

## Council

### Public minutes of the 143<sup>rd</sup> meeting of the Health and Care Professions Council as follows:-

**Date:** Thursday 26 May 2022

**Time:** 10am

**Venue:** Videoconference

**Present:** Christine Elliott (Chair)  
Meera Burgess\*  
Stephen Cohen  
Heeral Davda\*  
Maureen Drake  
Rebekah Eglinton  
Sue Gallone (until item 8)  
Helen Gough  
David Stirling  
Kathryn Thirlaway  
Valerie Webster  
Steven Vaughan

#### **In attendance:**

Claire Amor, Secretary to Council  
John Barwick, Chief Executive and Registrar  
Alastair Bridges, Executive Director of Resources and Business Performance  
Alan Clamp, Professional Standards Authority  
Matthew Clayton, Policy Manager  
Laura Coffey, Head of Fitness to Practice  
Daniella Dollinger, Communications Business Partner  
Sara Harris, Policy Manager  
Colette Higham, Professional Standards Authority  
Alan Keshtmand, Head of Finance  
Emma Leary, Head of Policy and Strategic Relationships  
Naomi Nicholson, Executive Director of Professional Practice and Insight  
Margaret Osibowale, Financial Planning and Analysis Manager  
James Penry-Davey, Capsticks LLP  
Andrew Smith, Executive Director of Regulation  
Talha Zafar, Department of Health and Social Care  
\*Council Apprentice

## Public Agenda

### **Item 1. 22/56 Chair's welcome and introduction**

- 1.1 The Chair welcomed those present to the 143<sup>rd</sup> meeting of Council. A special welcome was extended to HCPC employees attending Council for the first time.
- 1.2 The Chair welcomed Alan Clamp, Chief Executive of the Professional Standards Authority (PSA), to the meeting as an observer. Alan Clamp provided an overview of the PSA's role in regulation.

### **Item 1.i. 22/57 Apologies for absence**

- 1.i.1 The Council noted that members Eileen Mullan and Kathryn Foreman had sent apologies for the morning session of Council. They would attend the afternoon session beginning at 2pm.
- 1.i.2 The Council noted that Heeral Davda would not attend the afternoon session of Council.

### **Item 1.ii. 22/58 Approval of Agenda**

- 1.ii.1 The Council approved the agenda.

### **Item 1.iii. 22/59 Declaration of Members' interests**

- 1.iii.1 Sue Gallone declared an interest in item 8, Council Appointments 2022, as the panel composition to consider her reappointment was one of the decision points. It was noted that Sue Gallone would leave the meeting for this item.

### **Item 1.iv. 22/60 Minutes of the Council meeting of 23 March 2022**

- 1.iv.1 The Council approved the minutes of its meeting of 23 March 2022.

### **Item 1.v. 22/61 Matters arising**

- 1.v.1 The Council noted those matters arising from previous meetings.

## Standing reports

### **Item 2. 22/62 Chair's Report**

- 2.1 The Chair noted that she and the Chief Executive had met the Minister of State for Health. The meeting had been constructive and the HCPC had assured the Minister that every effort was being made to meet the PSA

standards as soon as possible. The Minister noted the HCPC's openness and transparency in approaching performance improvement. Other areas of discussion included the benefits of regulatory reform.

