthen its relationships with employers in relation to conduct issues, with the aim of increasing the level of cooperation and information sharing. The Government should provide the GSCC with additional powers to require employers and others to provide information or concerns about a social worker's fitness to practise to the GSCC.

#### **Key CHRE issue/s**

- Decision taken to close cases on the basis of very limited information from employers.
- Employers unwilling to provide detailed information.
- Lower level concerns could be managed at the local level and referred back to the regulator if the position changes.

#### **Government position**

Relations with employers are key to the effective functioning of any regulatory body

#### **Current HPC position**

##### **Relationship with employers/Closing cases**

- The HPC hold a series of events each year particularly aimed at employers where representatives from the fitness to practise department hold work shops and discuss case studies with employers. This work has also received commendation from CHRE as an example of good practice.
- There is a brochure specifically aimed at employers to explain how the fitness to practise process; '***Fitness to Practise: Information for employers***' and guidance documents for registrants and employers on managing fitness to practise.
- Article 25 of the 2001 Order sets out the powers HPC have to demand information if it is relevant to investigating a fitness to practise allegation.
- When the HPC are informed of ongoing action that an employer is taking, the case manager keeps this under review and reviews the file on a monthly basis in accordance with our policy, to ensure we have the relevant information to manage our statutory responsibilities.

## **CHRE issue: Failure to consider all relevant issues appropriately and to give proper reasons for closure (p21)**

### **CHRE recommendation 13 (p21)**

We recommend that the GSCC should give clear reasons when they close a case explaining why the social worker should not be referred to the conduct committee on the basis that they do not present a risk to the public. The GSCC should also clarify and strictly apply its policies on how to handle social workers who have not renewed their registrations, and those who apply for voluntary removal whilst under the conduct process.

#### **Key CHRE issue/s**

- All relevant issues not considered by the conduct staff when reviewing a conduct case.
- Insisting that a matter go through the local employer complaint procedures before the GSCC can act.
- Decisions taken to remove a social worker's name from the register because they had not renewed their registration or to allow voluntary removal after the receipt of a complaint.
- Appearance that the GSCC was looking for reasons not to investigate matters.

#### **Government position**

The Government supports this recommendation.

#### **Current HPC position**

##### **Local resolution**

- HPC do not require matters to proceed through local employer complaint procedures before they can be considered as an allegation by the HPC. We have no legislative ability to make such a request nor is it appropriate for a number of reasons including situations where the complainant has no confidence in local resolution based on their passed experience or where the complaint may relate to individuals within a management position. It is also important to ensure that all cases are dealt with consistently. Further the regulators jurisdiction extends to the practice of the registrant through the United Kingdom and is not limited to the practice of a profession within a specific employment setting.

##### **Removal of registration**

- Article 11 of the 2001 Order provides that a 'person's registration shall not lapse under this article or under article 10(3) where –

- (a) *the person concerned is the subject of an allegation, or is treated under article 22(6) as if he were the subject of an allegation, or is the subject of any investigations or proceedings under Part V or Part VI of this Order, on the grounds only that he has not paid the prescribed fee or has failed to apply for renewal in the prescribed form or within the prescribed time; or*
- (b) *if the person concerned is the subject of a suspension order, a conditions of practice order, an interim suspension order or an interim conditions of practice order.*

- In September 2007, the Conduct and Competence and Health Committee agreed to a policy where consideration could be given to dispose of cases via consent. The Practice Note '**Disposal of Case via Consent**' was approved in September 2008 and provides guidance and information on this topic. Particularly important is that the HPC will only consider resolving a case by consent:
  - o after an Investigating Committee Panel has found that there is a "case to answer", so that a proper assessment has been made of the nature, extent and viability of the allegation;
  - o where the registrant is willing to admit the allegation in full; and
  - o where any remedial action proposed by the registrant and to be embodied in the Consent Order is consistent with the expected outcome if the case was to proceed to a contested hearing.

## **CHRE issue: Scrutiny of the conduct function by the Council and its Committees (p22)**

### **CHRE recommendation 14 (p22)**

We recommend that Council and Committee members should provide effective scrutiny by challenging information provided and requiring senior management to demonstrate what they have done to address identified issues.

#### **Key CHRE issue/s**

- Scrutiny and oversight undertaken by the Council and Regulation and Audit Committees over the operation of the conduct function was not sufficiently challenging.
- Limited evidence of challenge of statistics from Council and its Committees.
- Need to ensure that conduct was operating effectively.

#### **Government position**

The Council must demonstrably be prepared to interrogate and challenge the executive.

#### **Current HPC position**

##### **Effective Scrutiny**

- The HPC Executive has continually demonstrated its commitment to ensuring a full range of information is provided to Council and Committees. This has included a full range of narrative and statistical information to aid Council and the Committees undertake their monitoring, oversight and strategic roles.

## **CHRE issue: Risk management (p22 and 23)**

### **CHRE Recommendation 15 (p23)**

We recommend that the GSCC review their approach to risk management to ensure that it is effective in identifying, recording and managing risks within the organisation. Where required, training should be provided. This should include Council members, senior management and all operational staff.

### **CHRE Recommendation 16 (p23)**

We recommend that the Council should assure itself of the quality of decisions taken under the conduct function by commissioning regular internal and external audits and by ensuring that the terms of the audits provide a sufficient level of scrutiny linked to an evaluation of risk. The internal auditors also need to have the skills and experience necessary to make informed judgements on cases if that is required within the scope of their audit.

### **Key CHRE issue/s**

- GSCC risk register does not adequately represent the main risks within the conduct function.
- The existence of a backlog of cases was well known at all levels.
- The Council did not understand sufficiently the implications of failures within the conduct process.
- No expression of concern by the GSCC's internal and external audit about the management of risk in the conduct function.

### **Government position**

The Government agrees with both recommendations.

### **Current HPC position**

#### **Risk Management**

- Management of key risk is included within all annual departmental work plans.
- The organisational risk register is reviewed on a twice yearly basis.
- Risks in the fitness to practise area are prioritised as HPC's highest risks.

### **Audit/Quality of decisions**

- The Fitness to Practise function has been subject to three external audits by PKF and BSI in the 2009/10 calendar year. These audits have covered the management of key risks in the fitness to practise area and whether the function complies with the relevant policies and procedures.
- The HPC Executive recommends the Fitness to Practise Committee consider at its February 2010 meeting a proposal on how the Council can assure itself as to the quality of decisions.
- The Practice Note '***Drafting Fitness to Practise Determinations***' provides guidance to panels on how to draft decisions.

### **Knowledge of backlog**

- Comprehensive management information is provided to Council and Committee.
- A monthly management information commentary is provided to members of the HPC Executive.

## **CHRE issue: The quality of reporting by senior management to the Council and its Committees (p23 and 24)**

### **CHRE Recommendation 17 (p24)**

We recommend that the executive should be open, transparent and comprehensive when reporting to Council and its committees and should be able to do so with confidence of support through constructive challenge.

#### **Key CHRE issue/s**

- Council and committees hampered in undertaking their oversight duties by the quality of information received.
- Council and committees provided with misleading information.

#### **Government position**

The Council need to challenge the executive effectively to ensure that information provided to it is complete and accurate.

#### **Current HPC position**

- The Council's primary objective is public protection. It is committed to its role in setting, monitoring and reviewing the strategies for achieving this and ensuring that the work of the organisation continually reflects its shared values. **The** HPC values are set out in its strategic intent document. Those values reflect both the social context in which the organisation operates and its business drive to deliver effective and efficient regulation. They are as follows:
  - o Transparency
  - o Collaboration
  - o Responsiveness
  - o Value for money
  - o High quality service

External reviews by CHRE in 2007/08 and 2008/09, the National Audit Office Organisational health check (2009) as well as ongoing internal governance audits and annual review by Council members would suggest that the HPC Executive and Council are working well together and that decision making is supported by the appropriate level of information and the appropriate level of delegation.

## **CHRE issue: Purpose and Powers of the General Social Care Council (p25 and 26)**

### **CHRE Recommendation 18 (p25)**

We recommend, therefore, that the Government reforms the role and legal responsibilities of the GSCC to ensure clarity of purpose in protecting the public and maintaining the standing of the profession to enable it to operate as an effective and independent regulator committed to public protection and to building public confidence in the profession.

### **CHRE Recommendation 19 (p26)**

We recommend that in the longer term the GSCC becomes more financially independent of the Department of Health and that this change is phased in over a number of years. The GSCC should have more straightforward lines of accountability and oversight.

### **CHRE Recommendation 20 (p26)**

We recommend, therefore, that the Government reviews the risks in relation to the work and supervision of domiciliary care workers and their managers and reconsiders if inclusion in the GSCC's statutory register is proportionate and targeted. Other approaches, such as a statutory licensing scheme or an employer led approach based on codes of conduct and practice and induction standards may be more appropriate.

### **Key CHRE issue/s**

- The GSCC needs to refocus its activities on the effective delivery of its statutory role as a regulator.
- The GSCC does not have a statutory duty to protect the public and promote their care and well-being.
- A regulator needs to demonstrate that it observes the principles of good regulation; transparent, accountable, proportionate, consistent and targeted.
- A regulator needs to be seen as independent of sectional interests  
Other regulators have moved away from self-regulation to shared regulation.
- GSCC should become more financially independent of government by having clearer lines of accountability.
- The number of new workers to the register will inevitably increase the number of complainants and referrals to the conduct committee
- GSCC would benefit from being able to focus on the core activities of a modern regulator

## **Government position**

- The Government agrees with recommendation 18.
- The Government agrees with recommendation 19 in principle as the model of financial independence works well in the health care sector. There may well be a case for the functions of the GSCC to be carried out by a body that is more independent of Government with increased flexibilities and incentives to focus on the efficiency of processes. This will be considered in more detail by the Government.
- The Government accepts recommendation 20.

## **Current HPC position**

### **Funding**

- The HPC is self funding - all its operating costs are paid for by the registration fee which is currently £76 per annum. The HPC receives no regular funding from the Department of Health. The HPC may occasionally receive funding to cover costs not directly associated with its normal activities. For example, the HPC normally receives a small grant to cover costs associated with preparing for the regulation of new professions so that these costs are not borne by existing registrants.

### **New Workers**

- The recent Department of Health report 'Extending Professional and Occupational Regulation' included licensing as one of the regulatory options for lower risk groups / occupational roles which do not justify full statutory regulation.

|                          | FTP cases pre ICP | FTP cases post ICP | Review   | POT      | H&C      | Appeals  | Case Load | At Obs   |
|--------------------------|-------------------|--------------------|----------|----------|----------|----------|-----------|----------|
| <b>CASE TEAM 1</b>       |                   |                    |          |          |          |          |           |          |
| Zoe                      | *                 | *                  | *        | *        | *        | *        | 0         | *        |
| Ciara                    | *                 | *                  | *        | *        | *        | *        | 0         | *        |
| Simon                    | *                 | *                  | *        | *        | *        | *        | 0         | *        |
| Padi                     | *                 | *                  | *        | *        | *        | *        | 0         | *        |
| Cara                     | *                 | *                  | *        | *        | *        | *        | 0         | *        |
| Nafessah                 | *                 | *                  | *        | *        | *        | *        | 0         | *        |
| <b>Total</b>             | <b>0</b>          | <b>0</b>           | <b>0</b> | <b>0</b> | <b>0</b> | <b>0</b> | <b>0</b>  | <b>0</b> |
| <b>Av per person</b>     | <b>0</b>          | <b>0</b>           | <b>0</b> | <b>0</b> | <b>0</b> | <b>0</b> | <b>0</b>  | <b>0</b> |
| <b>CASE TEAM 2</b>       |                   |                    |          |          |          |          |           |          |
| Russell                  | *                 | *                  | *        | *        | *        | *        | 0         | *        |
| Sabrina                  | *                 | *                  | *        | *        | *        | *        | 0         | *        |
| Dominic                  | *                 | *                  | *        | *        | *        | *        | 0         | *        |
| Grant                    | *                 | *                  | *        | *        | *        | *        | 0         | *        |
| Joanna                   | *                 | *                  | *        | *        | *        | *        | 0         | *        |
| Jon                      | *                 | *                  | *        | *        | *        | *        | 0         | *        |
| <b>Total</b>             | <b>0</b>          | <b>0</b>           | <b>0</b> | <b>0</b> | <b>0</b> | <b>0</b> | <b>0</b>  | <b>0</b> |
| <b>Av per person</b>     | <b>0</b>          | <b>0</b>           | <b>0</b> | <b>0</b> | <b>0</b> | <b>0</b> | <b>0</b>  | <b>0</b> |
| <b>CASE TEAM 3</b>       |                   |                    |          |          |          |          |           |          |
| Paul                     | *                 | *                  | *        | *        | *        | *        | 0         | *        |
| Delwyn                   | *                 | *                  | *        | *        | *        | *        | 0         | *        |
| Grant                    | *                 | *                  | *        | *        | *        | *        | 0         | *        |
| Rodney                   | *                 | *                  | *        | *        | *        | *        | 0         | *        |
| Alan                     | *                 | *                  | *        | *        | *        | *        | 0         | *        |
| <b>Total</b>             | <b>0</b>          | <b>0</b>           | <b>0</b> | <b>0</b> | <b>0</b> | <b>0</b> | <b>0</b>  | <b>0</b> |
| <b>Av per person</b>     | <b>0</b>          | <b>0</b>           | <b>0</b> | <b>0</b> | <b>0</b> | <b>0</b> | <b>0</b>  | <b>0</b> |
| <b>Unallocated cases</b> |                   |                    |          |          |          |          | N/A       | N/A      |
| <b>Overall Totals</b>    | <b>0</b>          | <b>0</b>           | <b>0</b> | <b>0</b> | <b>0</b> | <b>0</b> | <b>0</b>  | <b>0</b> |

| <b>Summary</b> |                   |                               |
|----------------|-------------------|-------------------------------|
|                | <b>Open cases</b> | <b>At ICP/Reg panel stage</b> |
| Pre ICP        | 0                 | 0                             |
| Post ICP       | 0                 | N/A                           |
| Reviews        | 0                 | N/A                           |
| Appeals        | 0                 | *                             |
| POT            | 0                 | N/A                           |
| H&C            | 0                 | *                             |
| <b>Total</b>   | <b>0</b>          |                               |

## Fitness to Practise Management Information Commentary

This document provides monthly information for the Director of Fitness to Practise and other members of the Executive on key information from the Fitness to Practise department management information and to highlight any recurring issues that need to be addressed.

