

Fitness to Practise Committee

Public minutes of the 10th meeting of the Finance and Resources Committee held on:-

Date: Thursday 14 February 2013

Time: 10:30 am

Venue: The Council Chamber, Health Professions Council, Park House, 184 Kennington Park Road, London SE11 4BU

Present:

Jennifer Beaumont
John Donaghy
Julia Drown
Richard Kennett
Morag MacKellar
Penny Renwick
Robert Templeton
Joy Tweed

In attendance:

Alison Croad, Policy Officer
Jonathan Dillon, Hearings Manager
Selma Elgaziari, Policy Officer
Claire Gascoigne, Secretary to Committee
Brian James, Head of Adjudication
Kelly Johnson, Director of Fitness to Practise
Deborah Oluwole, Scheduling Manager
Steve Rayner, Secretary to the Committees
Eve Seall, Head of Case Management

Item 1.13/01 Nomination of Chair (report ref: FTP 01/13)

1.1 In accordance with its standing orders, the Committee was asked to nominate a Chair to preside at the meeting.

1.2 Morag MacKellar was nominated as the Chair of the Committee.

Item 2.13/02 Apologies for absence

2.1 Apologies were received from Pradeep Agrawal and Keith Ross.

Item 3.13/03 Approval of agenda

3.1 The Committee approved the agenda.

Item 4.13/04 Declarations of members' interests

4.1 Members had no interests to declare in connection with the items on the agenda.

Item 5.13/05 Minutes of the Fitness to Practise Committee meeting of 24 May 2012 (report ref: FTP 02/13)

5.1 It was agreed that the public minutes of the 9th meeting of the Fitness to Practise Committee should be confirmed as a true record and signed by the Chair subject to an amendment to item 11.3 and the removal of Neil Willis from the attendance record.

Item 6.13/06 Matters arising (report ref: FTP 03/13)

6.1 The Committee received a paper to note from the Executive.

6.2 The Committee noted the actions list as agreed at the last meeting.

Item 7.13/07 Director of Fitness to Practise Report (report ref: FTP 04/13)

7.1 The Committee received a paper for discussion from the Executive providing a summary of the work of the Fitness to Practise Department. The paper also included key statistical data on the fitness to practise process.

7.2 The Committee noted the following points:

- at the end of December 2012 there were 787 non GSCC transfer cases open. 472 new cases concerning social workers have been

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received since August 2012. This is 56% of the total number of cases received since this date;

- six cases were considered at the Case Progression Conference in December 2012. Two cases involved Local Authorities that had not responded to requests for information made under Article 25(1) in relation to cases involving Social Work registrants. This was a power the GSCC did not have. It was noted that the FTP Team wrote to all local authorities in November, explaining the new process;
- at the end of December, there were 120 GSCC transfer cases within the pre ICP and enquiry remit. 83 cases had been considered by panels of the Investigating Committee with a case to answer percentage of 90%;
- the Suitability Scheme is now operational with transferred student cases received from the GSCC assessed via the scheme;
- Alison Abodarham formerly Head of Adjudication left the HCPC in December. Zoe Maguire, formerly Head of Investigations has been appointed to the vacancy created by Alison's departure;
- Zoe Maguire starts her maternity leave in early February 2013 and arrangements have been put in place to cover her new substantive post of Head of Adjudication until she returns to HCPC in January 2014. Recruitment is underway for the replacement post of Head of Investigations;
- work is underway to prepare for the tender on the provision of legal services and the provision of transcription writer services; and
- the PSA report on the initial stages of the NMC fitness to practise process was published in December 2012. The Executive will undertake a review of this report and that of the initial stages of the GPhC's fitness to practise process and present a report in due course.

7.3 The Committee noted the Director's report.

Item 8.13/08 Fitness to Practise Department workplan (report ref: FTP 05/13)

8.1 The Committee received a paper for approval from the Executive setting out the draft FTP work plan for 2013-14. The paper included an update on the work plan for 2012-13 as an appendix.

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8.2 The Committee noted the following points:

- the work plan is based on the assumption of a Directorate of 72 permanent employees. It is anticipated that there will be a fitness to practise budget of approximately £12.1 million;
- it is forecasted that there will be 2110 new FTP cases and 1300 days of hearings during 2013-14;
- the PSA are due to audit decisions made at the initial stages of the Fitness to Practise process in 2013. An audit of the HCPC by PSA was last undertaken in 2010;
- the focus of the year plan for 2013-14 was on improving the FTP 'experience' for those involved. A workshop is planned for late May.
- the mediation pilot is anticipated to begin in summer 2013. An evaluation of the pilot will also take place in 2013-14; and
- FTP will work with the Policy and Standards Department to develop guidance for employers on when to refer a registrant to the HCPC. This will include a consultation exercise.