2.2 The Council noted this item.

### **Item 3. 22/63 Chief Executive's performance report**

3.1 The Council received a standing report from the Chief Executive.

3.2 The Council noted the following points:-

- the HCPC's Corporate Plan 2022-23 had been published and the first review of progress against deliverables undertaken by the ELT, with good progress made in initiating workstreams. The deliverables tracker would be presented to the Council at its July meeting.
- online international applications functionality went live on 7 April. The number of applications on the portal had been encouraging. The pilot for online UK applications had launched and, if successful, would be rolled out to all UK applications ahead of the summer peak of graduate registrations;
- improving international application processing times remained a key Executive priority. Positive progress has been made with the additional processing capacity secured through partnership working;
- the renewal window for physiotherapists closed on 30 April 2022 with 91% of physiotherapists renewing. This rate was in line with previous renewal cycles which had historically been between 90% and 97%;
- the Chartered Society for Physiotherapy (CSP) had raised concerns about the number of deregistered physiotherapists. The HCPC had worked closely with the CSP to support registrants who inadvertently let their registration lapse to get back on the register as quickly as possible. Readmission applications were being processed within 24 hours of receipt, and 95% of all readmission applications received had been processed;
- the Insight and Intelligence team had reviewed physiotherapist registration trend analysis, and this had shown that the overall trend was one of growth of the physiotherapist profession through the two year renewal cycle; and
- the HCPC had launched its first student competition, the competition invited students on HCPC approved programmes to create a learning session on the theme of candour.

- 3.3 The Council discussed concerns raised regarding physiotherapist renewal rates and agreed that communication with the professional body during renewal periods was key to ensuring registrant awareness of the closure of the window.
- 3.4 The Council noted that there had been no concerns raised regarding the radiographers' renewal earlier in 2022 and asked the Executive if there was a known reason why the issue had occurred specifically with physiotherapists. The Chief Executive responded that there was no specific reason known to the Executive for the difference in professions renewal behaviours and that the CSP had raised the disruption of physiotherapy work environments due to the pandemic, with many physiotherapists working in different settings and not necessarily having access to their normal work email addresses. He added a key learning for the HCPC was to ensure professional bodies were regularly updated through the renewal window with renewal progress rates in order to tailor communications to support high renewal rates.
- 3.5 The Council asked if the Executive had indications that particular employers had high rates of missed renewals for physiotherapists. The Executive Director of Regulation responded that there were no indications that specific employers had high rates of non-renewal. He added that the Executive had reflected on how to enhance communication to employers during the renewal window.
- 3.6 The Council noted that the HCPC had responded to the DHSC's consultation on the criteria for deciding when statutory regulation was appropriate and if the right professions were subject to statutory regulation. The Council asked if the Executive had undertaken any activity to establish if there were non-regulated professions with a public protection case for statutory regulation, as the HCPC had a remit within its legislation to recommend aspirant groups for regulation. The Executive Director of Professional Practice and Insight confirmed that, in preparing its consultation response, the HCPC had reviewed its historical work on unregulated professions but had not proactively sought to identify new groups for statutory regulation. The HCPC's legislative remit had been raised in the consultation response and the HCPC noted its willingness to support the DHSC in assessing the public protection case for statutory regulation for any new groups.
- 3.7 The Council discussed the introduction of online application functionality and noted the need to be aware of digital literacy differences, as well as monitoring the EDI data of those using the online functionality to ensure there were no unintended impacts. The Executive Director of Professional Practice and Insight agreed with the importance of ensuring there were no unintended EDI impacts and noted that paper-based application forms remained available for the small number of registrants who preferred or required this application format.
- 3.8 The Council asked if the move to online international applications included technology to automatically answer queries through 'chat bots'. The Executive Director of Regulation confirmed that this technology was not in place but that it was an ambition for the future development of the system. He added that the HCPC's telephony system was being upgraded to provide information

proactively through an initial option system. The Council welcomed the continuing efforts to improve the contact centre service.

- 3.9 The Council discussed the HCPC's work on preceptorship and welcomed the four-country basis of the exploratory work.

#### **Item 4. 22/64 Finance Report**

- 4.1 The Council received a standing report from the Head of Finance. The report presented the HCPC's financial position as at the end of March 2022.

- 4.2 The Council noted the following points:-

- the HCPC's operating deficit for 2021-22 was £0.93m compared to a budgeted deficit of £2.28m and a forecasted deficit of £1.55m;
- the outturn position had improved mainly due to additional international registration applications and reduced levels of expenditure in FtP and Information Technology;
- while this was an improvement compared to the budget and forecast, there were a number of risks, opportunities and timing differences in both income and cost allocation to manage as part of year-end adjustments, with some costs deferred to the 2022-23 financial year;
- the reported position was subject to further potential adjustments from ongoing year-end work, including income recognition, bad debts and any audit adjustments; and
- as finance capacity had increased with key posts being filled, cashflow forecasting would be added to the Finance Report in a future iteration.