### Allegations and Enquiries – Pre Investigating Committee Panel

- In October 2009 there were 286 open cases at Pre-Investigating Panel stage and 96 enquiries, 52 cases had observation (obs) letters sent out.
- Of the 52 cases that had obs sent out in October 2009, 10 were over 5 months old from the date on which the allegation was made. The average age for these cases from date allegation made to obs sent is:

**Mean:** 3 months

**Median:** 3 months

- There were 52 cases in both the ‘Pre-investigating Committee’ and ‘Not Allegation Yet’ remit 5 months old or over (from the date the allegation was received) where obs letters had not yet been sent out.
- The tables below provide more detail about the age of these 52 cases 5 months old or over where obs have not been sent out. We are unable to provide commentary on the reasons why this month due to an error in the FTP database which means the comments section has had to be removed until the problem is rectified by IT.

| No. of months since allegation received | 1-4 | 5-8 | 9-12 | 13-16 | 17-20 | 21-24 | 25-28 | 29-32 | 33+ | Total cases |
|---|-----|-----|------|-------|-------|-------|-------|-------|-----|-------------|
| No. of allegations / enquiries          | 0   | 26  | 14   | 8     | 1     | 1     | 0     | 1     | 1   | 52          |

- More information concerning length of time can now be found in the **Investigating Committee** section.
- Of the 286 cases at Pre-Investigating Panel stage in October 2009 the average age of case (from date received to 31 October 2009) is:

**Mean: 4 months**

**Median: 3 months**

### **Interim Orders**

There are currently 32 cases that are subject to an interim order. 18 of these cases are in the pre ICP remit. 5 of the have had the observation letter sent and are waiting to go before the ICP. The remaining 14 cases are all in the Conduct and Competence Committee remit. Of these 14 cases, 6 have been fixed, 2 are ready to be fixed and 6 are still being prepared.

Of the 13 cases that are yet to have the observation letter sent, 6 relate to sexual offences against children or adults, 2 relate to the theft of medical equipment, 2 relate to physical assaults, 1 relates to misconduct in a judicial or public setting, 1 relates to the taking of controlled substances and 1 relates to an inappropriate relationship.

The majority of cases that are yet to have an observation letter sent involve complex police and / or trust investigations into allegations of sexual offences. The vast majority of cases are under 6 months old and are being dealt with appropriately by the case managers.

### **Investigating Committee**

There are currently 286 cases in the pre ICP remit. Of these cases 209 were between 0 and 4 months. 77 cases are over 5 months old, of which, 47 are between 5 and 8 months old, 16 are between 9 and 12 months old. The remaining 14 cases range from 13 to 33 months.

The case to answer rate in October was 63%. This represented a slight increase from last month's figure of 60%. 20 of the 24 cases that were referred had had representations from either the registrant or representative.

23 of the cases that were referred were referred to the Conduct and Competence Committee. The other case was referred to the Health Committee.

Of the 38 cases that went to ICP in October, 23 were considered within 5 months of receipt and 15 exceeded the service standard. This increase reflects the efforts that have been made to clear the older cases in the department's caseload.

## **Cases awaiting consideration- final hearings**

There has been a slight increase in the number of cases waiting for hearing in October 2009 from 194 cases in September to the current 205 cases in the Conduct and Competence Committee remit and eight in the Health Committee remit.

Kingsley Napley are investigating 74 of the 205 cases waiting and 128 cases already have final hearing dates arranged. Of the 74 cases Kingsley Napley have been instructed on, only two are over five months beyond their ICP date. We are closely monitoring this situation to ensure that Kingsley Napley meet their service level standard in notifying us that a case is ready to fix.

The Hearings Team has 29 cases ready for a hearing date to be arranged, three of which are being held up whilst we seek further information. The scheduling team arranged the dates of 41 substantive cases in October, which is the highest number of cases ever fixed in one month.

## **Final Hearings**

Of the 36 cases scheduled in October 2009, 24 cases resulted in a final substantive decision. Of the remaining 12 cases, 11 were adjourned/ part heard or cancelled and one case was referred to the Health Committee.

There were five adjourned cases and these involved circumstances beyond HPC's control. One concerned the illness of a family member which was agreed by the panel. Two cases were adjourned for a future date after issues concerning the admissibility of evidence were raised on the day of the hearing. At another hearing signed consent forms had not been received as expected and in the remaining case the panel recused itself from the hearing after a member of the public in the public gallery volunteered new information in relation to the registrant.

A further five cases were part heard and we are reviewing the reasons why cases are part heard to identify whether there is anything we can do to in relation to our listing procedures.

## **Outcomes and Decisions**

Of the 36 substantive cases scheduled to take place in October 2009, 9 were not well founded. One not well found case was heard by the Health Committee who received medical reports the week before the hearing demonstrating that the registrant's fitness to practise was not impaired. We are planning to review the not well founded decisions made by panels over the past year as a mechanism for identifying learning for panels in making case to answer decisions.

There were five striking off orders, five suspension orders, three caution orders, one conditions of practice and one case where the registrant consented to the removal of their registration. One case was referred to the health committee.

There were also 10 substantive review cases heard in October.

## **Registration Appeals**

Only one registration appeal was received in October. Nine of the 13 open cases have been listed to be heard on 30 November 2009.

### **Protection of Title**

We received 28 new Protection of Title complaints in October and closed a similar number of existing cases. The vast majority, 19, were received from other professionals. The number of open cases at the end of October remains low at 51.

### **Health and Character Declarations**

The numbers of new cases received fell from 115 in September, to 86 in October. The number of declarations received on renewal fell from 54 to 30. The renewal period for a number of professions came to an end on 30 September 2009. The number of declarations made by new applicants to the register is beginning to fall after the usual busy summer period with 33 received in October.

At the end of October there were 108 open health and character cases which is relatively high in comparison to other months. This is expected to fall as the number of new applications decreases and the renewal periods for occupational therapists and practitioner psychologists come to an end.

### **High Court Cases**

The case of Lloyd Subner was considered by the High Court on 23 October 2009. The appeal was rejected and the decision to strike the registrant from the register was upheld.

The case of Richard Howlett has been fixed for hearing by the High Court on 8 and 9 December 2009.

The case of Himanshu Agarwal has been listed for hearing on 18 January 2009.

We are waiting dates in the cases of David Brammer and Heather Bonser.

In two other cases we are applying to the High Court for an extension to the interim orders.

### **CHRE**

Costs have now been recovered from CHRE in the case of Gary Tabberer

### **Court of Appeal**

The judgement in the case of Stanley Muscat was handed down on 21 October 2009. The appeal was rejected and the decision to strike Mr Muscat from the register was upheld.

## **Resourcing**

### **Case Management**

The number of allegations received remains higher than in previous years, and we anticipate that we will exceed the number of allegations received in 2008/09 by the end of November.

Case Team 1 and 2 both now comprise of 5 case managers and 1 lead case manager. There have been resignations however in both teams so over the course of the last 6 months there hasn't been a full complement of case managers. Following the most resignation, a Case Manager is moving from Case Team 3 to Case Team 2 to place our resources where they are most needed.

Three Case Managers are currently being recruited with interviews taking place on 23 and 25 November. One of these positions is to replace a resignation and the other two posts are additional headcounts for 2009/10.

Two temporary Case Support Officers joined Case Teams 1 and 2 in November to help with the administrative aspects of the case work. We are looking at this role as an alternative to increasing numbers of Case Managers in 2010/11.

Due to the high numbers of complaints being received the Case Managers currently have relatively high caseloads, but we are trying to ensure that cases are turned around quickly and closed off as soon as possible if they are not being pursued through the FTP process.

### **Hearings**

We have appointed two extra hearings officers who are due to start in the organisation in November 2009. This will help to ensure that we have enough hearings officers to cover the number of hearings.

### **Rooms**

The rooms at Park House are currently being used at very close to full capacity. Sickness, TOL and annual leave have meant that we have needed to use Case Managers to cover the number of hearings that are being held. This should be addressed through the appointment of the two extra hearings officers outlined above.

### **Administration**

The Administration Co-ordinator role has been made an Administration Manager role to give line management responsibility and prepare for future growth of the administration team. We currently have a temp to aid us in the management of FTP invoices and this will be recruited as a permanent Team Administrator role towards the end of November.

## NET REGULATE STATUSES TRAINING MANUAL

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## Introduction

The Fitness-to-Practise department did not have an adequate list of statuses within Net Regulate to describe and monitor the state of an Applicant or a Registrant in appeal, in Health and Character declaration or a Registrant in an FTP case. This led to inadequacies in the system, including confusion as to whether an applicant had appealed, whether a registrant was having a public hearing and whether a registrant had been struck or removed through the incorrect entry process. Net regulate statuses link directly to the online register and the inadequacy in the net regulate statuses led to confusion for members of the public in particular with regards to the renewal date which appeared on the online register when someone was under investigation,

## Key differences

- Records no longer need to remain under investigation throughout the FTP process and when a sanction is applied, unless there are multiple FTP cases for that registrant in different stages of the process
- Hearings ID is added when applying a caution or condition of practice or interim conditions of practice status
- An expiry date is added when applying a caution or condition of practice, interim conditions of practice, suspension, or interim suspension status
- The renewal date will automatically click over to the following cycle if a registrant in a complaint or health and character status and does not complete the renewal process
- An accurate list of complaint, health and character and appeal statuses are available and can be reported on
- Period of adaptation and aptitude test statuses available
- Users can see whether an applicant has appealed a decision

## New Statuses

The following is a list of the new statuses that have been created within Net Regulate:

### New Complaint (FTP) Statuses

- Registered Under Investigation
- Registered In Public Hearing
- Registered Caution
- Registered Conditions of Practice
- Registered Interim Conditions of Practice

- Deregistered Suspension
- Deregistered Struck Off
- Deregistered Interim Suspension
- Deregistered Removed

### **New Health and Character Statuses**

- Applicant (Declaration Received)
- Applicant (Declaration Approved)
- Application (Declaration Rejected)
- Renewals – Declaration Received
- Renewals – Declaration Rejected
- Self Referrals – Declaration Received
- Readmission – Declaration Received
- Readmission – Declaration Approved
- Readmission – Declaration Rejected
- Deregistered – Rejected

### **New Appeal Statuses**

- Applicant (Under Appeal)
- Applicant (Appeal Dismissed)
- Applicant (Appeal Allowed)
- Applicant (Appeal Withdrawn)
- Applicant (Appeal Remitted)
- Registered In Appeal
- Registered Appeal Dismissed

### **New Application Statuses**

- Period of Adaptation
- Aptitude Test

### **Other**

- Incomplete renewals

### **New User Groups**

There are three new user groups (as well as the existing reg manager and reg officer user groups). They are as follows:

FTP manager – change and view rights to all FTP statuses (includes administrators within FTP)

FTP hearing - has change rights to all FTP statuses except under appeal, renewal – declaration received, Self- referral –declaration received and has view rights to all FTP statuses

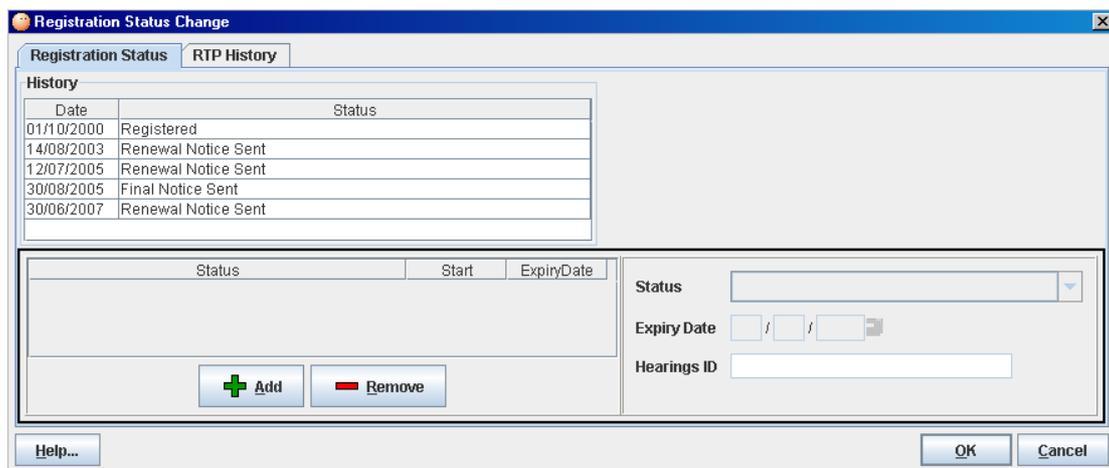
FTP case management – has change rights to Registered Under Investigation, Registered in Public Hearing, all appeals and health and character statuses and view rights to all FTP statuses

Registration user groups will not be able to assign or unassign the new FTP statuses except for Readmission – Declaration Approved

## Status Details – How to change a status on a registrant record

When you need to change a complaints, health and character or appeals status:

1. Click on 
2. Click on Add or remove as appropriate
3. Select Status from the drop down menu on the right



| Date       | Status              |
|------------|---------------------|
| 01/10/2000 | Registered          |
| 14/08/2003 | Renewal Notice Sent |
| 12/07/2005 | Renewal Notice Sent |
| 30/08/2005 | Final Notice Sent   |
| 30/06/2007 | Renewal Notice Sent |

