

Council, 7 July 2010

Fitness to Practise: What does it mean?

Executive summary and recommendations

### **Introduction**

At its meeting in March 2010, the Council considered a paper which explored the concepts of fitness to practise and impairment in more detail. At that meeting the Council agreed to the content of the paper and noted that there needed to be some amendments to the language and content in advance of its wider circulation.

In June 2010, HPC held a research seminar which discussed in more detail the findings from the Ipsos MORI report 'Expectations of the Fitness to Practise Complaints Process.' A report on the event is attached to this paper as an appendix. At the event, the participants were asked to discuss in more detail a revised and shortened version of the above mentioned paper and whether a different approach needed to be taken for different audiences. The Executive has reviewed the feedback from the event and updated the paper 'Fitness to Practise: What does it mean?' accordingly.' If the Council are minded to approve the paper, the wording from the paper will be used in literature relating to the work of the Fitness to Practise function.

### **Decision**

The Council is asked to approve the attached document setting out the meaning of Fitness to Practise for the HPC

### **Background information**

Approaches to Justice Paper, Council 25 March 2010 - <http://www.hpc-uk.org/assets/documents/10002CF020100325Council-enc09-approachestojustice.pdf>

Expectations of the Fitness to Practise Complaints Process: Research and Executive Commentary, Fitness to Practise Committee 25 February 2010 - <http://www.hpc-uk.org/assets/documents/10002C8520100225FTP-06-expectationsofcomplainants.pdf>

As part of the Expectations of Complainants work plan agreed by the Fitness to Practise Committee in February 2010, the Executive is currently undertaking a review of the material that is available regarding the fitness to practise process. This includes reviewing, updating and producing where appropriate:

- Information available on the website
- The fitness to practise process: Information for employers
- What happens if a complaint is made against me?
- How to make a complaint about a health professional
- Information for Witnesses
- Reporting a concern form
- Self referral forms for registrants
- A referral form for employers
- Standard letters
- Hearings DVD

### **Resource implications**

Accounted for in 2010-11 budget

### **Financial implications**

Accounted for in 2010-11 budget

### **Appendices**

Event Report

Presentation: Increasing Understanding of Fitness to Practise

Fitness to Practise: What does it mean?

### **Date of paper**

24 June 2010

## **Fitness to Practise: What does it mean?**

### **About us**

This document sets out the Health Professions Council's (HPC) approach to delivering public protection through its fitness to practise processes. .

The HPC is responsible for regulating members of 15 different professions. We keep a register of health professionals who meet our standards for their training, professional skills and behaviour. Through our fitness to practise processes we can take action if a registrant (a professional on our register) falls below our standards.

### **About fitness to practise**

When we say that someone is 'fit to practise' we mean that they have the skills, knowledge and character to practise their profession safely and effectively. However, fitness to practise is not just about professional performance. It also includes acts by a registrant which may have an impact on public protection or confidence in the profession or the regulatory process. This may include matters not directly related to professional practice.

### **What is the purpose of a fitness to practise process?**

Fitness to practise proceedings are about protecting the public. They are not a general complaints resolution process. They are not designed to resolve disputes between registrants and service users.

Our fitness to practise processes are not designed to punish registrants for past mistakes. They are designed to protect the public from those who are not fit to practise. Finding that a registrant's fitness to practise is "impaired" means that there are concerns about their ability to practise safely and effectively. This may mean that they should not practice at all. Or that they should be limited in what they are allowed to do. HPC will take appropriate action to make this happen.

Sometimes registrant make mistakes that are unlikely to be repeated. This means that the registrant's fitness to practise is unlikely to be impaired. People do make mistakes or have lapses in behaviour. Our processes do not mean that we will pursue every minor or isolated lapse.

## When will a registrant's fitness to practise be found to be impaired?

We consider every case individually. However, a registrant's fitness to practise will normally be found to be impaired if we have evidence to show one of the following:

- serious or persistent failure to meet standards;
- reckless or deliberate acts;
- hiding mistakes or trying to block their investigation;
- sexual misconduct or indecency (including any involvement in child pornography);
- improper relationships with service users;
- failure to respect the autonomy of service users;
- violence or threatening behaviour;
- dishonesty, fraud or an abuse of trust;
- exploitation of a vulnerable person;
- substance abuse or misuse;
- health problems which the registrant has not addressed, and which may affect the safety of service users; and
- other, equally serious, activities which undermine public confidence in the relevant profession.