- 4.3 The Council noted that the People and Resource Committee would review the year end position at its meeting of 7 June 2022. The Committee thanked the Head of Finance for the improved quality of financial reporting to Council.

#### **Item 5. 22/65 Fitness to Practise Report**

- 5.1 The Council received a standing report from the Head of FtP.

- 5.2 The Council noted the following points:-

- in April, the 12-week Interim Order KPI target for the time taken from receipt of a concern to consideration by a panel had been met for the first time since improvement work began;
- performance against best practice standards for front line checks had decreased in April to just below the target of 70% adherence. Frontline checks had not been undertaken in the post-ICP team in April due to

shortages of management resource. Post-ICP cases underwent regular risk assessment by legal providers and the HCPC's Internal Quality Assurance Team had run a series of workshops for FtP case teams on best practice risk assessments;

- in April, the median case age increased to 95 weeks as older cases continued to be concluded at final hearing. However, this had not been at the expense of progressing younger cases. The youngest case concluded in January 2022 was 14 weeks. This reflected the impact of the frontloading direct listing process;
- the median age of concluded pre-ICP cases was 43 weeks which was above the 33-week KPI. This was due to older cases being concluded at the threshold stage;
- the median age of the live pre-ICP caseload had been consistently under the 33-week KPI since July 2021 and the age of the oldest open case had remained consistent following a noticeable decrease in the age profile;
- at the end of April, 79 cases had a confirmed final hearing date. This was the highest number of confirmed listings since May 2021; and
- new roles within the FtP department had been included in the 2022-23 budget, this included dedicated training and standards roles and a Deputy Head of FtP who would have a focus on the delivery of frontloaded investigations in-house.

- 5.3 The Council discussed the risks outlined in the report, noting the risk highlighted relating to frontloading cases. The Head of FtP clarified that the risk lay in seeking to in-house the frontloading activity once the process with external legal providers had been established. She added that a significant mitigation to this risk was the addition of a new Deputy Head of FtP who would have responsibility for the transition to in-house frontloading.
- 5.4 The Council asked for how long the Executive expected FtP to remain in improvement phase, instead of change being part of business as usual. The Head of FtP responded that a significant part of the improvement work underway was business as usual, and that while embedding this way of working in the teams would take time, the expectation was that continuous improvement would be the business-as-usual way of working for FtP.
- 5.5 The Executive Director of Regulation noted the importance of transparency in performance reporting, highlighting the dip in performance in April for frontline checks. He added that significant process changes such as frontloading would take time to embed and that it would commence in June with external legal providers with the aim of increasing the proportion of inhouse frontloading undertaken over the following years.
- 5.6 The Council asked if the Executive regularly reviewed the KPI targets to ensure they remained suitable to continue to meet the PSA standards. The

Head of FtP advised that as part of the move to frontloading cases the Executive would be reviewing the FtP KPIs to ensure they fitted with the new process.

- 5.7 The Council asked if the new roles within FtP had been accounted for within the budget. The Head of FtP confirmed that these roles were included in the budget, and that no additional headcount above that included in the budget was foreseen to be required.
- 5.8 The Council noted the resourcing pressures highlighted in the report. The Council asked if greater oversight was required of workforce planning in core regulatory delivery. The Executive Director of Resources and Business Performance advised that workforce planning was a key part of the People Strategy actions for 2022-23 and the HR Business Partners were working with all departments to establish a workforce plan.
- 5.9 The Council thanked the Head of FtP for the transparency of the FtP report and for the dedication and skill shown by the FtP team in progressing FtP improvement work.