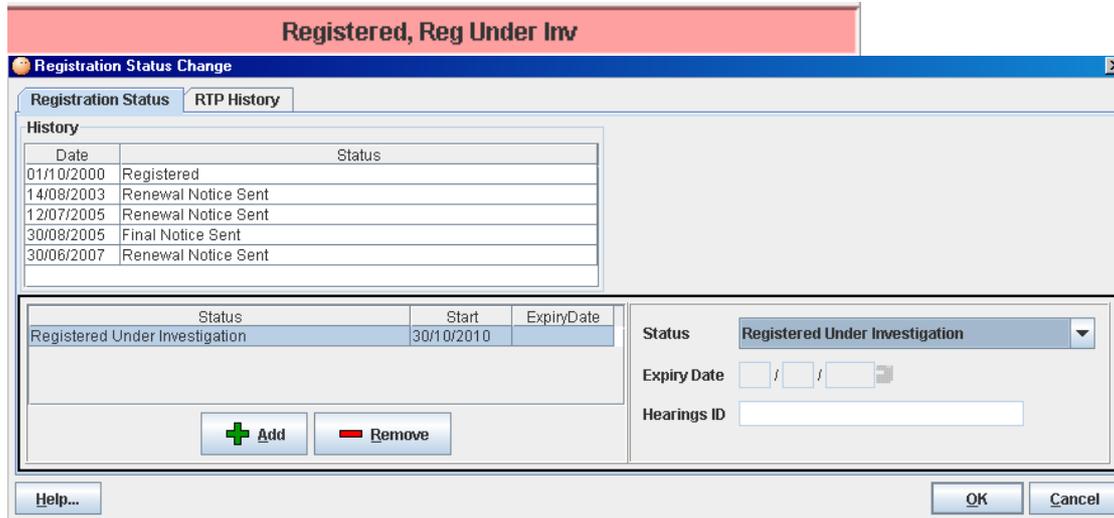
## Statuses – Complaint Statuses

### 1. Registered Under Investigation

When a complaint is received about a registrant, the manager logging the case will change the status to Registered Under Investigation (as is the current practice). This status will not appear on the online register, however, it will prevent the registrant from lapsing their registration either through non payment of fee or failure to sign their renewal form and they will not be selected for CPD. If a registrant does not complete their renewal form their registered dates will automatically click over to the next renewal cycle

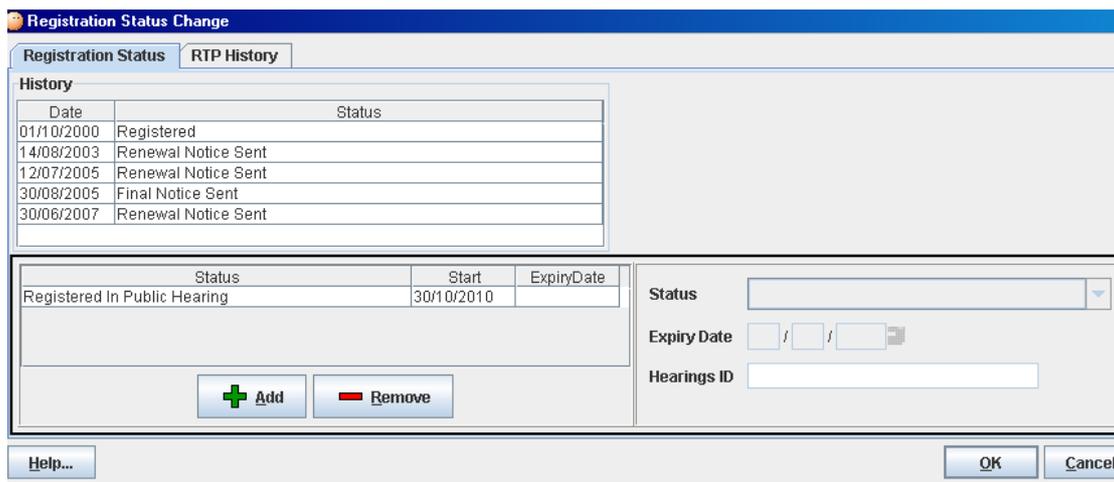
therefore never showing a past date. This prevents any confusion for members of the public when viewing the online register.

This status cannot be viewed by the registration officer user group but for FTP users will appear as follows:



## 2. Registered In Public Hearing

When a case to answer decision has been made by the investigating panel, the case manager, when doing follow up should remove the under investigation and add the status to Registered In Public Hearing. This status does not appear on the online register but can be viewed by ALL users. This status prevents the registrant from lapsing as per the registered under investigation status



The status will appear in the status bar of net regulate as follows



### 3. Registered Caution

When a panel imposed a caution order on the registrant, after any appeal period has elapsed, the hearings team should remove the in public hearing status and change to Registered Caution. You should also enter the expiry date of the caution. You should also enter the hearings ID number. This is the number generated when you enter the outcome of the hearing on to the CMS system. This will then link the online register to the relevant website entry outlining the decision and order

| Date       | Status              |
|------------|---------------------|
| 01/10/2000 | Registered          |
| 14/08/2003 | Renewal Notice Sent |
| 12/07/2005 | Renewal Notice Sent |
| 30/08/2005 | Final Notice Sent   |
| 30/06/2007 | Renewal Notice Sent |

| Status               | Start      | ExpiryDate |
|----------------------|------------|------------|
| Registered Cautioned | 30/10/2010 | 14/01/2009 |

Status: Registered Cautioned

Expiry Date: 14 / 01 / 2009

Hearings ID: 999999

+ Add   - Remove

It will look like this in the status bar and all will be able to view

**Registered, Cautioned**

### 4. Registered Conditions of Practice

The same process as Registered Cautioned applies here. The tool bar will appear as follows:

**Registered, CoP**

### 5. Registered Interim Conditions of Practice

When a panel impose an interim conditions of practice, a new status is added to either registered under investigation or registered in public hearing. The status of interim conditions is only removed when the INTERIM order is revoked. You will still need to enter the hearings ID number

**Registration Status Change**

Registration Status RTP History

**History**

| Date       | Status              |
|------------|---------------------|
| 01/10/2000 | Registered          |
| 14/08/2003 | Renewal Notice Sent |
| 12/07/2005 | Renewal Notice Sent |
| 30/08/2005 | Final Notice Sent   |
| 30/06/2007 | Renewal Notice Sent |

| Status                                    | Start      | ExpiryDate |
|---|------------|------------|
| Registered In Public Hearing              | 30/10/2010 |            |
| Registered Interim Conditions of Practice | 30/10/2010 | 28/04/2009 |

Status: **Registered Interim Conditions of Practice**

Expiry Date: 28 / 04 / 2009

Hearings ID: 111111

+ Add - Remove

Help... OK Cancel

The status bar will look like this:

**Registered, In Public Hearing, Interim CoP**

Registration Officers will see that registrant has interim conditions of practice

## 6. Deregistered Suspension

The process outlined in relation to caution will apply here. However, no Hearing ID needs to be entered

**Registration Status Change**

Registration Status RTP History

**History**

| Date       | Status              |
|------------|---------------------|
| 01/10/2000 | Registered          |
| 14/08/2003 | Renewal Notice Sent |
| 12/07/2005 | Renewal Notice Sent |
| 30/08/2005 | Final Notice Sent   |
| 30/06/2007 | Renewal Notice Sent |

| Status                  | Start      | ExpiryDate |
|-------------------------|------------|------------|
| Deregistered Suspension | 30/10/2010 |            |

Status: **Deregistered Suspension**

Expiry Date: 17 / 10 / 2009

Hearings ID:

+ Add - Remove

Help... OK Cancel

The registrant WILL NOT appear on the online register and the status bar will look like this:

**Dereg Suspension**

## 7. Deregistered Struck Off

The process above will apply, however you do not need to enter an expiry date or a hearings ID

## 8. Deregistered Interim Suspension

The process outlined in Registered Interim Conditions of Practice will apply. However, no Hearings ID needs to be entered

## 9. Deregistered Removed

This status should be used when a registrant is removed from the register following an incorrect entry finding and in NO other circumstance

### Other

If a registrant appeals their decision to the high court and no interim order is imposed, the status should be Registered – In Public Hearing

## Statuses – Health and Character Registrant Statuses

The following statuses are health and character statuses when an individual has registrant record:

### 10. Renewals – Declaration Received

When a registrant declares an issue on renewal to the register, FTP will change their status to Renewals- Declaration received

The screenshot shows a software window titled "Registration Status Change". It has two tabs: "Registration Status" (selected) and "RTP History".

**History Table:**

| Date       | Status              |
|------------|---------------------|
| 16/10/2004 | Renewal Notice Sent |
| 18/10/2004 | Registered          |
| 17/11/2004 | Final Notice Sent   |
| 31/08/2006 | Renewal Notice Sent |
| 04/09/2008 | Renewal Notice Sent |

**Current Status Table:**

| Status                          | Start      | ExpiryDate |
|---------------------------------|------------|------------|
| Renewals - Declaration Received | 30/10/2010 |            |

**Form Fields:**

- Status: Renewals - Declaration Received (dropdown menu)
- Expiry Date: [ ] / [ ] / [ ] (calendar icon)
- Hearings ID: [ ] (text input)
- Buttons: + Add, - Remove
- Buttons: Help..., OK, Cancel

The status bar will appear as follows and will be visible to all but will not show on the online register. The registrant cannot lapse their registration or complete the renewal process until this status is removed. The status should only be removed if the registration panel determine the renewal should be allowed and processed in the usual way.

**Registered, Renewals Decl Rec, Renewal Notice Sent**

## 11. Renewals – Declaration Rejected

If the registration panel determine that the renewal should be rejected, the status should be changed to Renewal- Declaration rejected. After the 28 day appeal period has elapsed and no appeal has been received, the status should be manually changed to deregistered rejected. More detail on what you should do if a registrant does appeal a renewal can be found later in this document. It will look like this:

The screenshot shows the 'Registration Status Change' window with the 'Registration Status' tab selected. The 'History' table lists several events:

| Date       | Status              |
|------------|---------------------|
| 16/10/2004 | Renewal Notice Sent |
| 18/10/2004 | Registered          |
| 17/11/2004 | Final Notice Sent   |
| 31/08/2006 | Renewal Notice Sent |
| 04/09/2008 | Renewal Notice Sent |

Below the history table, there is a table for the current status:

| Status                          | Start      | ExpiryDate |
|---------------------------------|------------|------------|
| Renewals - Declaration Rejected | 30/10/2010 |            |

To the right of this table, the 'Status' dropdown is set to 'Renewals - Declaration Rejected'. There are also fields for 'Expiry Date' and 'Hearings ID'. At the bottom, there are 'Add' and 'Remove' buttons, and a 'Help...' button on the left. 'OK' and 'Cancel' buttons are at the bottom right.

and once rejected like this:

This screenshot is similar to the previous one, but the 'Status' dropdown is now set to 'Deregistered - Rejected'. The 'History' table and the table below it remain the same, with the 'Status' field in the table now showing 'Deregistered - Rejected' and a 'Start' date of '30/10/2010'.

## 12. Self Referrals – Declaration Received

If a self referral is received the status should be changed to Self Referral – Declaration received. If the registration panel recommend a referral to FTP the status should be changed to Registered Under Investigation. If they do not, the status should be removed.

All users can see the self referral declaration received status

## 13. Readmission – Declaration Received

If an individual applies for readmission to the register, the status should be changed to Readmission – Declaration received.

All users can see this status

#### **14. Readmission – Declaration Approved**

If the readmission is approved, the status should be changed to Readmission – Declaration Approved. Registration can then change the status as appropriate

#### **15. Readmission – Declaration Rejected**

If the readmission is rejected the status Readmission received should be removed and changed to Readmission- Declaration rejected.

#### **16. Deregistered – Rejected**

Please see above in section 11

### **Statuses – Registrant Appeal Statuses**

The following statuses apply when a registrant appeals a registration decision. They do not apply when an applicant appeals a decision (see statuses below). Only FTP users can apply these statuses, but they can be viewed by all user roles.

#### **17. Registered In Appeal**

This status applies when a registrant appeals a decision not to renew their registration. The status is applied by a Case Manager when logging an appeal.

#### **18. Registered Appeal Dismissed**

This status applies when a registrant appeals a decision and their appeal is dismissed by a panel. The status Registered in Appeal should be removed and replaced with Applicant (Appeal Allowed) by the person doing the hearing follow up follow an appeal panel.

### **Status Details – How to change a status on an applicant record**

When you need to change a status on an applicant record:

1. If the record has been closed, click on 
2. Then, click on the drop down list in the bottom, middle of the screen 
3. Select the required status from the drop down list

## Statuses – Applicant Appeal Statuses

The following statuses apply when an **applicant** appeals a registration decision. They do not apply when a **registrant** appeals a decision (see statuses above). Only FTP users can apply these statuses, but they can be viewed by all user roles.

### 19. Applicant (Under Appeal)

This status applies when an applicant appeals a decision not to allow their registration. The status is applied by a Case Manager when logging an appeal.

### 20. Applicant (Appeal Dismissed)

This status applies when an applicant appeals a decision and their appeal is dismissed by a panel. The status Applicant (Under Appeal) should be removed and replaced with Applicant (Appeal Dismissed) by the person doing the hearing follow up follow an appeal panel.

### 21. Applicant (Appeal Allowed)

This status applies when an applicant appeals a decision and their appeal is allowed by a panel. The status Applicant (Under Appeal) should be removed and replaced with Applicant (Appeal Allowed) by the person doing the hearing follow up follow an appeal panel.

Although a registration user cannot apply this status, they can change this status to any other registration status once the case is passed to them to process.

### 22. Applicant (Appeal Withdrawn)

This status applies when an applicant appeals a decision and they subsequently decide to withdraw their appeal. The status Applicant (Under Appeal) should be removed and replaced with Applicant (Appeal Withdrawn) by the person closing the case.

Although a registration user cannot apply this status, they can change this status to any other registration status.

### **23. Applicant (Appeal Remitted)**

This status applies when an applicant appeals a decision and their appeal is remitted to the Education and Training Committee by a panel. The status Applicant (Under Appeal) should be removed and replaced with Applicant (Appeal Remitted) by the person doing the hearing follow up follow an appeal panel.