## What other factors will we consider?

In deciding whether a registrant's fitness to practise is impaired we take account of other factors. These relate to the registrant and the wider public. Those factors are known as the **personal** and **public** components.

Personal components include:

- whether the registrant has ignored previous warnings;
- whether the registrant has taken action to correct their behaviour;
- whether the registrant has insight (understands the harm they have caused); and
- whether the registrant knows what action to take to practise safely and effectively.

Public components include:

- the link between the conduct and the registrant's profession;
- whether the registrant's behaviour has undermined public confidence;
- whether the registrant has not met HPC's standards of conduct, performance and ethics; and
- whether the behaviour is likely to be repeated.

## More information

If you have any questions please refer to <http://www.hpc-uk.org/complaints/> where you will find more information about our fitness to practise processes. Alternatively, please contact us on telephone number 0800 328 4218 or email us at [ftp@hpc-uk.org](mailto:ftp@hpc-uk.org)

Draft

## **Stakeholder Event: Expectations of Complainants**

### **1 Introduction**

- 1.1 On 3 June 2010 the HPC held an event which discussed the recent research commissioned by HPC from IpsosMORI on the 'Expectations of the Fitness to Practise Complaints Process'. This report sets out what was discussed at that event and feedback from stakeholders on HPC's definition of fitness to practise.
- 1.2 A range of stakeholders attended the event. Attendees included representatives from other regulatory bodies, the Council for Healthcare Regulatory Excellence (CHRE), the Department of Health, the Scottish Government, the Parliamentary and Health service Ombudsman, professional bodies and a range of patient organisations and charities including AvMA (the Association against Medical Accidents), the Patient Association and RNID).
- 1.3 The key theme of the event was discussing how to increase understanding of fitness to practise. We set out the context in which regulatory bodies work, how HPC approaches fitness to practise and the IPSOS Mori findings themselves. We also set out how HPC was proposing to respond to those findings. Attached as an appendix to this document is the presentations that was delivered. We then broke the attendees into smaller groups each of which was facilitated by a member of the Fitness to Practise Committee and asked them to discuss three key subjects which were as follows:
- How do regulators improve understanding of fitness to practise?
  - What are the priorities for change
  - Feedback on HPC's paper 'Fitness to Practise: What does it mean?'

### **2 Feedback**

- 2.1 The groups discussed a range of topics and issues. Feedback from the groups is set out below and separated into a number of distinct themes

### **3 Timescales**

- 3.1 All of the groups commented that the HPC should continue to strive to reduce the timescales of cases. There were suggestions that there was a need to speed up the process with particular comments made around the time taken for allegation to reach a panel of the Investigating Committee.
- 3.2 It was also commented that this would be further aided by ensuring clear communication throughout the process, providing proactive

communication in keeping the complainant up to date and providing them with updated on expected timescales of each stage.

- 3.3 However, it was also noted that HPC should be careful when communicating how long a case may take to conclude as they put people off from making a complaint.

#### **4 Purpose of Fitness to Practise**

- 4.1 A number of comments were made both about HPC's paper on Fitness to Practise and more generally on the purpose of fitness to practise. It was felt that the draft of the paper discussed by the groups should be written to ensure that all audiences were able to understand it. This may mean providing more detailed information at different levels of the process. Another group felt that the paper would be useful to aid understanding of both the public and the regulated professions.
- 4.2 It was felt that the public and registrants' needed a better understanding of what fitness to practise means and when to raise a concern. Another group felt that there was a need to encourage the use of advocates to help people in raising concerns throughout the process and how this could be an external service provided for a number of regulators.
- 4.3 One group particularly commented that there was a need to explain that fitness to practise deals with individual practitioners rather than the circumstances of treatment and that publications should be clearer about the lack of financial recompense in a fitness to practise process.