### Items for discussion / decision

#### **Item 6. 22/66 Remote Hearings Consultation**

- 6.1 The Council received a paper from the Head of Policy, Standards and Strategic Relationships. The paper presented analysis of a recent public consultation regarding the HCPC's proposal to amend its legislation to provide an express power to hold remote hearings.
- 6.2 The Council noted the following points:-
- as part of the response to COVID-19, in March 2019 the government introduced emergency rules which gave HCPC, and other healthcare regulators express provisions to hold a meeting or hearing remotely;
  - the HCPC's existing legislation did not prohibit the use of remote hearings, but the express power put remote hearings on a clear statutory footing;
  - as the government intended to withdraw the emergency rules, and given the positive experience of remote hearings operation during the pandemic, the HCPC had consulted on amending its legislation to make the express power permanent;
  - the consultation ran between August and November 2021. 630 responses were received, with around 86% of respondents indicating that there were reasons why remote hearings should not be held once the emergency period ended;
  - the Executive had analysed the consultation responses and this analysis was presented to assist the Council in its decision on whether

to pursue a permanent change to the HCPC's legislation to allow for remote hearings;

- a full Equality Impact Assessment (EQIA) regarding the proposed power had been completed and was included in the paper to support the Council's decision; and
- the Council's reasoning for its decision regarding remote hearings would be set out in the consultation response document which, it was proposed, would be drafted following the Council's discussion and approved by the Chair outside of meeting.

- 6.3 The Council thanked the Executive for the thorough analysis of the consultation responses as set out in the paper. The Council agreed that the analysis clearly set out the benefits of the ability to hold remote hearings for the HCPC and its stakeholders. The Council also agreed that the paper demonstrated the Executive's careful consideration of how the concerns raised by consultation respondents would be mitigated.
- 6.4 The Council agreed that the paper made a strong case for seeking an express power to hold hearings remotely. The benefits included the speed of the process, a lessened financial impact on attendees, reducing the time needed away from work for participants, increased engagement in the process, enabling easier participation for attendees with mobility or mental health conditions and the ability to fulfil the wishes of registrants should they prefer to take part remotely.
- 6.5 However, the Council noted the high proportion of negative responses to the consultation and the areas of concern highlighted by respondents which included the risk of clear communication being impacted by remote hearings, the potential for a hearing to be held remotely against the registrants wishes, issues relating to the welfare of participants, EDI impacts, technological issues impacting on the quality of the hearing and potential confidentiality issues.
- 6.6 The Council noted the analysis that many of the responses conflated the issue of the HCPC having an express power to hold hearings remotely, with an intention that the HCPC would hold all hearings remotely, which was not proposed. However, the Council asked that where responses were more negative than positive it be reflected in the analysis rather than giving equal weight to positive and negative comments. **ACTION.**
- 6.7 The Council discussed the risk factors outlined in the paper. A member of Council noted the most significant risk was the potential to miss indications of vulnerability or mental health support required by hearing participants. The Council noted the range of support the HCPC had available for hearing participants and asked the Executive to further consider the mitigations for this risk. **ACTION.**
- 6.8 The Council noted the importance of considering the wellbeing of participants in determining if an in-person hearing was desirable. A member made the point that the presumption should not be that an in-person hearing was

necessarily better for the mental health of participants given the potential for isolation away from home if travel and hotel stays were required.

