

Council, 8 December 2016

## Fitness to Practise Policy Statement

### Executive summary and recommendations

#### **Introduction**

HCPC's approach to fitness to practise is currently publicly articulated through a number of policies and practice notes. The relevant policies include:

- Fitness to Practise: What does it mean?
- The Standard of Acceptance for Allegations
- Indicative Sanctions Policy
- Fitness to Practise Publications Policy

At present, the Council sets high level policy in respect of fitness to practise proceedings but also approves Practice Notes, which provide detailed guidance to Panels on practice and procedure. As outlined in papers previously presented to Council, the establishment of the Health and Care Professions Tribunal Service (HCPTS) will see responsibility for approving Practice Notes transferring to the Tribunal Advisory Committee (TAC). Although the TAC will be responsible for approving Practice Notes, Council will retain responsibility for setting fitness to practise policy.

In anticipation of the establishment of the HCPTS and TAC, and as part of our ongoing review of policies, we have taken the opportunity to review our fitness to practise policy statement. The purpose of the review has been to ensure the fitness to practise policy accurately reflects the HCPC's approach to fitness to practise in the legislative, legal and procedural context in which the process operates and specifically the:

- proportionate and risk based approach we adopt to fitness to practise proceedings;
- consideration of the wider public interest as a central element of the fitness to practise process
- threshold standard that is applied when considering fitness to practise allegations
- independence of Practice committee Panels
- process for considering whether a registrant's fitness to practise is impaired
- expectations of registrants who may be a complainant and/or witness and the action we may take if they do not meet these expectations.

It is proposed that the revised policy will replace the current Fitness to Practise: What does it mean? Document.

### **Decision**

This paper is for discussion and approval.

### **Background information**

A paper outlining HCPC's approach to Fitness to Practise was presented and discussed by Council at its meeting on 20 May 2016. <http://www.hcpc-uk.org/assets/documents/1000500CEnc02-HCPCsapproachtoFitnessToPractise.pdf>

Relevant papers relating to the Health and Care Professions Tribunal Service (HCPTS) can be found at <http://www.hcpc-uk.org/assets/documents/100050C1Enc14-HealthandCareProfessionsTribunalService.pdf>

### **Resource implications**

None.

### **Financial implications**

None.

### **Appendices**

Draft FTP policy statement

### **Date of paper**

21 November 2016

## HCPC's Approach to Fitness to Practise

### Introduction

1. The statutory function of the Health and Care Professions Council (HCPC) is to set and maintain standards for the professions it regulates, with the overarching objective of protecting the public. This document sets out the (HCPC) approach to delivering public protection through its fitness to practise process,

### Legislative context

2. The HCPC's powers in respect of fitness to practise are set out in Part V of the Health and Social Work Professions Order 2001. They are supplemented by statutory procedural rules made under that Order and supplemented by a suite of policy documents and Practice Notes to which Panels and all those who investigate or present on HCPC's behalf should have regard.

### The purpose of fitness to practise proceedings

3. Most health and care professionals adhere to those standards without any intervention by the HCPC. They maintain their knowledge and skills, engage appropriately with service users and others, act with honesty and integrity and conduct their lives in a manner which justifies the public's trust in their professions. Only a small minority of registrants will ever face an allegation that their fitness to practise is impaired and, of those that do, very few will have acted maliciously. 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 should not practise at all or should be limited in what they are allowed to do.
4. Critically, the test is expressed in the present tense; that fitness to practise is impaired. The process is not designed to punish registrants for past acts, but to consider those acts in determining whether they are fit to remain in unrestricted practice. A finding of current impairment will not always lead to striking off, as the legislation contains a graduated range of sanctions which allow for a proportionate response.<sup>1</sup>
5. The HCPC's resources are finite and, in order to ensure those resources are deployed to best effect, a proportionate and risk-based approach should be adopted in dealing with fitness to practise issues. It is important that an appropriate balance is struck by the HCPC and those acting on its behalf. Registrants do make mistakes and not every minor error or isolated lapse in judgement indicates that a registrant's fitness to practise is impaired. Fitness to practise proceedings are not a general complaints resolution process nor are they designed to resolve disputes

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<sup>1</sup> This is addressed in more detail in the HCPC's Indicative Sanctions Policy. That policy is not, and does not purport to be, a tariff and Panels may depart from it where there is good reason for doing so. However, Panels should acknowledge that they have done so, to avoid the unfounded suggestion that they are unaware of or have ignored the policy.

between registrants and service users. The HCPC would not be protecting the public by creating a climate of fear among its registrants.

6. Being fit to practise is about more than just being a competent health and care professional. The need for registrants to keep their knowledge and skills up to date, to act competently and remain within the bounds of their competence are all important aspects of fitness to practise. But, fitness to practise also requires registrants to treat services users with dignity and respect, to collaborate and communicate effectively, to act with honesty and integrity and to manage any risk posed by their own health.
7. In considering the fitness to practise of registrants, the HCPC must also take account of the wider public interest, including the need to declare and uphold standards, to deter wrongdoing by registrants and to maintain public confidence in the professions it regulates. Inevitably, this means that a registrant's conduct outside of the workplace may be the basis of a fitness to practise allegation. The public would rightly criticise the HCPC if it failed to address conduct which has a bearing on a registrant's fitness to practise, such as being convicted of an offence involving violence, dishonesty, abuse of trust or predatory sexual behaviour.