#### **5 Communication**

- 5.1 It was felt by one group that HPC should review the language it uses in its fitness to practise process, including the use of terms such as 'complaint' and 'allegation' so as to aid toward ensuring that all those who interact with the process have a clear understanding of what it means.
- 5.2 Another group also discussed priorities in communicating with different stakeholders (for example the public and employers). It was pointed out that regulators needed to ensure that they provided clear and accessible information for members of the public and that employers needed clearer understanding about what point an issue should be referred to the regulator.
- 5.3 It was suggested that there should be a greater use of case studies in publications but also that HPC should ensure that its methods of communication about fitness to practise was suitable for all audiences. It was also felt that publications should also explain what HPC was unable to do.
- 5.4 Away from the role of the regulator body in handling fitness to practise cases, it was also raised that all regulators should explore how independent practitioners could give information to clients at the start of their treatment about their right to complain and who to complain too

## **6 Alternative Mechanisms to resolve disputes**

- 6.1 There was also some discussion around the role of mediation and conciliation in a fitness to practise process. Some considered that there was a role for such a process where the case is not serious. Others asked whether HPC should look at cases which have no case to answer and indentify these at an early stage and use a different process to resolve them.
- 6.2 Concern however was expressed that such a mediation or conciliation process should not be used as a mechanism to bypass the fitness to practise process. It was also commented that such a process should not be used to dissuade people from making a complaint

## **7 Conclusions and Comments**

- 7.1 The feedback from the event and from the groups will be taken into account when updating publications, developing new initiatives and communicating with stakeholders. It has also informed the further development of our paper on the purpose of fitness to practise. Feedback was positive around the holding of the event itself with comments that attendees would attend such events, if HPC were to hold them, in the future.



---

Research Seminar 3 June 2010

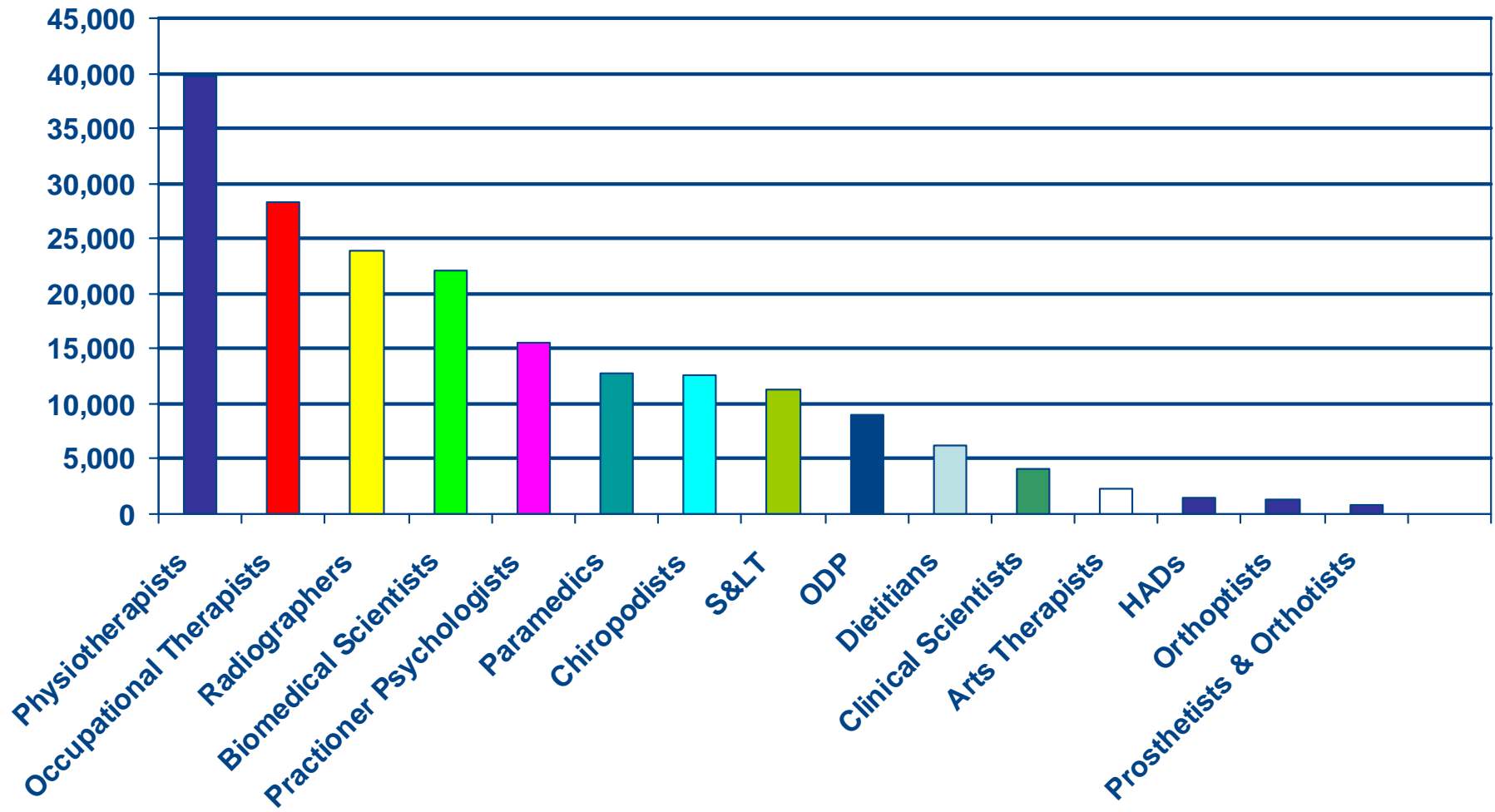
# Increasing Understanding of Fitness to Practise