- 6.9 The Council noted the importance of communicating clearly to registrants that in person hearings remained an option, clarity in communication was particularly important as registrants may be experiencing stress.
- 6.10 The Council discussed support and adaptations to the hearing process to support effective remote hearings. The Council noted that as well as the HCPC's current experience of running remote hearings, many other organisations had learning the HCPC could draw on. Council member Steven Vaughan added that a number of research projects were underway in to the use of remote court hearings during the pandemic and offered to provide the Executive with references to this research.
- 6.11 The Council noted the importance of monitoring appeals as an indication that remote hearings were having an adverse impact on the outcome for the registrant. The Head of FtP agreed noting that monitoring of the remote hearings held over the pandemic period, as presented in the paper, showed there was no identifiable impact on outcomes.
- 6.12 The Council asked the Executive to outline how it would ensure that decisions on whether to hold a hearing in-person or remotely was fair and equitable. The Head of FtP responded that the HCPC would receive a steer from the legal providers presenting the case as well as weighing up the factors of the case known to the HCPC. The HCPC would also seek the views of the registrant when informing them of the intended format and outline how the registrant could request an alternative format. If the registrant did not agree with the proposed format, the hearings team would engage with the registrant to understand their concerns and needs. She added that in the HCPC's experience of running remote hearings during the pandemic with the facility to run COVID-secure in-person hearings, there had not been a case where the HCPC had needed to ask a Panel Chair to make a determination due to a difference in position between the HCPC and the registrant on hearing format.
- 6.13 The Council asked how the Executive would proceed if a witness or complainant had a difference of view to the registrant in the case as to the format of the hearing. The Head of FtP responded that the factors would be weighed and that the HCPC had successfully held hybrid hearings previously with some participants taking part remotely and some taking part in-person. The Council requested that the decisions document explicitly set out how a decision would be made if hearing participants had conflicting opinions as to the need for an in-person hearing. **ACTION.**
- 6.14 The Council asked if the proposed process step of balancing the factors for and against holding a hearing remotely or in person would add time to the hearings process. The Head of FtP confirmed that the process was in place already and had not added time to the process.
- 6.15 The Council noted that the use of remote hearings on a permanent footing was in line with the NHS's move towards increased digital delivery.

- 6.16 The Council noted that the HCPC had a responsibility to make best use of the registrant fee and the efficiency savings of remote hearings should be noted as a benefit, however cost consideration should not be a factor in determining if a specific hearing should be remote or in-person. The Head of FtP added that the savings on travel and subsistence costs of remote hearings were largely balanced out by remote hearings taking on average slightly longer than in person hearings.
- 6.17 The Council noted the need to recognise within the EQIA the positive EDI impacts of the ability to hold remote hearings in some cases. **ACTION.**
- 6.18 The Council agreed the following decisions:-
- the HCPC should seek an express power in the HCPC's legislation to enable the HCPC to hold remote hearings;
  - in determining if an FtP final hearing should be in person or remote, the starting point would be one of balance and would be determined by the particular circumstance of the case and the participants. The factors which would be considered were set out in the paper;
  - for registration appeal hearings or FtP hearings other than final hearings, the starting point would be that they should be held remotely, unless evidence suggested a hybrid approach or in-person hearing was more appropriate;
  - the HCPC would monitor the impact of remote hearings decisions to ensure no unforeseen issues surfaced through operation required a change in approach; and
  - the approval of the Council's consultation response document was delegated to the Chair of Council.
- 6.19 The Council discussed the communication of the Council's decision given the high proportion of responses against the addition of the power to hold remote hearings. The Council agreed that clarity on the balancing factors and that in person hearings would remain an option were key points to emphasise.
- 6.20 The Council asked about the timescale for legislative change. The Head of FtP advised that a provisional laying date of July 2022 had been provided by DHSC, the emergency powers would end at the end of September. The HCPC would continue with remote hearings if there was a gap in express provision for remote hearings as the HCPC's current legislation allowed for remote hearings.

## **Item 7. 22/67 Key Performance Indicators Review**

- 7.1 The Council received a paper from the Head of Governance. The paper proposed revisions to the Council's Key Performance Indicators (KPIs).

7.2 The Council noted the following points:-

- the KPIs were last agreed in 2021, following a detailed review of the Council's requirements and the role of Committee assurance;
- as agreed by Council, the KPIs had been reviewed following one year of operation and changes were proposed by the Executive;
- metrics on registration responsiveness had been enhanced with the inclusion of processing times and a review of service standards;
- the FtP KPI moved away from tracking the FtP Improvement Programme, it was proposed that measures on timeliness and quality be monitored by Council as part of the KPI set. The full FtP report to council would continue to be a standing item; and
- performance target ranges had been set for most KPIs, providing a more nuanced understanding of how actual performance compared to the Executive's expectation.