8.3 The Committee discussed the FTP activities table 2013-2014. It was agreed that the Public Protection heading should take prominence in the table due to its importance.

ACTION: Director of Fitness to Practise to amend the FTP activities table by 23 May 2013

8.4 The Committee discussed the use of telephone attendance for Investigating Committee Panel Meetings. It was advised this system was only appropriate for investigating committee panel meetings where the registrant did not have the right to appear

8.5 The Committee noted that the Health and Character report planned for 2012-13 was now expected to be completed in July 2013. This delay was due to the transfer of GSCC work taking priority.

8.6 The Committee approved the Fitness to Practise Department work plan for 2013-14.

Item 9.13/09 Public protection research (report ref: FTP 06/13)

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- 9.1 The Committee received a paper for discussion from the Executive.
- 9.2 The FTP work plan for 2012-13 included a work stream looking at concepts of public protection and HCPC's approach to determining whether fitness to practise is impaired. This area of work forms part of the response to recommendations previously made by the PSA that regulators should routinely request that registrants who are convicted of drug or alcohol related offences should undergo a health assessment.
- 9.3 It was agreed by the Fitness to Practise Committee in October 2011, that any review of approach in this area should look more widely at HCPC's approach to registrants who had been convicted or cautioned for an offence.
- 9.4 Picker Europe were commissioned to undertake a study on understanding public and professional views of the concept of 'public protection.' This included looking at perceptions of fitness to practise and how views differed on what information might be relevant to the regulator
- 9.5 The committee noted the following points;
- the research report observed that, above all, both public and professionals expected to be protected from consistently poor performance;
 - overall, the findings support the principles which underpin the HCPC's current case by case approach; and
 - it was proposed that a Review of written literature be undertaken along with the production of clearer guidance to employers on when to report a registrant, and for registrants on responding to allegations.
- 9.6 The Committee welcomed the report as a valuable piece of work, which demonstrated the HCPC's commitment to engagement with the public.
- 9.7 The Committee discussed reporting of issues by employers. It was agreed that more robust guidance was needed and that employers of a multi regulated workforce could be confused about the various processes. It was felt that the language and tone of any guidance produced should be firm and emphasise the duty to report.
- 9.8 The Committee approved the recommendations detailed at item 6.1 in the accompanying paper 'understanding public protection'.
- 9.9 The Committee discussed the accompanying paper on multiple allegations. The following points were noted:

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- analysis has been undertaken of all registrants who have been subject to more than one allegation from the opening of the HPC register up to the end of August 2012. A total of 413 registrants were the subject of more than one case;
- no clear conclusions could be drawn about the registrants where more than one allegation has been made. There were varying outcomes, and it remains important for panels to consider all cases on their merits;
- it is suggested that the HCPC undertakes a regular six monthly review of registrants where multiple allegations have been made. This will add to its quality assurance framework; and
- legal advice will be sought in relation to panels being notified of on-going or previous sanctions at ICP stage.

9.10 The Committee approved the suggested work to be undertaken in item 4 of the paper 'multiple allegations'.

9.11 The Committee discussed the accompanying paper 'Requesting further information'. The following points were noted:

- as part of the public protection research and reports published by the PSA, the HCPC has been reviewing its approach to requesting further information that may not directly relate to the allegation in question;
- the PSA highlighted that regulators should consider routinely obtaining Police National Computer (PNC) checks as part of its audit report on the Nursing and Midwifery Council's fitness to practise process in November 2011. The PNC is a series of databases which are shared by the UK Police service;
- currently, when the HCPC is notified that a registrant has been convicted of a criminal offence under the notifiable occupations scheme or otherwise, the matter is investigated in line with the HCPC's fitness to practise process;
- automatic notification is likely to change as the Home Office is reviewing policy in this area. Employers may now be notified in place of the HCPC. However, the duty to disclose convictions will remain on the registrant; and
- in line with the standard of acceptance policy approved by Council in December 2011, minor drink drive offences will not be pursued as a fitness to practise allegation other than in cases involving

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serious offences or in the case of drink drive offences, where there are aggravating circumstances.

- 9.12 The Committee noted that legal advice has been sought on whether the HCPC should be routinely requesting Police National Computer (PNC) checks when notified that a registrant has been convicted of a criminal offence. It was advised that making the assumption that any registrant who has been convicted of an offence may have other undisclosed criminal past history amounts to little more than a 'fishing trip'.
- 9.13 The Committee discussed the use of mandatory health assessments. There is no provision in the Health and Care Professions Order 2001 to compel registrants to undergo a health assessment or produce medical documents in drink and drug cases. Feedback on the benefits of these assessments has been sought from other Regulators who require them. So far no evidence is available. The Committee requested that this feedback be pursued.
- 9.14 The Committee noted that if health assessments were undertaken in all cases relating to a drink or drug offence, the costs could be estimated at approximately £200,000.
- 9.15 The Committee discussed the recommendations put forward in the 'requesting further information' paper. The Committee approved the enhancement of guidance for Case Managers in requesting further information from employers and other parties. The proposal to record blood/breath alcohol levels in cases of drink related offences was not supported, as it was considered that this would be of little benefit. Instead it was proposed that feedback on health assessments from other regulators be obtained next year.