Although a registration user cannot apply this status, they can change this status to any other registration status once the case is passed to them to process.

## **Statuses – Application Statuses**

These statuses can only be applied by registration users. They are visible to all users.

### **24. Period of Adaptation**

### **25. Aptitude Test**

## **Searching by status**

**Search for Information...**

**Registration/Application**

ID:   
 Profession:   
 Reg/App Date:  /  /   
 CPD ID:

**Search Type**

Search for:  Registrations  Applications  Both  
 Registration status:   
 Application status:   
 Application type:

**Personal Details**

Surname:   
 First Names:   
 Previous Name:   
 Date of Birth:  /  /

**Address**

Address Line 1:   
 Town/City:   
 County/Shire:   
 Country:   
 Post Code:

**Results**

| Number | Surname | First Names | Date of Birth | Profession | Reg/App Date | Status |
|--------|---------|-------------|---------------|------------|--------------|--------|
|        |         |             |               |            |              |        |

3 results returned in 17 milliseconds (data: asp:12, processing:11, network:24)

Records can be searched by registrant or applicant records. They can also be searched by any registration status (see full list above) or any application status (see list above).

This can be used a method of checking that records are assigned the correct status and can be cross referenced with other databases.

## Incomplete Renewals

When a registrant has a complaint, health and character or appeal status applied to their record, they do not lapse from the register even if they do not complete the renewal process i.e. pay their fees and sign the declaration. When the proceedings have concluded, HPC needs to chase any outstanding money or request a signed declaration. **The Incomplete Renewals status identifies these registrants and must be applied manually by FTP.** The following process must be applied:

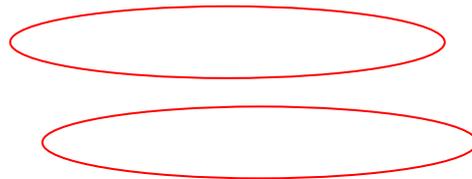
1. The FTP user removing the status on conclusion of any proceedings must check whether the individual paid and signed during the most recent renewal process. (For details on how to check this, see section below.)
2. If the registrant has either not paid and/or not signed the declaration, the status **Incomplete Renewal** must be applied manually by the FTP user, rather than the Registered status.
3. The FTP user must email [regfinance@hpc-uk.org](mailto:regfinance@hpc-uk.org) to inform finance that this status has been applied and provide the registration number and name.
4. Finance will request outstanding fees and/or a signed declaration.

5. An FTP manager will run a monthly report of those registrants with a Incomplete Renewal status and provide Finance with a copy.

### Checking that a registrant has paid and signed

To check if a registrant has signed the declaration in the most recent renewal cycle, look in the Registration Details part of the record highlighted below.

To check if a registrant has paid their fees, check the financial history. If the current balance appears in red, they have not paid their fees. If it is in black they have paid their fees, see below.



### Accuracy check for monthly stats

| Check   | Report to use  | Field to check                        | Content  |
|---|--|---------------------------------------|--|
| Allegations will be counted in correct month              | <b>All case data –</b><br>Sort data by FTP number and scroll to the most recent numbers                | Date received                         | Accurate date  |
|   | <b>Stats 1 –</b> use green arrows to select previous month   | Total allegations received            | Should match last months stats report, if not, allegations this month have been incorrectly logged |
| Allegation information is accurate and has been filled in | All case data - sort the data by received date and scroll to the data relating to the relevant month   | Type of allegation                    | Must not be blank  |
|   |  | Allegation made date                  | Must not be blank for cases which are “Pre ICP” remit  |
|   |  | Home country                          | Must NOT state United Kingdom  |
|   |  | Application type                      | Must not be blank  |
|   |  | Complainant type                      | Must not be blank  |
|   |  | Current remit                         | Must not be blank  |
|   |  | Type of letter                        | Must not be blank  |
|   |  | Where incident occurred               | Must not be blank for cases which are “Pre ICP” remit  |
|   |  | Employment status at time of incident | Must not be blank for cases which are “Pre ICP” remit  |
| All ICP follow up has been completed                      | <b>Running order</b>   |                                       | Check that the cases listed correspond to those listed on the database                             |
|   | <b>All case data –</b> sort the data by ICP date and scroll to the data relating to the relevant month | Type of allegation                    | Must not be blank or state “Not yet known”   |
|   |  | Allegation made date                  | Must not be blank  |

|                                       |  |   |   |
|---------------------------------------|--|---|---|
|                                       |  |   |   |
|                                       |  | Current remit   | Has been changed to reflect decision  |
|                                       |  | Reg provided obs  | Must not be blank   |
|                                       |  | Sufficient info for panel   | Must not be blank   |
|                                       |  | Case to answer  | Must not be blank unless further information requested  |
|                                       |  | Type of panel   | Must not be blank if case has been referred   |
|                                       |  |   |   |
| <b>Final hearing/Review follow up</b> | <b>All case data</b> – sort data by Review/FH dates and scroll to relevant dates | Current remit   | Has been changed to reflect decision. If conditions/suspension, it must be in review remit.                         |
|                                       |  | <b>Final Hearings</b> – sort by start date and scroll to relevant dates | Registrant represented  |
|                                       |  | Suspension or conditions applied  | Must not be blank   |
|                                       |  | FH outcome  | Must not be blank, unless hearing was cancelled (check this on Panel view).<br><br>Cross check this with Panel view |
|                                       |  | Sanction length   | Must not be blank if sanction is caution, conditions or suspension  |
|                                       |  |   |   |

**FTP Check List  
Case to Answer**

|   |
|---|
| <b>Case Manager completing actions:</b><br><b>Case Reference:</b> |
|---|

| Action   | Completed                | Date  |
|--|--------------------------|-------|
| <b>CASE MANAGER TO ACTION</b>  |                          |       |
| Anonymise identifiable information in allegation   | <input type="checkbox"/> | _____ |
| Write to registrant – Letter - <i>Notice of Allegation</i>   | <input type="checkbox"/> | _____ |
| Letter saved to Net Regulate   | <input type="checkbox"/> | _____ |
| Write case plan  | <input type="checkbox"/> | _____ |
| Saved to registrant info folder  | <input type="checkbox"/> | _____ |
| Complete <i>ICP information</i> spreadsheet<br>(G:\Legal\Operational Data\Case Information)          | <input type="checkbox"/> | _____ |
| Update FTP database:   |                          |       |
| - Remit  | <input type="checkbox"/> | _____ |
| - Decision   | <input type="checkbox"/> | _____ |
| - Allegation details   | <input type="checkbox"/> | _____ |
| <b>CASE SUPPORT TO ACTION</b>  |                          |       |
| Write to complainant – Letter <i>Case to Answer – Complainant</i> , enclose witness information pack | <input type="checkbox"/> | _____ |
| Send copy to HR Director where complaint is from an employer   | <input type="checkbox"/> | _____ |
| Letter saved to registrant folder  | <input type="checkbox"/> | _____ |

Write to **HR Director** of employer if known –

Letter *Referred - advising employer 25(1)*

\_\_\_\_\_

**CHECK NET REGULATE AND CASE FILE**

\_\_\_\_\_

Letter saved to Registrant info folder

\_\_\_\_\_

Instruct Kingsley Napley including the following information:

- Letter *Instruction to KN*
- Copy of case file
- Stamped copy of *Notice of Allegation*
- Case Plan
- Proof of registration certificate
- Copy of ICP decision
- Email Word version of *Notice of Allegation*

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

*to: NSmith@kingsleynapley.co.uk*

\_\_\_\_\_

Letter saved to registrant info folder

\_\_\_\_\_

Scan decision and attach to Net Regulate

\_\_\_\_\_

Add details to website CSM (do not approve)

\_\_\_\_\_

Net Regulate status changed (remove “Under Investigation” and apply “In public hearing”)

\_\_\_\_\_

Add pink card to file

\_\_\_\_\_

Deleted: ¶

Deleted: Complete ICP information spreadsheet¶  
<sp>(G:\Legal\Operational Data\Case Information) . . ¶

**FTP check list  
After final hearing and reviews**

**Hearings Officer completing actions:**

**Case reference:**

| Action  | Completed                | Date  |
|---|--------------------------|-------|
| <b>Transfer decision into “Reg Folder” in G drive</b>   | <input type="checkbox"/> | _____ |
| <b>Send outcome email to:</b>   | <input type="checkbox"/> | _____ |
| <ul style="list-style-type: none"> <li>• ‘DI Comms’ and Ebony and Amy, FTP, KN</li> <li>• Section 29 for CCC and HC cases only (not adjourned) NOTE: review cases should include previous decisions</li> </ul>  |                          |       |
| <b>Update FTP database:</b>   |                          |       |
| <ul style="list-style-type: none"> <li>• <b>Current remit</b> (If NFA, Caution, SO – change to Case Closed. If CPO, Suspension – change to C&amp;C Review/HC Review)</li> </ul>   | <input type="checkbox"/> | _____ |
| <ul style="list-style-type: none"> <li>• <b>Complete final hearing form</b> including sanction or adjourned</li> </ul>  | <input type="checkbox"/> | _____ |
| - Insert the <b>employment type</b> and <b>incident location</b>  |                          |       |
| <b>CMS:</b>   |                          |       |
| <ul style="list-style-type: none"> <li>• Note website hearing ID if CPO or caution order</li> </ul>   | <input type="checkbox"/> | _____ |
| <b>Update Net Regulate:</b>   |                          |       |
| <ul style="list-style-type: none"> <li>• Update status (If NWF, NFA – remove in public hearing. If interim order imposed – apply relevant status). If Review Hearing, update new expiry date of sanction.</li> </ul>  | <input type="checkbox"/> | _____ |
| <b>Update ‘To Do’ task from FTP Lotus Notes</b>   | <input type="checkbox"/> | _____ |
| <ul style="list-style-type: none"> <li>• Create new to do item from the <b>FTP calendar</b></li> <li>• In ‘subject’ enter FTP number, Reg number, case name, sanction to be applied and website hearing ID</li> <li>• Set “due date” and “start date” to 28 days after hearing date</li> <li>• Record end date of order in the text space</li> <li>• Assign to Zoe, Russell, Anaru and ‘FTP’ (NOT fitness to practise)</li> <li>• Save and Close</li> </ul> |                          |       |

**Update 'Substantive Reviews.xls' spreadsheet in 'scheduling' folder:**

- With details for final hearing cases where 'suspension' or 'conditions of practise' orders are made.  \_\_\_\_\_
- For cases after review if orders confirmed (or remove if Order is to expire)  \_\_\_\_\_

**Send out come, save to Registrant Info, and file:**

- Registrant  \_\_\_\_\_
- Representative  \_\_\_\_\_
- Employer (please send to HR Manager if Trust is mentioned on file)  \_\_\_\_\_
- Complainant  \_\_\_\_\_
- Witnesses  \_\_\_\_\_
- Other regulator if applicable  \_\_\_\_\_

**Complete final outcomes spreadsheet**  \_\_\_\_\_

**Interim Order** (to cover appeal period)

- If interim order made update Net Reg and F2P database  \_\_\_\_\_

**Existing Interim Orders** (pre-substantive hearing)

- If IO exists remove case from IO review spreadsheet  \_\_\_\_\_
- If IO exists close any IO tracking forms in F2P database  \_\_\_\_\_

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# FTP OPERATIONAL GUIDANCE

## Investigating and Drafting Allegations

### Introduction

The Health Professions Order 2001 provides that overall responsibility for the investigation of allegations rests with the Investigating Committee, which has the responsibility for determining whether HPC has established a “case to answer” against a registrant in respect of any allegation.

The Investigating Committee is not involved in the day to day work of conducting investigations and that function is delegated to HPC Investigators acting under the direction and control of the Director of Fitness to Practise.

Where an allegation is received by HPC, the Investigating Committee is obliged by Article 26 of the Order to:

- give prompt notice of the allegation to the registrant concerned and invite him or her to submit written representations;
- if appropriate, invite the complainant to deal with any points raised by those representations; and
- obtain as much other information as possible about the case;

so that adequate information is available to the Investigating Committee Panel which will decide whether there is a “case to answer”.

The “case to answer” stage is intended to ensure that only allegations which are of substance proceed to a full hearing. This not only helps to ensure that the resources of HPC and others are not wasted in the pursuit of an allegation which is unlikely to be proved at hearing, but also helps to avoid needlessly harming the reputations of registrants.

### Dealing with complaints – general principles

The investigative process commences with the initial contact between HPC and the complainant. A person’s first contact with HPC will have a significant impact on their confidence in the regulatory process and, accordingly, Investigators involved in that initial contact should:

- act in a professional and courteous manner;
- obtain and accurately record all relevant information;

- provide appropriate advice, guidance and reassurance, in areas including:
  - a clear explanation of the fitness to practise process
  - the standard of acceptance for allegations
  - ways in which a complaint can be made
  - literature which may be of assistance (e.g. FTP brochures and practice notes)
  - other organisations that may be of assistance
  - information about the next steps in the investigation;
  - an appropriate point of contact
  - a positive but realistic assessment of HPC's response; and
- adhere to the service standards which are communicated to complainants, particularly in relation to contact and time frames.

HPC Investigators should investigate and manage allegations in an effective and professional manner, in accordance with the following guiding principles:

- acting proportionately and courteously, recognising that both complainants and registrants are entitled to expect that allegations will be dealt with expeditiously and in accordance with the law;
- upholding HPC's commitment to promoting equality and valuing diversity by acting in a fair, impartial and non-discriminatory manner;
- being objective 'finders of fact', not simply seeking evidence to prove an allegation, but gathering all relevant evidence in a fair and balanced manner; and
- supporting HPC in its obligations as a public authority under the Human Rights Act 1998 to act in accordance with the European Convention on Human Rights.

### **Contact with registrants and complainants**

The registrant should be notified that an allegation is being investigated when a complaint is received. This need not contain the full details of the allegation as all the information may not have been gathered at that stage. It should be made clear that a full allegation with all supporting material will be provided at the conclusion of the investigation. This is not necessary when the case is an enquiry as it is not yet a fitness to practise allegation. However once it moves to the status of an allegation, a letter should be sent.