7.3 The Head of Governance highlighted an error in the paper, being the performance target for registration KPI three which the paper stated was 85%, instead of the correct 90%.

7.4 The Council discussed the targets for registration responsiveness and if these were comparable to other regulators. The Executive Director of Regulation noted that a review of the other regulators service standards had been undertaken and the HCPC's proposed targets were challenging but achievable, he added that if the targets were being met consistently consideration would be given to raising the target.

7.5 The Council noted that there was not a proposed KPI on the progression of major projects. The Executive Director of Resources and Business Performance noted that this would be reported to the People and Resources Committee within a developing Resources Directorate standing report.

7.6 The Council welcomed the proposed inclusion of a sustainability KPI but did not consider that energy consumption was the most useful metric. The Council also agreed that sustainability should be a focus on a future Council seminar. The Executive Director of Resource and Business Performance agreed to consider alternative KPIs for sustainability. **ACTION.**

7.7 The Council asked if, given the HCPC's intention to establish hybrid working permanently, the IT KPIs should be tailored to meeting the needs of hybrid working. The Executive Director of Resources and Business Performance agreed that the IT KPIs required further development and noted that the Corporate Plan commitment to review of the digital transformation strategy, due in quarter three of 2022-23, would also consider how progress was measured and reported.

7.8 The Council agreed to adopt the presented KPI set, subject to the action outlined in paragraph 7.6. The Council agreed that the KPIs should be reported to the Council quarterly as part of the Chief Executive's Performance Report.

### **Item 8. 22/68 Council Appointments 2022**

8.1 The Council received a paper from the Head of Governance. The paper set out proposed plans for an appointment campaign seeking two lay members of the Council as well as information on reappointments in 2022.

8.2 The Council noted the following points:-

- as two members of the Council would end their terms at the end of 2022, the appointment campaign would seek two Lay members of Council at least one of which needed to live or work in Northern Ireland to meet the Council's constitution requirements;
- the appointment process had been amended to add clarity on how independent committee members were appointed. The process for Council member appointments remained unchanged, as did the competencies, which had been reviewed in detail in 2021; and
- Council's approval was sought for the constitution of the Council appointment panel, as well as the constitution of the appointment panels for independent committee member appointments in 2022.

8.3 The Council requested that consideration be given to the diversity of the Council appointments panel. **ACTION.**

8.4 The Council approved the amended 'appointment process for Council members and other associated processes' and confirmed that no changes to the Council competencies were required.

8.5 The Council confirmed the constitution of the Council and Independent Committee member appointment panels as set out in the paper.

### **Items to note**

The Council noted the following items:

### **Item 9. 22/69 Decisions outside of meeting**

### **Item 10. 22/70 Any other business**

10.1 Council Apprentice Heeral Davda was invited to share her reflections on the meeting. Heeral noted the importance of ensuring that the registrant voice

was considered in the Council's decision making, she noted that the Council had achieved this in the meeting's key decision points.

10.2 There was no further business.

**Item 11. 22/71 Date and time of next meeting:**

11.1 21 July 2022 - 11am

**Item 12. 22/72 Resolution**

The Council adopted the following resolution:

'The Council hereby resolves that the remainder of the meeting shall be held in private, because the matters being discussed relate to the following;

- (a) information relating to a registrant, former registrant or application for registration;
- (b) information relating to an employee or office holder, former employee or applicant for any post or office;
- (c) the terms of, or expenditure under, a tender or contract for the purchase or supply of goods or services or the acquisition or disposal of property;
- (d) negotiations or consultation concerning labour relations between the Council and its employees;
- (e) any issue relating to legal proceedings which are being contemplated or instituted by or against the Council;
- (f) action being taken to prevent or detect crime to prosecute offenders;
- (g) the source of information given to the Council in confidence; or
- (h) any other matter which, in the opinion of the Chair, is confidential or the public disclosure of which would prejudice the effective discharge of the Council's functions.

Item	Reason for Exclusion
13	C
14	H
15	G
16	H

Chair: .....

Date: .....