## Outline

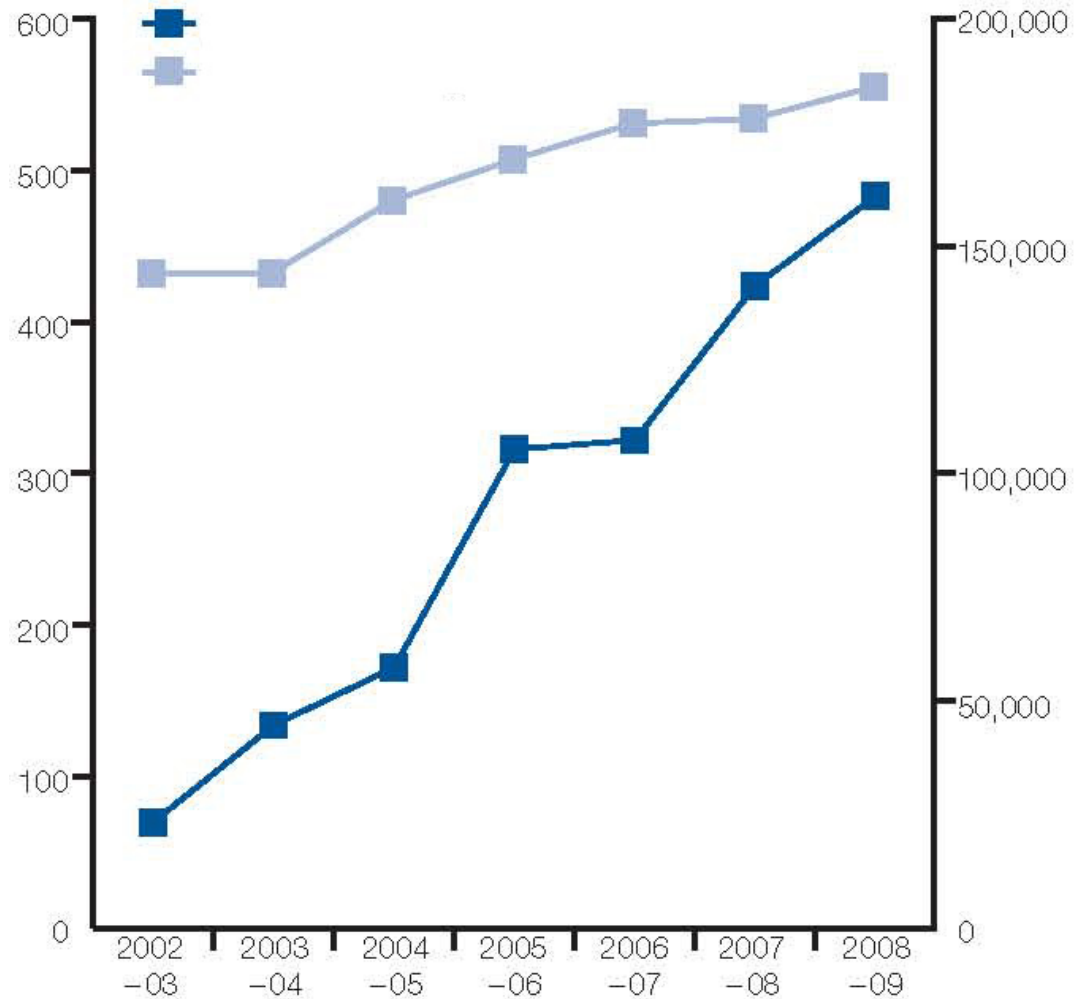
- The context of our work
- The IPSOS research findings
- Question and answer session
- Workshop
- Summing up