### **How Fitness to Practice is assessed**

8. In fitness to practise proceedings it is the HCPC that has the burden of persuasion. It must prove the facts alleged, to the civil standard of the balance of probabilities. Whether those facts amount to the 'statutory ground' alleged (for example, a lack of competence or misconduct) and, in turn, whether the registrant's fitness to practise is impaired do not need to be proved by the HCPC. They are both matters of judgement for the Panel which hears the case.
9. In investigating fitness to practise allegations, those acting on the HCPC's behalf must:
  - act as neutral fact finders, gathering evidence regardless of whether it supports the HCPC's or the registrant's case and disclose all relevant material to the registrant concerned;
  - provide guidance on the fitness to practise process to complainants, witnesses and registrants, particularly where the registrant concerned may not have legal representation;
  - ensure that allegations which do not raise fitness to practise concerns or are clearly not viable are not pursued any further than is appropriate.
10. In addressing the latter point, allegations should only proceed if they meet the HCPC's Standard of Acceptance Policy. Complaints will often be made to HCPC which raise wider issues such as the complainant's disagreement with a court

ruling or health service policy but do not concern the fitness to practise of an individual registrant. Allowing cases of that kind to proceed is not only unfair to the registrant concerned but also misleads and is unfair to the complainant.

11. In determining whether fit to practise is impaired, in addition to gravity of the allegations, Panels need to take three important factors into account:

- the degree of insight displayed by the registrant;
- any remedial steps which the registrant has taken (where it is feasible to do so); and
- the risk of repetition.

12. Adopting a risk-based approach to those factors, impairment is more likely to be found where the registrant acted deliberately or recklessly, where there were persistent or repeated departures from accepted professional practice, or where the past conduct may be indicative of a propensity to be dishonest, violent, abuse trust or pose a similar threat to service users or others,

13. In some instances a registrant's conduct after an initial event will have a significant bearing on the case. For example, a registrant who makes an error in the course of practice but who admits that error and takes appropriate steps to correct it and avoid its repetition poses a much lower risk than a registrant who takes no remedial steps and falsifies the service user's records in an attempt to hide the error.

### **Engagement with Fitness to Practise Proceedings**

14. The HCPC's expectation is that all registrants will co-operate with fitness to practise investigations, whether they are the subject of the allegation or a complainant, witness or involved in some other way. A registrant who is the subject of an allegation cannot be compelled to co-operate with or participate in fitness to practise proceedings, but those representing the HCPC should encourage registrants to do so and warn them of the risks of not engaging, including the likelihood of the proceedings being concluded in their absence.

15. Where a registrant who is the complainant or a witness fails to co-operate, appropriate steps<sup>2</sup> should be taken to compel them to produce evidence or attend a hearing. Consideration should also be given to making a fitness to practise allegation against the registrant<sup>3</sup> on the ground of misconduct.

### **The Role of Panels and HCPC Presenting Officers**

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<sup>2</sup> such as a statutory requirement made under Article 25(1) of the Health and Social Work Professions Order 2001 or by asking the Panel to issue a Production Order or Witness Order.

<sup>3</sup> under Article 22(6) of that Order.

16. The determination of any fitness to practise allegation is a matter for a Panel of one of the HCPC's Practice Committees. Those Panels are independent of the Council and are supported by an adjudications team which is separate from those who investigate allegations on the HCPC's behalf.

17. Without seeking to interfere in the Panels' discretion to determine individual cases as they see fit, the HCPC expects Panels (with the support of the adjudications team) to:

- deal with cases justly, consistent with the overarching objective of protecting the public but recognising the rights of registrants, particularly under Article 6 of the European Convention on Human Rights;
- deal with the HCPC and registrants concerned fairly and equitably, and encourage them to co-operate with each other in progressing cases and conducting proceedings;
- respect the interests of witnesses and ensure they are kept informed of the progress of cases;
- undertake active case management, to ensure that cases are dealt with fairly, justly, expeditiously and proportionately (having regard to the gravity and complexity of the allegations) and, in particular:
  - giving directions and exercising powers under the procedural rules to ensure that cases are heard quickly and efficiently;
  - identifying and addressing the needs of witnesses;
  - identifying the issues in dispute;
  - setting timetables or otherwise controlling the progress of cases;
  - helping the parties to resolve issues;
- deal with cases without the need for parties or others to attend in person, including by appropriate use of technology.

18. Those who represent the HCPC should assist Panels to the fullest extent possible, be ready to proceed when hearings are fixed and ensure that cases are conducted expeditiously. They should also seek to resolve cases by consent where that is appropriate and apply to discontinue allegations (in whole or part) where there is no longer realistic prospect of the HCPC discharging the burden of persuasion.