A letter should be sent to the registrant at the conclusion of the investigations containing the full allegation and copies of all information that will be considered by the investigating panel (see section: Formulating allegations below).

Both the registrant and complainant should be contacted once a month and provided with an update on the progress of the investigation.

### **Maintaining case files**

Case files must be accurately maintained and up to date at all times. Relevant documents must be filed in order of receipt and in a timely manner. File notes must be made to record any action taken on the case which is not evidenced by correspondence in the file. This includes telephone calls, and decisions made in relation to management of the case.

### **Case reviews and updates**

HPC must process complaints expeditiously, and therefore a regular review by the Case Manager of all cases for which they are responsible is essential. This should be done on a monthly basis.

As part of the review process, where no contact has been made with the complainant or registrant in the preceding month, an update should be provided to them. If no evidence of action exists, the assumption must be that no action has been taken. It is therefore important that all action is evidenced either by correspondence of a file note.

Case meetings should be held by a manager at least once a month at which the progress of all cases should be reported.

### **Obtaining relevant information**

Many complaints will be received in writing and in a form which provides sufficient detail of the identity the registrant concerned and the nature and circumstances of the complaint to meet HPC's standard of acceptance.

That will not be the case where initial contact is by telephone and, in such cases, Investigators must:

- obtain the name, address and telephone number of the complainant;
- obtain details of the registrant who is the subject of the allegation;
- ascertain what has happened and where and when it occurred;
- provide guidance on HPC's standard of acceptance for allegations and:
  - advise the complainant to put the allegation in writing;
  - send a complaint form to the complainant, or
  - complete a statement of complaint for the complainant.

Records should be legible, accurate and contain all necessary information. In doing so, remember that the details of the initial contact or initial lines of inquiry will be obvious to the person who had that initial contact but will not be so obvious to someone who assumes responsibility for the case unless clear and detailed records have been maintained. Further FOG will be provided for taking complaints over the phone.

In cases where the initial information from the complainant does not meet the standard of acceptance for allegations, the case should be logged and given the remit of "Not allegation yet". As soon as information is received which complies with

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the standard of acceptance and the case in effect becomes an allegation, the remit of the database should be amended to “Investigating Committee – Pre ICP”, to reflect this change in status. Until a case is an allegation, an interim order can not be applied for and Article 25(1) powers can not be used.

## **Closing cases**

If a case is closed either prior to becoming a fitness to practise investigation, or prior to an Investigating Panel, the case assessment should be completed providing detailed reasons for the decision and authorisation sought from a manager. In some instances legal advice should be obtained. The case assessment documentation must be scanned to the electronic record with comments provided in the comments field of the database including date of closure.

The status on Net Regulate must be changed to remove “under investigation”.

## **Case handling**

After initial receipt, appropriate steps should be taken to establish that the allegation is within HPC’s remit, by confirming that:

- the person who is the subject of the allegation is a registrant; and
- the subject matter is such that fitness to practise may be impaired.

Other than in exceptional circumstances, a copy of any complaint which forms the basis of an allegation will be sent to the health professional concerned. This needs to be made clear to any complainant who asks for the information to be treated “in confidence”, who also need to be advised that failure to agree to disclosure of the complaint may prevent the case progressing further.

Where the person concerned is not registered with HPC but may be registered with another regulator, appropriate advice and contact information should be given to the complainant and, with their consent, any relevant documentation passed to that regulator.<sup>1</sup>

Although allegations must relate to impairment of fitness to practise, an over-strict interpretation of that term should not be adopted. Fitness to practise is not just about clinical performance but also encompasses acts by a registrant which may have an impact upon public protection, the reputation of profession concerned or confidence in the regulatory process.

There will often be circumstances in which matters seemingly unconnected with professional practice may nonetheless have a bearing on fitness to practise. For example, an allegation arising from the sale of a car by a registrant to a patient may involve issues about abuse of the clinician-patient relationship. Any doubts on this point can usually be resolved by further investigation of the allegation.

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<sup>1</sup> It is also possible that the allegation has arisen because a person is falsely claiming to be HPC registered or misusing a protected title. Such cases should be referred to the HPC case team responsible for offences under Article 39 of the 2001 Order.

Every allegation received by HPC must be considered on its merits and, as HPC's main objective is public protection, there is a presumption in favour of making further inquiries about an allegation unless it is clearly not within HPC's jurisdiction, frivolous or vexatious. If an administrative decision is taken not to pursue an allegation further, it is important that the reasons for doing so are recorded. All such decisions should be discussed with and agreed by a manager (see section: Closing cases above).

However, that presumption should not lead to the adoption of a one-sided approach to the investigation of allegations. All relevant lines of inquiry should be pursued, with the evidence being gathered in a fair and balanced manner and presented in a form which will assist an Investigating Committee Panel to reach a decision.

A case assessment should be undertaken by the Case Manager at the time the case is allocated, including a risk assessment, and any issues identified should be discussed with a manager. This document should be continually updated through the course of the investigation.

### **Case Investigation**

In many cases it will be possible to formulate an allegation solely on the basis of the initial information received from a complainant. However, in some cases a more detailed investigation will need to be carried out before an allegation can be prepared.

In gathering further information for this purpose, HPC Investigators may exercise the powers under Article 25(1) of the Health Professions Order 2001 to compel disclosure, but it should be noted that the registrant concerned cannot be compelled to provide any information or required to take part in an interview.

Investigations which extend beyond gathering documents and materials, such as interviews, must be recorded in a form which enables the registrant to comment upon them and to be included in the case documents and materials.

It may be necessary in some cases to seek advice from an expert in a particular field during the investigation of an allegation. The advice sought may relate to profession specific issues that arise in the complaint where clarification or explanation is required. It may also relate to the ability of HPC to prove a case and present evidence to a panel.

When seeking advice at this stage of the investigation, discussion should take place with a Lead Case Manager and authorisation sought from either the Head of Case Management or the Director of Fitness to Practise.

Once any investigation has been completed, an investigation report should be prepared in the standard format which:

- summarises the background to, and source of, the allegation;
- sets out the allegation in the form it was provided to the registrant;
- provides a synopsis of the investigation which has been carried out; and

- identifies all of the documents and other materials received by HPC relating to the allegation, full copies of which must be attached to the report.

## **Allegations**

In essence, the fitness to practise process consists of three stages:

1. an early opportunity for the registrant to be informed of and, if he or she so chooses to comment on, the allegation;
2. an Investigating Committee Panel deciding, in respect of that allegation, whether there is a case to answer; and
3. if that question is answered in the affirmative, a Panel of another Practice Committee determining whether that allegation is well founded.

Throughout that process the allegation which the registrant faces must be materially the same. The allegation which is first put to the registrant must also be the allegation on which the Investigating Committee Panel is asked to reach a case to answer decision and, assuming there is a case to answer, must be the allegation which is considered at the subsequent hearing.

Whilst it is permissible to amend the detail of an allegation, in the sense of providing more detail to help the parties understand or answer points raised by that allegation, it cannot be extended or varied to any material degree without either the consent of the registrant or, if that consent is not forthcoming, the additional elements being subjected to the investigative process outlined above, so that the registrant has the opportunity to make representations which can be considered by an Investigating Committee Panel. Consequently, careful consideration needs to be given to the formulation of allegations at the very outset of an investigation. All allegations should be considered and signed off by a manager prior to being sent to the registrant.

The requirement not to vary an allegation during the fitness to practise process is a facet of the common law rules of natural justice, which set the minimum standards of fair decision-making. An implied obligation to observe the principles of natural justice – essentially the right to a fair hearing free of bias - arises in respect of any body determining questions of law or fact in circumstances where its decisions will have a direct impact on someone's rights or legitimate expectations.

The right to a fair hearing requires that a person is given adequate prior notice of the allegations against him or her, and of the procedure for determining those allegations, so that he or she has a fair opportunity to:

- answer the case against him; and
- present his or her own case, including;
  - presenting his or her version of the facts;
  - making submissions on principles of law or any applicable legislation, guidance or codes of conduct etc.

The right to a fair hearing is also protected by the Human Rights Act 1998 in consequence of Article 6 of the European Convention on Human Rights. In Convention jurisprudence, the concept of what amounts to a fair hearing is a flexible

one and the essential requirements reflect the common law duty to apply the principles of natural justice and otherwise to act fairly.

## **Formulating allegations**

Allegations should be drafted in clear and unambiguous language which enables any person reading them to understand what is being alleged.

An allegation should contain sufficient detail to enable the registrant to understand what it is he or she is accused of, including the material facts upon which the allegation is based, so that the registrant is able to respond to make representations if he or she so chooses, can properly consider whether to admit or deny the allegation and, if appropriate, commence the preparation of any defence or mitigation.

Whilst the nature of many HPC cases will be such that much of the available evidence will be provided to the registrant with the allegation, it is important to note that there is no requirement for an allegation to include all the evidence on which it is based and, if such an obligation did exist, it would severely hamper the process of informing registrants of allegations. This therefore allows registrants to be notified at an early stage that an investigation is taking place. Of course, the registrant will be entitled to see any evidence which the Investigating Committee is later asked to consider in reaching a case to answer decision.

So, for example, in a case where a registrant is accused of inappropriate physical contact with a patient, it is sufficient for the allegation to be based upon the initial complaint (assuming it provides sufficient detail of date, place, people and events etc.) without the need to first obtain and provide other supporting evidence, such as witness statements.

Every allegation must be based upon impairment of the registrant's fitness to practice, founded upon one of the grounds set out in Article 22(1) of the 2001 Order and supported by the facts on which that ground is alleged to arise.

The allegation should, so far as possible, be described in ordinary language and in sufficient detail to provide the essential facts which constitute the allegation. So far as possible, the elements of the allegation should be set out:

- briefly and concisely;
- in separate, consecutively numbered, paragraphs, each dealing with a single element of the allegation;
- giving precise dates (or a range of dates), locations and, where relevant, identifying individuals ensuring accuracy particularly with dates;
- with the facts and other matters in chronological order; and
- dealing with the allegation on a point by point basis, to allow a point by point response and adjudication.

When drafting allegations, the following points should be considered:

- Careful thought should be given to the use of the correct ground. Care should be taken when alleging lack of competence **and/or** misconduct to ensure that it is used correctly. Some particulars may only relate to misconduct, some only to lack of competence and some may be both.
- Avoid the use of factual statements that are not allegations. Some scene setting is necessary but this should be kept to a minimum.
- Where there is a motive behind the actions of the registrant, this should be specifically particularised e.g. dishonesty, sexual motivation and indecency. However, there is no need to particularise dishonesty where it is implicit in the allegation e.g. "you stole £100 from patient x".
- Avoid making reference to breaches of employer policies unless relevant to the allegation. E.g. use of Entonox whilst on duty is misconduct regardless of the employer policies, whereas general misuse of IT equipment in the work place may require reference to employer policies.
- Avoid subjective terminology, e.g. "unjustifiably", "inappropriate"
- A breach of the standards of conduct, performance and ethics should not be alleged as Rule 9 of the Conduct and Competence Committee Procedure Rules provides that:

"Where the Committee has found that the health professional has failed to comply with the standards of conduct, performance and ethics established by the Council under article 21(1)(a) of the Order, the Committee may take that failure into account but such failure shall not be taken of itself to establish that the fitness to practise of the health professional is impaired."

The panel can take account of the standards when making its decision.

So, for example:

#### *Allegation*

*In the course of your employment as a [profession] by Toytown NHS Trust you:*

1. *Were provided with access to a computer belonging to the Trust.*
2. *Between [dates], you used that computer to*
  - (A) *access websites containing pornographic material,*
  - (B) *to download pornographic images from such websites, which were stored in the files on the computer identified in Appendix 1;*
3. *Between [dates], you used that computer to search for the terms of a sexual nature identified in Appendix 2.*
4. *Your use of that computer for those purposes was contrary to the Trust's Internet Access Policy.*

5. *The matters set out in paragraphs 2(A) [or] (B), 3 [and] 4 constitute misconduct.*
5. *By reason of that misconduct, your fitness to practise is impaired.*

**Note:** In drafting allegations it is important to be very clear and precise about whether HPC is alleging that all of the facts or only one or some of them need to be established in order to prove the allegation. This can usually be resolved by careful use of “and” and “or” in the penultimate paragraph.

### **The “case to answer” test**

In deciding whether there is a case to answer, the test to be applied by a Panel is whether, based upon the evidence before it, there is a “realistic prospect” that the Council will be able to establish that the registrant’s fitness to practise is impaired.

That test (which is also known as the “real prospect” test) is used in other proceedings and is relatively simple to understand and apply. As Lord Woolf MR noted in *Swain v Hillman* [2001] 1 All ER 91, 92:

*“The words ‘no real prospect of succeeding’ do not need any amplification, they speak for themselves. The word ‘real’ distinguishes fanciful prospects of success... or, as [Counsel] submits, they direct the court to the need to see whether there is a “realistic” as opposed to a “fanciful” prospect of success.”*

The test applies to the whole of the allegation, that is:

1. the facts set out in the allegation;
2. whether those facts amount to the “ground” of the allegation (e.g. misconduct or lack of competence); and
3. in consequence, whether fitness to practise is impaired.

For most allegations the evidence will relate solely to the facts and it would be unusual to provide separate evidence on the “ground” or the issue of impairment as these are a matter of inference for the Panel. For example, the Panel can infer from the facts that the registrant’s actions fell below the standard expected of a reasonably competent practitioner. In reaching that decision the Panel may have regard to the HPC Standards of Proficiency or Standards of Conduct, Performance and Ethics.

The test does not call for substantial inquiry or require the Panel to be satisfied on the balance of probabilities, it only needs to be satisfied that there is a realistic possibility (as opposed to remote or fanciful one) that the Council will be able to establish its case.