## Facts and Figures: Numbers

### 206,500 registrants, 15 Professions



## Facts and Figures: Allegations on the increase



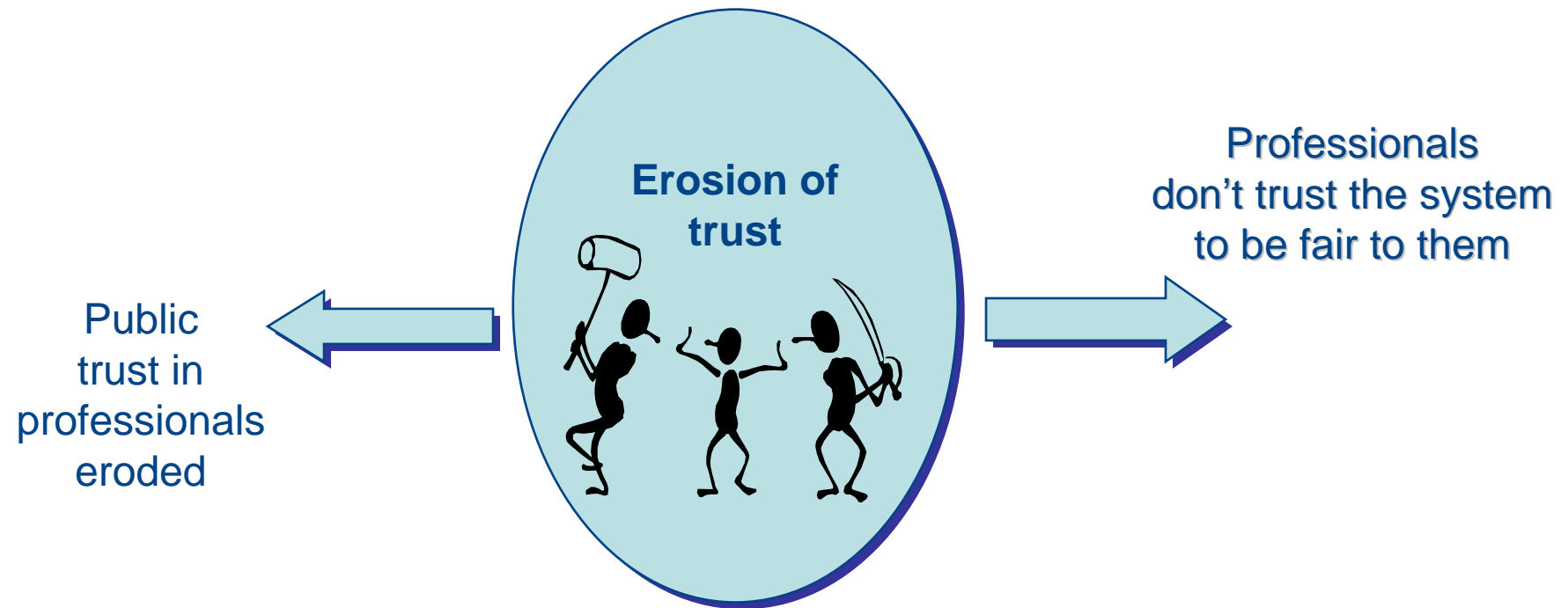
## Facts and figures: Economics

- Spending on 'defensive medicine' in the US
- Spending on clinical negligence in the UK
- UK Regulators spend on fitness to practise increasing year on year

## The social impact

- + Greater awareness of patient safety and patient rights as equal partners
- + Greater transparency and accountability
- + Greater independence in decision making
  