Item 10.13/10 Practice notes (report ref: FTP 07/13)

- 10.1 The Committee received a paper for discussion from the Executive.
- 10.2 The Committee noted that as part of the FTP work plan for 2012-13, the Executive has undertaken a review of a number of the practice notes in place to provide guidance to Panels and those appearing before them. As a result of this review, a number of practice notes have been reviewed, updated or produced.
- 10.3 The Committee noted the following points:
- a new practice note on half time submissions has been produced. This practice note is felt necessary given feedback from legal assessors and the mistaken use of half time submissions by some of those appearing for registrants;

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- the case to answer determinations practice note has been reviewed and updated to provide more guidance on the application of the realistic prospect test and to reflect the standard of acceptance policy;
- the discontinuance practice note has been updated to provide more guidance on discontinuing part of an allegation; and
- the interim orders practice note has been updated to provide more guidance on adjourning/postponing interim order application hearings and to clarify the section on review, variation, revocation and replacement; and
- a footnote to the postponement and adjournment of proceedings practice note has been updated to allow the Head of Adjudication to nominate individuals to consider requests for postponement and adjournment.

10.4 The Director of Fitness to Practise informed the Committee that the updated documents were intended to be presented with tracked change explanations. The Committee requested that these tracked changes included when the paper is presented to Council.

ACTION: Director of Fitness to Practise to present the paper to Council on 27 March 2013

10.5 The Committee recommended the paper and practice notes to Council subject to minor typographical amendments.

Item 11.13/11 Audit of final fitness to practise decisions (report ref: FTP 08/13)

11.1 The Committee received a paper for discussion from the Executive. The paper detailed the fifth audit of final fitness to practise hearing decisions covering the period 1 April to 31 October 2012.

11.2 The Committee noted the following points:

- on the whole, the quality of drafting of decisions across the audit period was appropriate, and of a high quality. There was only one decision in the audit which was of a low standard;
- in two out of the ninety cases where the registrant was not present and not represented there was no reference in the decision to the consideration to proceed. It is planned to reiterate the importance

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of this during panel member training, and also in the FTP quarterly newsletter;

- in 30% of cases in the audit sample, no mitigating evidence was referred to in the decision. Whilst there are cases where no mitigating evidence is submitted, the HCPC will continue to review panel training and the practical examples and exercises used;
- there appeared to be an increase in administrative errors by the HCPC, which had not been evident in previous audits. While the overall number of errors was small, it was a notable trend in this audit; and
- while the general standard of drafting has improved since the first audit period, 46 decisions in this audit included some minor grammar, spelling, or typographical errors. A checking system has been introduced before publishing, co-ordinated by the Adjudication Manager.

- 11.3 The Committee noted that feedback about drafting issues was fed back to Partners and addressed at performance review stage. It was also noted that the Hearings Manager is undertaking a review of cases involving drafting errors.
- 11.4 The Committee discussed the provision of witness support during hearings. It was reassured that there is provision within HCPC's legislation for this, and that high level assessments are carried out to determine if a witness was vulnerable. The Committee commended the FTP's approach in this matter.
- 11.5 The Committee discussed the importance of setting realistic and measureable requirements for conditions of practice orders. It was noted that there were two cases in the audit where the auditor was concerned that the relevant sanction policy had not been applied appropriately.
- 11.6 The Committee agreed to the actions proposed by the Fitness to Practise Department in the report.

The Committee noted the following papers:

Item 12.13/12 High Court update (report ref: FTP 09/13)

Item 13.13/13 Mediation pilot update (report ref: FTP 10/13)

Item 14.13/14 CHRE audit of the GDC (report ref: FTP 11/13)

Item 15.13/15 Review of complaints (report ref: FTP 12/13)

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Item 16.13/16 Assurance and Development update (report ref: FTP 13/13)

Item 17.13/17 Scheduling process (report ref: FTP 14/13)

Item 18.13/18 Witness process (report ref: FTP 15/13)

Item 19.13/19 Any other business

19.1 There was no other business.

Item 20.13/20 Date and time of next meeting

20.1 The next meeting of the Committee would be held at 10.30 am on Thursday 23 May 2013

20.2 Subsequent meetings would be held at 10.30 am on Thursday 10 October 2013

Chair

Date

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