A decision that there is “no case to answer” should only be made if there is no realistic prospect of the Council proving its case, for example, because there is insufficient evidence to substantiate the allegation or the evidence is manifestly unreliable or discredited.

The Panel only conducts a limited, paper-based, exercise and whilst it may assess the overall weight of the evidence, should not seek to make findings of fact on the substantive issues or seek to resolve substantial conflicts in the evidence.

In applying the test the Panel needs to take account of the wider public interest, including protection of the public and public confidence in the profession concerned and the regulatory process. Panels are expected to adopt a cautious approach and resolve cases where there is any element of doubt by deciding that there is a case to answer.

### **Following an ICP**

The correct actions must be taken following an ICP. Checklists are available for Case Managers to ensure that all actions are completed. Completed checklists must be placed in the file when complete and will form part of the audit process.

Where a case to answer decision is found Case Managers, should ensure that any reference to individuals within the allegation is anonymised prior to sending the notice of allegation to the registrant and preparing web pages. A schedule can be produced for ease of reference.

Lead case manager will conduct an audit of no case to answer files before the case is closed.

### **Other resources**

- Checklists:
  - Case to answer
  - No Case to answer
  - Closing a case
  
- Case to answer practice note
- FOG - Three year rule
- Standard of acceptance for allegations
- Practice note - Consent Orders
- Practice note – Interim Orders
- Standard letters

## Appendix one

### Internet social networks

This advice relates to action HPC may be able to take when it receives complaints about registrants' activities outside of work on internet social networks such as Facebook, Myspace, and Bebo.

In those cases where the registrant can be identified and the activity in question, if conducted by other means, would amount to misconduct, the matter should be dealt with in a similar manner to any other fitness to practise allegation. However, such cases will be rare and in many instances it may not be possible to identify the person concerned with any certainty. Further, in many instances evidential considerations may prevent further action being taken, including:

- the generalised and tenuous nature of the comments which may have given rise to the complaint, which may amount to little more than "letting off steam" or be the internet equivalent of "coffee room banter" (albeit then transmitted around the world on the web);
- the complaint may relate to selected or isolated comments which are taken out of context and may not represent the properly balanced views of the person concerned. HPC may not have access to the relevant 'string' of comments which provides that context, for example, by showing that the comments were jocular, qualified in some way or the person concerned has apologised for them;
- the extent to which a complainant may be regarded as having consented to whatever has taken place by participating in the network in question. A recent prosecution for harassment using Facebook failed on exactly this ground;
- the transient nature of some of these websites and the evidential problems this creates, such as where a website does not even exist at the time a case is heard.

In addition, whilst decisions about impaired fitness to practise can properly take account of the reputation of the profession in question, we now live in a diverse society in which individual rights to privacy and freedom of expression are protected. This places severe limitations on the extent to which private conduct may be regarded as being damaging to the public standing of a particular profession.

In cases involving the use of internet social networks where there are insufficient grounds for an allegation to be made, but where the content in question may be damaging to the reputation of a particular profession and the registrant responsible can be identified, HPC does have the option of sending a letter of advice to that registrant:

1. drawing attention to the content in question; and
2. reminding the registrant of his or her obligation to comply with the HPC Standard of Conduct, Performance and Ethics and, in particular, Standards 14 and 16:

#### ***14. You must behave with integrity and honesty.***

You must make sure that you behave with integrity and honesty and keep to high standards of personal and professional conduct at all times.

***16. You must make sure that your behaviour does not damage your profession's reputation.***

You must not get involved in any behaviour or activity which is likely to damage your profession's reputation or undermine public confidence in your profession.

# FTP OPERATIONAL GUIDANCE

## Case File Structure

### Introduction

It is vital that all case files are maintained and are accurate at all times. This guidance is intended for all employees within the Fitness to Practise Department who have an equal responsibility to ensure that it is followed and files are properly managed.

### Maintaining case files

Case files must be accurately maintained and up to date at all times. Relevant documents must be filed in order of receipt and in a timely manner. File notes must be made to record any action taken on the case which is not evidenced by correspondence in the file. This includes telephone calls, and decisions made in relation to management of the case.

### Basic FTP file structure

- A sheet is attached to the front of the file containing important information which should be updated as the case progresses
- Each section of the file (see below) should be ordered with the most recent document on top
- Draft or unsent documents should never be kept on the file
- Files should be a reasonable size and not overloaded (no more than approximately a thumb's width)
- If more than one file is created this should be clearly marked on the front of all files i.e. File 1 of 2
- No information should be stored in the back pocket except small bundles where necessary (only one copy is required)
- Duplicate information such as copies of ICP bundles should not be stored in the file
- Any exhibits not in paper form should be put in an evidence bag and attached to the file or secured to the pocket. Large items should be stored in a cabinet with a clear note on the file detailing where the item is stored.
- Any obscene images should not be stored in the main case file but an additional file should be created and kept in a locked cupboard (refer to FOG – Obscene Image Storing for full guidance)

### File dividers

The file is divided into 4 parts:

- legally privileged information should be filed behind a **yellow divider** at the back of the file
- Information relating to a health and character investigation should be filed behind a **green divider**
- information relating to investigations before ICP should be filed behind a **pink divider**
- information relating to investigations after ICP should be filed in front of the **pink divider**
- information relating to hearings should be filed in front of a **blue divider** at the front of the file. This should only contain the following documents:
  - hearing notices
  - witness correspondence relating to scheduling
  - Kingsley Napley correspondence relating to scheduling
  - Hearing decisions

Blue and pink dividers should be inserted into the file as and when necessary as not all cases will reach this stage in the process.

Case Managers may wish to use further dividers to mark important documents within larger files for ease of reference.

## **Appendix**

Front sheet template

---

## Fitness to Practise File Audit

**Date of audit:**  
**Audit number:**  
**Audit conducted by:**

**Case reference:**  
**Case Manager/Officer:**

Case remit: Not allegation yet/Pre-ICP/CCC/HCC/ICP/CCC review/HCC review/ High Court [delete as appropriate]

Correct Net Regulate status?

Schedule of correspondence complete?

File in correct order?

Privileged information in the correct section?

Documentation attached?

Documentation scanned?

Case assessment form complete? (inc IO reasoning)

When was case last reviewed by Case Manager? Date:

Does case need chasing? Yes/No

Has complainant been contacted in last 4 weeks? Yes/No

Has registrant been contacted in last 4 weeks? Yes/No

Is the database correct: Yes/No

Date last reviewed?

Correct status?

Relevant comments?

Comments:

## FTP CASE FILE – FTP00000

**Related case numbers:**

**Previous FTP case numbers:**

**Interim order imposed: YES / NO**

Date imposed:

Order type:

**Additional contact information for registrant:** (not including registered address)

**Contact information for complainant:**

**Registration panel details** (where applicable):

Chair:

Lay:

Registrant:

**Registrant represented: YES / NO**  
Details

**Any special requirements:**

Braille, special measures, access to building

**Important dates:**

Registration panel date:

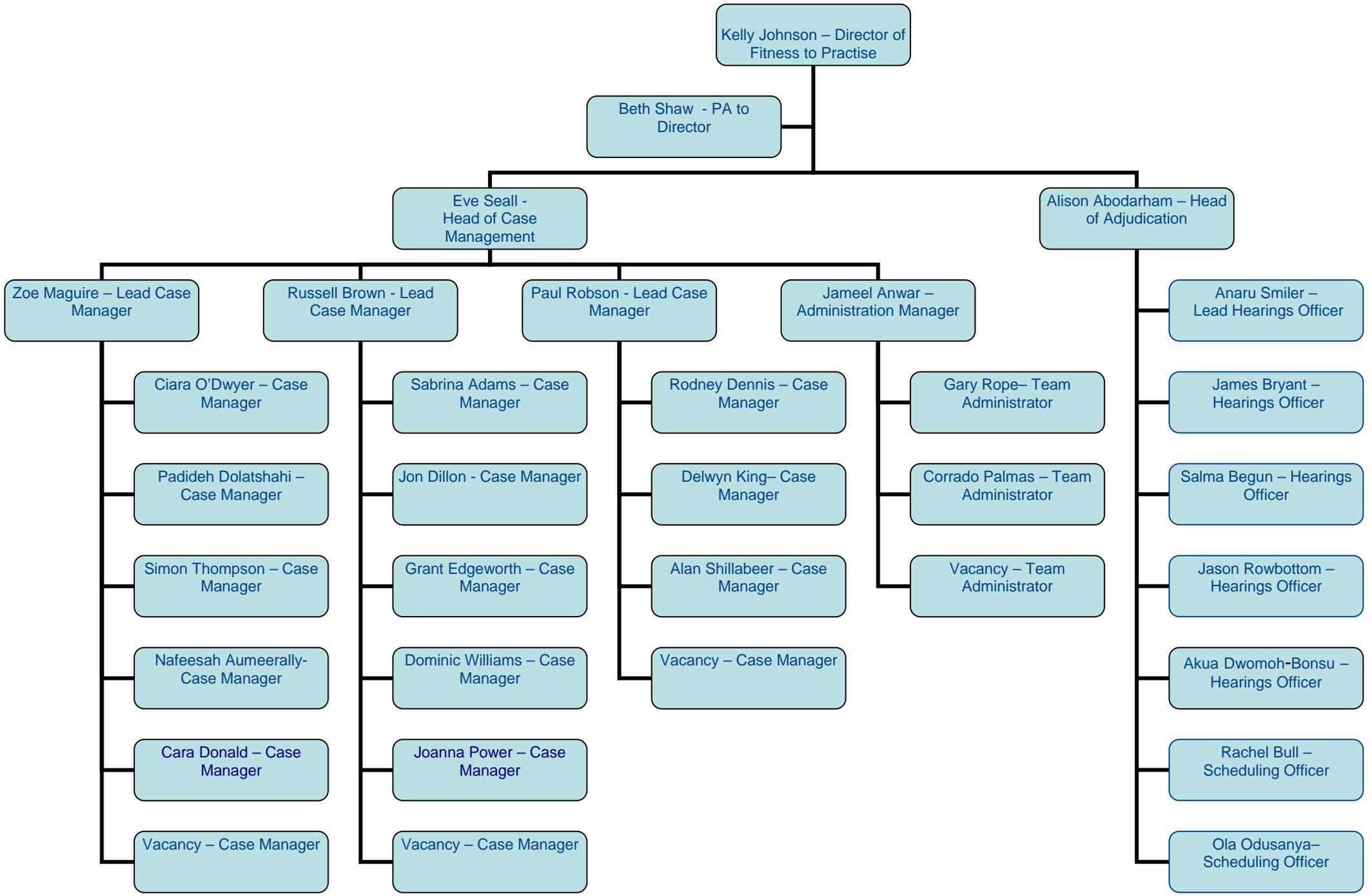
ICP date:

Final hearing date:

**Vulnerable witnesses: YES / NO**

**Electronic bundle available: YES / NO**

**Hearings risk assessment issues:**



# FTP OPERATIONAL GUIDANCE

## RISK PROFILING

### Introduction

In order to ensure that HPC is fulfilling its duty to protect patients, HPC Investigators undertake a preliminary assessment of the risk profile of every allegation they receive, so that higher risk cases can be given priority and, if necessary, interim measures can be put in place to protect the public.

Article 31 of the 2001 Order enables HPC Practice Committee Panels to impose interim suspension or conditions of practice orders on registrants who are the subject of an allegation. A Panel may make such an order if it is satisfied that doing so:

- is necessary for the protection of members of the public;
- is otherwise in the public interest; or
- is in the interests of the registrant concerned.

Those criteria are also used by Investigators as the basis for risk profiling allegations. The task is to assess whether, on the available evidence, the registrant may pose an actual or potential risk if permitted to remain in practice on an unrestricted basis until HPC has dealt with the case.

Although the risk profiling criteria are the same as the grounds upon which an interim order may be sought - and, in most cases, the decision reached about the priority of the case will also determine whether to seek such an order - the priority given to a particular case is not solely dependent upon whether or not an interim order may be required. It is entirely possible for an allegation to be of high priority but, due to the circumstances of the case, for example, where a registrant has been moved to restricted duties or is subject to bail conditions which provide adequate public protection, for it to be unnecessary to seek an interim order.

### Protection of the public

In assessing risk on the ground of public protection, higher priority should be given to those cases where a health professional may be a continuing risk of harm to the public based on prior acts (or alleged acts) which involve:

- providing clinical care far below accepted standards, for example:
  - repeated or persistent lapses in clinical care;

## FTP CASE ASSESSMENT

To be completed by the Case Manager

### Initial receipt

Date Received by  
Case Manager:

|  |
|--|
|  |
|--|

RISK CATEGORY

|  |
|--|
|  |
|--|

FTP NUMBER

|  |
|--|
|  |
|--|

REGISTRANT

### Standard of acceptance

Does the complaint:

sufficiently identify the registrant?

|     |  |
|-----|--|
| YES |  |
| YES |  |

sufficiently identify the complainant?

provide sufficient particulars of:

place(s)?

|     |    |
|-----|----|
| YES | NO |
|     | NO |
|     | NO |

time(s) and date(s)?

event(s)?

### Further investigations

If any answer is **NO**:

is the case suitable for telephone interview?

|     |    |
|-----|----|
| YES | NO |
| YES |    |
| YES |    |

could the defect be rectified by further inquiries?

is the case suitable for further investigation?