- Stress for the parties involved
- Disruption to working lives
- Erosion of trust

## The social impact of a 'blame' culture



## **A progressive approach to standard setting and monitoring**

- Emphasis on professional's personal responsibility
- Enabling standards not prescriptive standards
- Flexible approach to CPD
- Evidence based approach to revalidation proposals



## A progressive approach to administering justice



- Change in culture and approach
- Infamous or serious professional misconduct
- Criminal v Civil
- A non-punitive process
- Public Protection v Status of the profession

## HPC's approach to justice



## A progressive approach to administering justice

- Minimise use of lawyers in the process
- Principles of restorative justice
- New revisions to further improve literature and correspondence used
- New initiatives on alternative dispute resolution in progress
- Changes to ICP stage of investigation

## **IPSOS Research**

### **Aim of the research:**

To explore the expectations of complainants, stakeholders and members of the public about the HPC's fitness to practise process

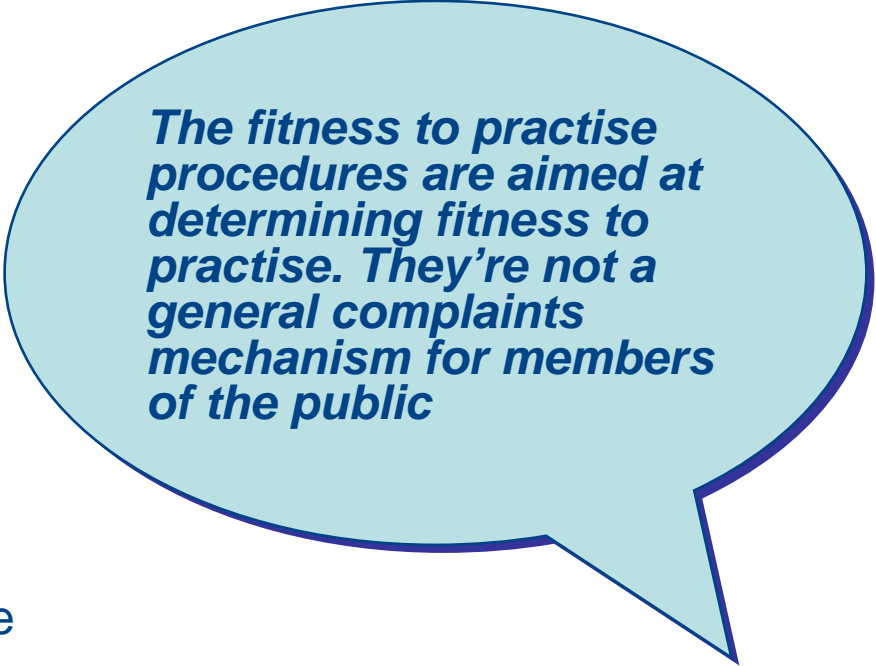
### **Methodology**

In depth interviews with complainants and other stakeholders

Discussion groups with HPC registrants and members of the public

## Research findings: The remit of the of HPC

- Lack of clarity about the role of the regulator amongst public
- Confusion about roles – regulator, employer, other agencies
- Desire to see mediation stage in the process



***The fitness to practise procedures are aimed at determining fitness to practise. They're not a general complaints mechanism for members of the public***

## Research findings: Expectations of the process: Time

- Most expected timeline from complaint to hearing to be 3-6 months

*You would then expect following on from that, the investigation is out to you within twelve weeks*