Reasons/What further investigation?

|  |
|--|
|  |
|--|

**Authorisation:** [Further Investigation/No Further Investigation/Close/Meets Standard]

|  |             |           |
|--|-------------|-----------|
| <b>Reasons:</b>  |             |           |
| Authorized by Director of Fitness to Practise                          | <b>YES</b>  | <b>NO</b> |
| Signed:  | <b>DATE</b> |           |
| <b>If further investigation undertaken, provide details of result:</b> |             |           |
| Does the case now meet standards of acceptance?                        |             | <b>NO</b> |
| Recommend case is closed?  | <b>YES</b>  |           |

### Risk Profile

(Circle the appropriate Risk Category and also record at the top of Page 1)

|                  |          |          |          |
|------------------|----------|----------|----------|
| <b>Category:</b> | <b>A</b> | <b>B</b> | <b>C</b> |
|------------------|----------|----------|----------|

If Category C, document reasons why an Interim Order is not warranted:

|  |            |           |
|--|------------|-----------|
| <b>Reasons:</b>  |            |           |
| <b>Interim order</b>                                   |            |           |
| If Category A or B, should an Interim Order be sought? | <b>YES</b> | <b>NO</b> |
| <b>Reasons:</b>  |            |           |
| <b>Authorisation: Interim Order</b>                    |            |           |
| Approved<br>DFTP/FPM                                   | by         | Date:     |

### Case Closure

## Job Description – Case Manager (Case Team 1 and 2)

### **Fitness to Practise Department**

#### **Main Purpose of Job**

- To manage and investigate cases dealt with by the Fitness to Practise Department.
- Contribute to the design, develop, and implement processes to support the work of the department.
- To ensure that a high quality of customer service is provided to all customers, both internal and external.
- Contribute to the provision of witness support
- Act as Presenting Officer in Article 30 reviews, Interim Order and Registration Appeal cases.

#### **Position in Organisation**

- Reports to a Lead Case Manager
- Liaises with external Lawyers, Police Forces, Courts Services, employers of Registrants and Trading Standards Officers.
- Liaises with all employees internally, in particular, the Communications Department and the Registrations Departments.
- Liaises with Hearing Officer regarding the organisation of Hearings.
- Investigates cases dealt with by the Fitness to Practise Department, including use of Statutory Powers delegated by Committees and Council, and taking statements from witnesses

#### **Scope of Job**

- Responsible for the management and investigation of a varied and complex case load including fitness to practise allegations, Registration Appeals, and prosecution of Offences.

#### **Dimensions and Limits of Authority**

- Manage and investigate cases in line with HPC policies and procedures.
- Use of Statutory Powers to demand information as required.
- Instructing external Solicitors on cases managed by the Fitness to Practise Department.
- Monitor application of Part V and VI of the Health Professions Order in hearings and advise manager or the Director if any problems arise.
- Act as Presenting Officer at Fitness to Practise Hearings.

## **Skills, Knowledge and Abilities**

### **Essential**

- Educated to degree level and/or relevant knowledge and understanding.
- Demonstrated ability of working with committees or panels within a complex framework and managing tribunal type processes, or the ability to do so.
- Demonstrated ability to investigate and manage complaints and present outcomes of investigations to committees and panels.
- Strong analytical, critical examination (including ability to conduct witness assessments), and report writing skills.
- Demonstrated ability of working within defined Regulations and legislation, and following procedures, including the ability to interpret and learn legislation where necessary.
- The ability to learn and understand Part V and VI of the Health Professions Order and apply this knowledge as required and of HPC's Prosecutions and Health and Character policies.
- Excellent oral communication skills, including demonstrated ability to present information confidently, clearly and succinctly.
- Ability to deal with people from all levels and from a diverse range of backgrounds including people who may be vulnerable and deal with these issues sensitively and pragmatically.
- Leadership skills, in particular, providing support and guidance to all parties involved in a Case.
- Ability to work under pressure, to deadlines and with minimal supervision.

- An understanding of professional regulation or a willingness to develop this if not currently held.
- Sound working knowledge of window based software packages, including word processing, spreadsheets, databases, electronic mail, and the internet.
- Willingness to travel throughout the UK, this will involve overnight stays as required.

### **Duties and Key Responsibilities**

Your principal duties and key responsibilities will be those set out below. In addition to those duties, HPC reserves the right to require you to undertake additional or other duties within your capacity as may from time to time be reasonably required and necessary to meet the needs of the HPC.

- Investigate and manage a variety of complex cases with a thorough knowledge of the relevant legislation, policies and procedures.
- Act as the primary contact for relevant internal and external enquiries and briefings relating to a case load, including handling options and instructing solicitors.
- Advise the public, registrants and other organisations about the HPC and the functions and process of the Fitness to Practise Department.
- Maintain and review paper and electronic systems and databases to record cases handled by the Fitness to Practise Department, making sure information is kept up to date, accurate and accessible in accordance with relevant Policies.
- Preparing cases for and attend panels to facilitate decision making, advising on the factual aspects of the case as necessary
- Analyse complex case information and take decisions relating to the direction of the investigation within HPC policies and procedures.
- Provide managers and the Director with up to date information about cases.
- Presenting a variety of cases in line with the Fitness to Practise Case Management strategy, including directing Panels to the relevant provisions of the Order and Rules.
- Undertake Witness Assessments and take witness statements.
- Contributing and assisting in projects relating to the Fitness to Practise Department.

- Assisting in the training and integration of new Fitness to Practise Department employees.
- Providing cover for other roles within the department
- To carry out the responsibilities of the post with due regard to the HPC's Diversity Policy and to treat colleagues and other HPC stakeholders with respect and dignity at all times.

|                            |
|----------------------------|
| <b>Reasons:</b>            |
| <b>Advice sought from:</b> |

Authorized by DFTP, HCM, LCM?

**YES**

**NO**

Signed, Case Manager:

**DATE**

Signed, DFTP, HCM, LCM

**DATE**

### Allegation

|                               |   |                            |   |
|-------------------------------|---|----------------------------|---|
|                               | ✓ |                            | ✓ |
| fraudulent or incorrect entry |   | conviction or caution      |   |
| misconduct                    |   | health                     |   |
| lack of competence            |   | determination by regulator |   |

### Authorisation: Particulars

|                             |  |       |  |
|-----------------------------|--|-------|--|
| Approved by<br>DFTP/FPM/LCM |  | Date: |  |
|-----------------------------|--|-------|--|

### Other Agencies

are any of following agencies involved?

Police or other law enforcement agency (e.g. SOCA, HMRC)

✓

NHS Counter Fraud and Security Management Service

Trading Standards Service

Another statutory regulator

Social Services Department

Other (specify)

Notify other competence authority if EEA national?

Does the complaint relate to an education provider?

|  |
|--|
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |

|   |
|---|
| If <b>YES</b> , provide contact details, file references etc. |
|---|

**Signed:**

**Date**

- a single, serious, lapse in circumstances which may be repeated;
- undertaking care beyond his or her scope of practice;
- posing a threat to patient health, for example, practising or seeking to practise whilst unfit to do so because of the health professional's own health problems;
- serious breach of the clinician-patient relationship, for example:
  - sexual abuse or indecency
  - unlawful violence.
  - dishonesty or other serious misconduct.
- continuing to practice in breach of a conditions of practice order or suspension order previously imposed by a Practice Committee.

### **Public interest**

The public interest is wider than public protection and includes maintaining

- public trust in the profession concerned;
- public trust in the effectiveness and integrity of the regulatory process;
- good standards of conduct and performance by other health professionals.

In assessing risk on the ground of public interest, higher priority should be given to those cases where the allegation is so serious, and irrespective of whether it is directly linked to the health professional's practice, that public confidence in the profession or regulatory process would be undermined if the health professional was allowed to remain in practice on an unrestricted basis. For example, allegations of:

- homicide,
- rape and other sexual offences,
- serious violence
- other serious offences

Cases involving breach of a conditions of practice order or suspension order may also be dealt with under this ground, in order to discourage the breach of such orders by others and to maintain confidence in the regulatory process.

### **Interests of the registrant**

In assessing risk on the ground of protecting the health professional concerned, higher priority should be given to those cases where the evidence indicates that:

- the health professional may be at risk of self harm, especially if removal from the practice environment or limiting practice would help to minimise that risk;
- the health professional lacks insight and needs to be protected from himself or herself, for example, to prevent a previous lapse in clinical care being repeated, possibly in a more serious manner.

As risk profiling is primarily undertaken when allegations are first received, to assess the priority to be given to further processing, it will often need to be undertaken on the basis of limited evidence. In assessing that evidence against the three grounds (between which there is a considerable degree of overlap), Investigators must consider:

- the overall weight and strength of the evidence;
- whether the allegation is credible;
- the nature, severity and extent of what has or is alleged to have occurred;
- the likelihood of continuing or further risk of harm.

### **Risk categories**

Once profiled allegations should be placed in one of the following three categories:

|                   |   |
|-------------------|---|
| <b>Category A</b> | allegations which, on the available evidence, are of a serious nature and involve a risk of continuing or further harm or are so serious that public confidence in the regulatory process would be undermined if they were not given the highest priority |
| <b>Category B</b> | allegations which, on the available evidence, are of a serious nature but where there is a limited risk of continuing or further harm.  |
| <b>Category C</b> | allegations which, on the available evidence, are assessed as not being in Category A or B.   |

The risk profile of an allegation should be reviewed in the light of the evidence which becomes available as an investigation progresses and revised accordingly. This is particularly important for allegations which are initially given a low priority but where evidence emerges indicating that the allegation is of a more serious nature.

## **Documentation**

As with all decisions reached by HPC, it is important that Investigators record the reasons for their categorisation of allegations. In many cases the reasons will be very brief, for example, *“this is a serious allegation involving theft from patients”*. However, it is important that concise reasons are recorded, especially when a serious allegation is given what would appear to be low priority. For example:

*“This allegation involves a serious lapse in clinical care. However, it appears to be an isolated incident and appropriate remedial action has already been taken by the registrant and his employer”*.

The category of risk and reasons should be recorded on the case assessment completed by Case Manager. Where a case is categorised as A, the Case Manager should discuss the case with their manager to ensure awareness within the team, and for guidance to be provided where necessary.

## **Relevant documentation**

Case assessment form  
FOG - Allegations

## Case Manager induction information and check sheets

### Information for Lead Case Managers

The induction checklists should be saved to the employee's G drive folder and completed electronically during the course of their induction.

This information is provided to ensure that there is consistency in the inductions provided to Case Managers and there is a comprehensive training programme in place to support them.

The HR induction checklist still needs to be completed and returned to HR as usual.

#### General FTP information

During the employee's induction on their first day, general information about the FTP department and the way we operate should be given. A checklist is provided to cover the main points.

#### Training programme

A training programme should be designed in advance of the first day of employment and should include all aspects of the role.

Specific training sessions which should be included in the training programme are listed, and the checklist should be completed so we have a record that the sessions have taken place and the employee has been trained in these areas.

The training should be spread over a period of time to allow this to be absorbed. (Sample training programme attached).

Certain areas of the Case Management work require specific shadowing and panel attendance to ensure Case Managers are confident and competent to undertake it on their own. This should be included in the training programme and are detailed below.

| Competency                     | Specific shadowing required   |
|--------------------------------|---|
| Vulnerable witness assessments | Attend vulnerable witness assessment with experience Case Manager   |
| Taking general phone enquires  | <ul style="list-style-type: none"> <li>• Listen to others taking calls</li> <li>• Not to take calls for at least 6 weeks</li> </ul>   |
| Present ICP/Reg panel          | <ul style="list-style-type: none"> <li>• Attend 3 days of ICP as observer only</li> <li>• Attend ICP with experienced Case Manager for at least 5 of their own cases</li> </ul> |

## FTP Operational Guidance Index

| <b>Subject</b>   | <b>For</b>                     | <b>Summary</b>  |
|--|--------------------------------|---|
| Adjournment Requests   | Fitness to Practise Department | Guidance on the steps that should be taken when an adjournment request is made.   |
| Binding Over and Discharge by Criminal Courts                | Case Managers/Officers         | Guidance on how to proceed with these types of cases  |
| Controlled substance   | Case Managers                  | Guidance on controlled substances, prescription medicines and prescribing rights.   |
| Disposal of cases by consent                                 | Case Managers                  | Guidance on the process for the management of cases where consent may be appropriate  |
| File Structure   | FTP                            | How a file should be structured   |
| Handling Complaints about an Education or Training Programme | Case Managers                  | Guidance on when FTP or education should pursue a complaint and information for complainants  |
| Health and Character   | Managers/Case Officers         | Guidance on how to deal with health and character case work.  |
| Instructing and Seeking Advice                               | Fitness to Practise Department | Guidance on instructing and when to seek advice   |
| Investigations and allegations                               | Case Managers/Case Officers    | Guidance on general participles of investigating complaints, contact with complainants and registrants, closing cases, drafting allegations |
| Investigative Report Writing                                 | Managers/Case Officers         | Guidance on how to structure an investigative report.   |
| Miscellaneous cases  | FTP                            | Information for case managers on how to deal with miscellaneous cases   |
| Obscene Image Storing  | Fitness to practise department | Guidance on how to deal with pornographic or obscene images which are received during an investigation.                                     |
| Physical   | Fitness to practise            | Guidance on how to handle   |

| <b>Subject</b>                      | <b>For</b>                        | <b>Summary</b>   |
|-------------------------------------|-----------------------------------|--|
| Evidence Management                 | department                        | documentary and real evidence.   |
| Police Station Paramedics           | Case Managers                     | Guidance on paramedics performing duties in police custody suites  |
| Presenting Officer Guidance         | Managers/Case Managers            | Guidance on presenting Interim Orders and Article 30 Review Hearings   |
| Protection of Title Offences        | Managers/Case Officers            | Guidance on the procedures to be followed when dealing with protection of title (POT) casework.  |
| Psychologists Case Transfer         | FTP                               | Information on the Psychologists Case Transfer   |
| Public or Private Hearings          | FTP and Communications Department | Information on when we can disclose information to journalists   |
| Registration Appeals                | Managers/Case Officers            | Guidance on dealing with appeals of admission and re-admission on the registrar of refused registrants.  |
| Requiring disclosure of information | Managers/Case Officers            |  |
| Risk profiling                      | Managers/Case Officers            | Guidance on how to perform a risk assessment and categorise allegations  |
| Signposting                         | FTP                               | Information on where to direct people to if their query cannot be dealt with by HPC.   |
| Three year Rule                     | Case Managers                     | Guidance on applying the 3 year rule following a no case to answer decision at ICP   |
| Vexatious complaints                | FTP                               | How to apply the frivolous, abusive and vexatious complaints policy  |
| Watchlist                           | Fitness to practise department    | Guidance on applicants who's fitness to practise has raised concerns prior to their entry to the register, or while their registration had lapsed. |
| Witness interviews                  | Managers/Case Officers            | Guidance on how to undertake a risk assessment when organising interviews with witnesses.  |
| Witness management                  | Fitness to practise department    | Guidance on how to manage witnesses, especially vulnerable and intimidated witnesses   |
| Witness statements                  | Managers/Case Officers            | Guidance on how to obtain / structure a witness statement.   |

|                       |   |
|-----------------------|---|
| Present interim order | <ul style="list-style-type: none"> <li>• Observe at least 3 interim order hearings</li> <li>• Not to present for at least 3 months</li> </ul> |
| Present A30 review    | <ul style="list-style-type: none"> <li>• Observe at least 3 interim order hearings</li> <li>• Not to present for at least 3 months</li> </ul> |
| ICP co-ordinator      | Not for first 3 months  |
| POT field work        | Attend field visit with experienced LCM   |

## **Documents**

The important documents are listed in a checklist and should be signed off when the Case Manager is familiar with them. Time and review of this should be built into the training programme.