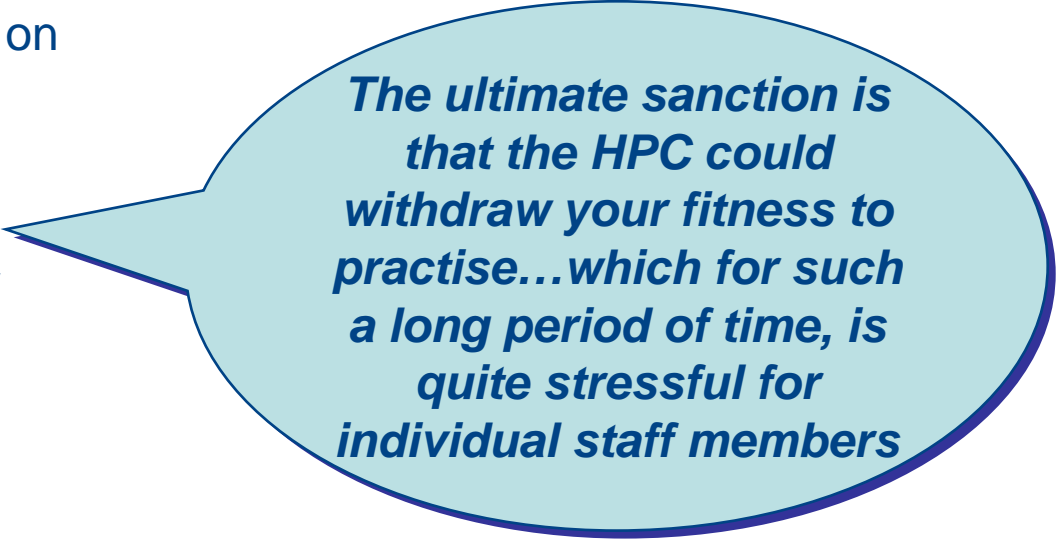
- Concerns about impact of delay on recall of events

*I suppose I didn't anticipate that timescale, because obviously the actual physical ability to remember things that have occurred I two years ago... is very difficult*

## Research findings: Expectations of the process: Time

Registrants and employers  
concerned about impact on  
registrant

- stress
- impact on future career



***The ultimate sanction is  
that the HPC could  
withdraw your fitness to  
practise...which for such  
a long period of time, is  
quite stressful for  
individual staff members***

## Research findings: Making a complaint

- Members of the public were confident that they could find out which organisation to approach if they needed to do
- There was some confusion as to whether the remit of the HPC would include informal advice and mediation as well as the formal fitness to practise process “

*I ‘googled’  
physiotherapy  
professional  
body,  
something like  
that.*

*I just thought that they [the  
HPC] were going to advise  
me, and maybe they would  
have some power in making  
[the registrant] talk to their  
patients, but it didn’t pan out  
like that at all”*



## Research findings: Case handling

- Some felt that a Case Manager should take an overview of the process and provide pastoral care to complainants and registrants, guiding them through the complaints journey. Others would have preferred the Case Manager to be 'fighting for them'
- Regular and unprompted contact from the HPC were seen by participants to be the key factors in determining good case management, including updates on the expected timeframes for each stage of the process

*But obviously  
HPC has for to  
be a little more, I  
don't know,  
neutral hasn't it*

*They [the HPC} are  
protecting the  
public, and that's  
all...the Case  
Manager is not  
actually on your  
side*

## Research findings: Attending the hearing

*I wanted it to be legal, I did not want this to be minimised and I thought the court hearing was, apart from the outcome, absolutely perfect*

- The experience of the hearings and its outcomes were key to determining how complainants felt about the process as a whole