**General FTP information**

| <b>General</b>  | <b>Completed</b> |
|---|------------------|
| <p>FTP Department structure<br/>           Role for HPC and FTP and understanding of regulation<br/>           Health Professions Order<br/>           Council and committees<br/>           Management (EMT and MMG)<br/>           Training/away days<br/>           Finance/expenses<br/>           Time in lieu arrangements<br/>           Important dates for diary<br/>           Team meetings<br/>           Partners<br/>           CRB checks<br/>           Article 25 letter</p> <p><b>Documents</b></p> <p>FOGs and other operational guidance<br/>           Standards<br/>           Practice notes<br/>           FTP workplan and annual report<br/>           Publications/guidance for registrants and the public</p> <p><b>Case work</b></p> <p>Expected case loads<br/>           Service standards – internal and external<br/>           File security<br/>           General operational information - file structure, 4 weekly case reviews, contact requirements with complainants and registrants, file notes etc</p> <p><b>IT</b></p> <p>Legal on G drive<br/>           Lotus Notes – personal email, FTP email and calendar, meeting room bookings, resource bookings, FTP database<br/>           MIS database<br/>           Appeals database<br/>           Health and character database<br/>           Protection of title database<br/>           Witness database<br/>           Running case lists reports from databases<br/>           ICP follow up spreadsheet</p> <p><b>Meetings and 1-1s</b></p> |                  |

|  |  |
|--|--|
| Two weekly case meetings and 1-1s for first 3 months to discuss case issues, ask questions about guidance and processes.<br>Monthly case meetings and 1-1s thereafter<br>Explanation of HPC's approach to drafting allegations |  |
|--|--|

**Case work training sessions**

|   | Completed |
|---|-----------|
| <p><b>Inductions</b><br/> FTP Administration Team<br/> Hearings Team<br/> CT3 induction for CT1/2<br/> Registrations for Case Team 3<br/> HPC internal departmental inductions</p>  |           |
| <p><b>Other training</b><br/> Attend next available induction with Jonathan Bracken<br/> Attend next available panel training<br/> Attend committee meeting</p>   |           |
| <p><b>Case training</b><br/> Standard letters<br/> Case allocation<br/> Risk assessment<br/> Initial investigations process pre-ICP<br/> ICP panel process and bundles<br/> Post case to answer responsibilities<br/> Interim order process<br/> Presenting article 30 cases<br/> Presenting interim order cases<br/> Health and character panel process – CT3<br/> Reg appeals process – CT3<br/> Protection of title process – CT3<br/> Article 22(6)</p> |           |

**Checklist of documents**

| Read  |  |
|---|--|
| <b>FTP Operating Guidance</b>   |  |
| Controlled substance<br>Watchlist<br>Health and Character<br>Investigations and allegations<br>Investigative Report Writing<br>Obscene Image Storing<br>Physical Evidence Management<br>Police Station Paramedics |  |

Protection of Title Offences  
 Registration Appeals  
 Requiring disclosure of information  
 Risk profiling  
 Three year Rule  
 Witness interviews  
 Witness management  
 Witness statements  
 Presenting Officer Guidance  
 Instructing and Seeking Advice  
 Binding Over and Discharge by Criminal Courts  
 Adjournment Requests  
 Handling Complaints about an Education or  
 Training Programme  
 Disposal of cases by consent  
 Public or Private Hearings  
 File Structure  
 Vexatious complaints  
 Signposting  
 Miscellaneous cases  
 Bundle process  
 ICP process

**Policies**

Vexatious, frivolous and abusive complaints  
 policy  
 Retention policy  
 Advocacy standards  
 Prosecutions policy  
 Health and character policy

**Practice notes**

The Standard of Acceptance for Allegations  
 (previously Allegations)  
 Assessors and Expert Witnesses  
 Barring Allegations  
 Case Management and Directions  
 Case to Answer Determinations  
 Competence and Compellability of Witnesses  
 Concurrent Court Proceedings  
 Conducting Hearings in Private  
 Conviction and Caution Allegations  
 Cross-Examination in Cases of a Sexual Nature  
 Drafting Fitness to Practise Decisions  
 Disclosure  
 Disposal of Cases via Consent  
 Equal Treatment  
 Finding that Fitness to Practise is Impaired  
 Hearing Locations  
 Health Allegations

|  |  |
|--|--|
| Interim Orders<br>Joinder<br>Mediation<br>Postponement and Adjournment of Proceedings<br>Preliminary Hearings<br>Proceeding in the Absence of the Registrant<br>Production of Information and Documents and<br>Summoning Witnesses<br>Restoration to the Register<br>Service of Documents<br>Unrepresented Parties<br>Use of Welsh in Fitness to Practise<br>Proceedings |  |
|--|--|

## Sample training and induction plan

| <b>Week 1</b> |  | <b>With</b>                                 |
|---------------|--|---|
| Monday        | AM – meet with Lead Case Manager<br>Tour of building and introduction to all FTP tam members<br>Go through basic departmental information and induction plan<br><br>2.30 pm – HR induction | Lead Case Manager<br>HR                     |
| Tuesday       | 9.30 Databases and G drive<br><br>2.00 Standard letters and initial process pre-ICP and shadowing  | X Case Manager<br><br>X Case Manager        |
| Wednesday     | AM - Process of allocation of a case and risk assessment<br><br>PM - Hand over of first cases and initial investigations process pre-ICP   | Lead Case Manager                           |
| Thursday      | 10.00 Explanation of ICP process and bundles<br><br>Discussion with Eve  | X Case Manager<br>Eve                       |
| Friday        | Observe ICPs / interim order reviews   | X Case Manager                              |
| <b>Week 2</b> |  |   |
| Monday        | Case work  |   |
| Tuesday       | 9.30 Administration induction  | Jameel                                      |
| Wednesday     | 2.00 pm - HPO legislation training   | Jonathan Bracken                            |
| Thursday      | 11.45am – Education induction<br><br>2.00 Mis cases  | Lead Case Manager                           |
| Friday        | Observe hearing X<br><br>2.00 1-1 week 2 review meeting  | X Hearings Officer<br><br>Lead Case Manager |
| <b>Week 3</b> |  |   |
| Monday        | 9.30 Hearings induction<br><br>Case work   | Anaru                                       |
| Tuesday       | 11.00am – Communications induction   |   |

|               |   |                   |
|---------------|---|-------------------|
|               | 2.00 pm - IT induction  |                   |
| Wednesday     | Review FOG's, policies and practice notes   | Lead Case Manager |
| Thursday      | Case work   |                   |
| Friday        | 10.30 Explanation of HPC's approach to drafting allegations (use relevant FOG)                  | X Case Manager    |
| <b>Week 4</b> |   |                   |
| Monday        | Observe ICPs  |                   |
| Tuesday       | Case team meeting   |                   |
| Wednesday     |   |                   |
| Thursday      | Observe Article 30 review hearings  |                   |
| Friday        | 10.00 Post case to answer responsibilities<br>2.00 1-1 week 2 review meeting                    | Lead Case Manager |
| <b>Week 5</b> |   |                   |
| Monday        |   |                   |
| Tuesday       | Observe interim orders  |                   |
| Wednesday     | Review FOG's, policies and practice notes   | Lead Case Manager |
| Thursday      | All Case Management Team meeting  |                   |
| Friday        |   |                   |
| <b>Week 6</b> |   |                   |
| Monday        | Observe ICPs  |                   |
| Tuesday       | 11.00 am – Registrations induction  |                   |
| Wednesday     |   |                   |
| Thursday      |   |                   |
| Friday        | Observe Article 30 review hearings<br>2.00 1-1 week 2 review meeting                            | Lead Case Manager |
| <b>Week 7</b> |   |                   |
| Monday        |   |                   |
| Tuesday       | 11.45am - Policy induction  |                   |
| Wednesday     |   |                   |
| Thursday      | 11.45am – Projects induction<br>2.00 pm – Secretariat induction<br>2.30 pm - Case teams meeting |                   |
| Friday        |   |                   |
| <b>Week 8</b> |   |                   |
| Monday        |   |                   |
| Tuesday       | Case team meeting   |                   |
| Wednesday     |   |                   |
| Thursday      |   |                   |
| Friday        | Observe ICPs  |                   |

|                |  |                   |
|----------------|--|-------------------|
|                | All Case Management Team meeting<br>2.00 1-1 week 2 review meeting | Lead Case Manager |
| <b>Week 9</b>  |  |                   |
| Monday         | Bank Holiday   |                   |
| Tuesday        |  |                   |
| Wednesday      | Review FOG's, policies and practice notes                          | Lead Case Manager |
| Thursday       |  |                   |
| Friday         | Observe ICPs   |                   |
| <b>Week 10</b> |  |                   |
| Monday         |  |                   |
| Tuesday        |  |                   |
| Wednesday      |  |                   |
| Thursday       |  |                   |
| Friday         |  |                   |
| Week           | 2.00 1-1 week 2 review meeting                                     |                   |
| <b>Week 11</b> |  |                   |
| Monday         |  |                   |
| Tuesday        |  |                   |
| Wednesday      |  |                   |
| Thursday       |  |                   |
| Friday         |  |                   |
| <b>Week 12</b> |  |                   |
| Monday         |  |                   |
| Tuesday        | Case team meeting  |                   |
| Wednesday      |  |                   |
| Thursday       | All Case Management Team meeting                                   |                   |
| Friday         | 2.00 1-1 week 2 review meeting                                     |                   |

**Health Professions Council**  
**INVESTIGATING COMMITTEE**  
**RECORD OF DECISION**

Chair  
Registrant Member  
Lay Partner

**Guidance for Panels**

Article 26(2) of the Health Professions Order requires the Panel to determine whether, in respect of the allegation(s) set out below, there is a “case to answer” that the registrant’s fitness to practise is impaired.

That decision must be made on the evidence put before the Panel and, in reaching its decision, the test which it must apply is whether there is a “realistic prospect” that HPC will be able to establish that the registrant’s fitness to practise is impaired.

The test applies to the whole of the allegation; that is the facts set out in the allegation, whether those facts amount to the “ground” of the allegation (e.g. misconduct); and, in consequence, whether fitness to practise is impaired. The last two elements may be decided ‘in the round’ and may be based on inferences drawn from the factual evidence.

The test does not call for substantial inquiry. The Panel only needs to be satisfied that there is a realistic or genuine possibility (as opposed to remote or fanciful one) that the Council will be able to establish its case.

In reaching its decision, the Panel may assess the overall weight of the evidence but as it is conducting a limited, paper-based exercise should not seek to resolve substantial conflicts in that evidence or make findings of fact.

A decision that there is “no case to answer” should only be made if there is no realistic prospect that HPC, which has the burden of proof, will prove its case, for example, because there is insufficient evidence to substantiate the allegation or the evidence is manifestly unreliable or discredited.

In applying the test the Panel needs to take account of the wider public interest, including protection of the public and public confidence in the profession concerned and the regulatory process. If there is any element of doubt, the Panel should adopt a cautious approach and deciding that there is a case to answer.

The Panel **MUST** provide clear and detailed reasons for its decision, particularly if it decides that there is no case to answer. Those reasons must explain the Panel’s rationale for its findings and **MUST NOT** simply be a repetition of the evidence or comments to the effect that the Panel has considered all the evidence.

**Health Professions Council  
Investigating Committee  
RECORD OF DECISION**

|                            |  |
|----------------------------|--|
| <b>Date of Decision:</b>   |  |
| <b>Name of Registrant:</b> |  |
| <b>Registration No:</b>    |  |

| <b>Allegation(s)</b> |  | <b>Realistic prospect test met?</b> |
|----------------------|--|-------------------------------------|
|                      |  |                                     |
| 1.                   |  | YES/NO                              |
| 2.                   |  | YES/NO                              |
| 3.                   |  | YES/NO                              |
| 4.                   |  | YES/NO                              |

**REASONS:**

*There is evidence to support the facts set out in 1 and 2, in the form of a witness statements from two witnesses. The evidence is disputed by the registrant but it is not for this Panel to seek to resolve conflicting evidence. Overall we are satisfied that the realistic prospect test is met in respect of that evidence.]*

*There is no evidence to support the allegation of dishonesty set out in 3 and we therefore find that there is no case to answer in respect of that element of the allegation.*

Reasons as to “ground” and impairment

*the facts alleged at 1 and 2 suggest conduct towards a patient which falls far below the standards expected of a registered health professional, potentially in breach of Standard X of the SCPE. On that basis, the Panel considers that there is a realistic prospect of establishing misconduct and that the registrant’s current fitness to practise may be impaired.*

**Conclusions:**

For the reasons set out above the Panel finds that:

there is a case to answer in respect of [the] allegation(s) set out in [numbers].

there is no case to answer in respect of [the] allegation(s) set out in [numbers].

**Signed:** \_\_\_\_\_ **(Panel Chair)**

**Date:**