## Research findings: Attending the hearing

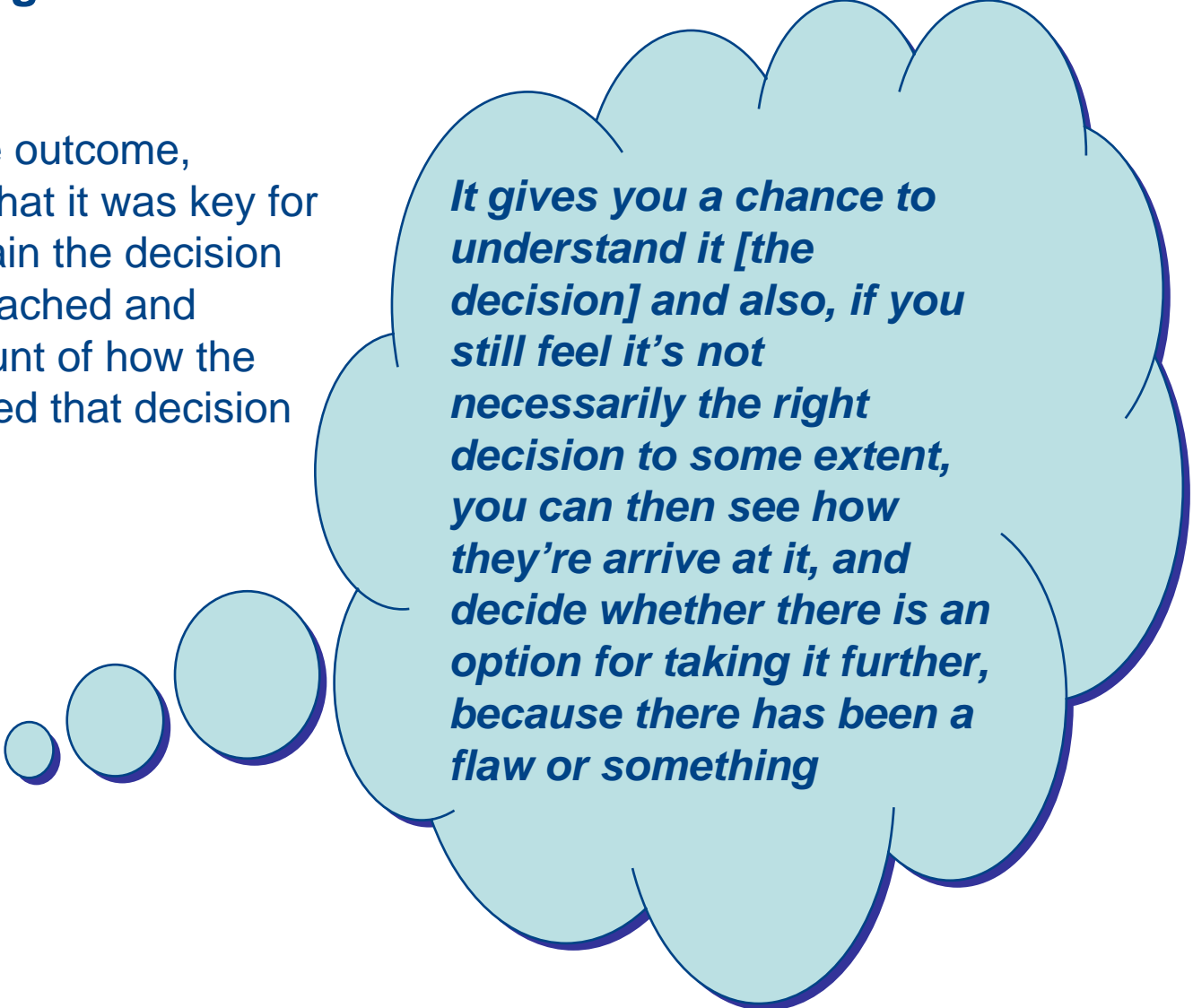
While key stakeholders acknowledged that the transparency of the process was one of its strengths, registrants and members of the public expressed concerns (albeit different ones) about the way in which all hearings are reported on the internet.

*I don't think that it's right that the hearings can be held in public...*

*They're transparent. I know that registrants are not comfy with the hearings being in public, but in a way I don't actually have a lot of sympathy with that*

## Research findings: After the decision

In presenting the outcome, participants felt that it was key for the HPC to explain the decision that had been reached and provide an account of how the panel had reached that decision



***It gives you a chance to understand it [the decision] and also, if you still feel it's not necessarily the right decision to some extent, you can then see how they're arrive at it, and decide whether there is an option for taking it further, because there has been a flaw or something***

---

## Recommendations and taking things forward

- Providing complainants with a 'roadmap'
- Improvements to the information provided to complainants at the point of initial contact
- Consider opportunities for providing a mediation and conciliation process prior to complainants entering the formal fitness to practise process
- Improve communication with registrants, employers and other key stakeholders
- Consider reviewing the role of the Case Manager and the approach that is taken in case handling

**Any questions?**

## **HPC's approach fitness to practise**

- Expectations
- Principles of Professional Responsibility and Accountability
- Wider contextual influences
- HPC's approach

## Workshop session

1. How do regulators improve understanding of fitness to practise?
2. What are the priorities for change?
3. Feedback on paper



## **Summing up and Conclusions**

**‘We need to encourage a change in philosophy – so that authority is not seen as the enemy of freedom’**

**Philip Howard**

**TED conference, USA**

**February 2010**