

Fitness to Practise Committee

Public minutes of the sixth meeting of the Fitness to Practise Committee held as follows:

Date: Thursday 26 May 2011

Time: 10:30 am

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

Members: Mary Clark-Glass
Malcolm Cross
Julia Drown
Morag MacKellar
Penny Renwick
Keith Ross (Chair)
Annie Turner
Neil Willis

In attendance:

Alison Abodarham, Head of Adjudication
Jonathan Dillon, Hearings Manager
Kelly Johnson, Director of Fitness to Practise
Zoe Maguire, Investigations Manager
James Malcolm, Compliance Manager
Steve Rayner, Secretary to the Committee
Eve Seall, Head of Case Management
Marc Seale, Chief Executive

Part 1 – Public Agenda

Item 1 Chair's welcome

- 1.1 The Chair welcomed members to the Committee.

Item 2 Apologies for absence

- 2.1 Apologies were received from John Donaghy, Deep Sagar and Anna van der Gaag.

Item 3 Approval of agenda

- 3.1 The Committee approved the agenda.

Item 4 Declaration of members' interests

- 4.1 Julia Drown declared an interest in item 8 (FTP annual report). At the time of the meeting, Ms Drown was a member of the Human Fertilisation and Embryology Authority Appeals Committee, which takes decisions about licences to carry out fertility treatment and embryo research. The Committee did not consider that this precluded Ms Drown from discussions.
- 4.2 The Chair declared an interest in item 9 (CHRE FTP audit report), and Item 9 (CHRE review of NMC FTP directorate). At the time of the meeting, the Chair's wife was a member of the Commission for Health Regulatory Excellence (CHRE). The Committee did not consider that this precluded the Chair from discussions.
- 4.3 Mary Clark-Glass and Julia Drown declared an interest in items 9 (CHRE audit report and item 10 (CHRE review of the NMC FTP directorate). At the time of the meeting Ms Drown was the Chair of the Nursing and Midwifery Council (NMC) Audit Committee, and Mrs Clark-Glass was an FTP Panel Chair for both the General Dental Council (GDC) and the General Medical Council (GMC). The Committee did not consider that these interests precluded Mrs Clark-Glass or Ms Drown from discussions.

Item 5 Minutes of the meeting of 16 February 2011 (FTP 16/11)

- 5.1 The minutes were accepted as a correct record and signed by the Chair.

Item 6 Matters arising (FTP 17/11)

- 6.1 The Committee received a paper to note from the Executive summarising actions taken against matters arising from previous meetings.
- 6.2 The Committee noted the actions.

Item 7 Director of Fitness to Practise report (FTP 18/11)

- 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 Department) from January to May 2011. The paper did not include key statistical data on the fitness to practise (FTP) process on this occasion, as this data was included in the annual report, to be discussed at item 8.
- 7.2 The Committee discussed key activities for the Department, during which discussion, the following points were raised:

Social Workers Transfer

- 7.2.1 The Executive had held meetings with the General Social Care Council (GSCC) Conduct and IT teams regarding the transfer of the register and related FTP cases. Regular meetings with equivalent departments at GSCC were continuing.

Recruitment

- 7.2.2 The Committee noted that, although there had been a number of job moves within FTP, the majority of these were either promotions, secondments or were as a result of the creation of new permanent or temporary positions. Only one employee had left HPC permanently.

Employer events

- 7.2.3 The cycle of employer events had been completed in March. Feedback from the events had been favourable. Further event cycles would take place in July, October and November.

Item 8 Fitness to Practise annual report 2010-2011 (FTP 19/11)

- 8.1 The Committee received a paper for discussion/approval from the Executive setting out the HPC Fitness to Practise annual report 2010-2011. The report included an appendix setting out data collected in previous years.
- 8.2 The Committee noted that the report would be subject to the HPC publications process before publication, which included editing and standardisation of terms and diagrams.
- 8.3 The Committee noted that the public had overtaken employers as the largest group of people who had raised concerns about registrants. If this trend continued it was likely to increase case management time. Cases originating from the general public generally required more case management resource.
- 8.4 The Committee noted that there had been a reduction in the average case time to final hearing by an average of 2(median) and 3(mean) months.

- 8.5 The Committee noted that the rise in the number of cases in 2009-2011, and subsequent stabilisation, was largely due to the transfer of the register for practitioner psychologists.
- 8.6 The Committee noted that there was a high level of detail in the report, which was not necessarily relevant for every reader. Nevertheless, there were a range of audiences for which different information was relevant. Audiences included the public, registrants, employers, educators and government stakeholders. It was also important for the Committee to receive the range of statistics and related analysis.
- 8.7 The Committee noted that the 2010 report was smaller than the 2009 report, and that the FTP Department planned work to streamline the data further for 2011. Work would also be undertaken to produce the report in different formats for different audiences.
- 8.8 The Committee recommended that the following changes should be considered before publication:
- 8.8.1 The percentage of registrants involved in FTP cases was 0.35% was a key message. This message should be presented near the beginning of the report.
 - 8.8.2 A conclusion should be added to the analysis on page 11 of the report, regarding HPCs work under Article 22(6) of the Health Professions Order.
 - 8.8.3 If possible, different examples of 'not well founded' cases should be found to help clarify the report on page 38-39.
 - 8.8.4 The Council policy statement on FTP should be attached to the report as an appendix.
- 8.9 The Committee offered its congratulations to the FTP Department for an excellent report.
- 8.10 The Committee recommended that, subject to minor editing changes, the Council should approve the FTP annual report 2010-2011.

ACTION: **Director of Fitness to Practise** to present the report to the Council meeting of 7 July 2011.

Item 9 CHRE FTP audit report (FTP 20/11)

- 9.1 The Committee received a paper for discussion/approval from the Executive regarding a CHRE audit of the initial stages of the FTP process of the health professional regulatory bodies.

- 9.2 The audit was the second of the CHRE's annual audits, and was intended to protect the public, and maintain public confidence in regulation, by identifying risks to public protection in the procedures of the regulators.
- 9.3 The Executive had undertaken an analysis of the report, which was attached as an appendix. This analysis included recommendations for future work.
- 9.4 The Committee noted that the report had found that HPC had robust systems for initial casework. The HPC had also been specifically commended in the report for using findings about other regulators to help identify potential improvements to its FTP processes.
- 9.5 CHRE was changing its cycle of reporting, with regulators to be audited every three years, instead of annually. The HPC was not going to be audited until either 2012 or 2013
- 9.6 The Committee noted that the HPC would be further reviewing its service level standards as a response to the review.
- 9.7 The Committee approved the Executive's analysis of the report, and recommended that the Council instruct the Executive to proceed with the following recommendations for further work:
- that the Executive ensures that quality of reasons remains as a focus at training for those that consider cases;
 - that the Executive review the approach other regulators take to quality control and whether there is any learning for the HPC;
 - that a further review of the service level standards in place within the department are reviewed;
 - that further training is provided to the team on what should be included in file notes;
 - that on-going training is provided on what should be communicated via telephone;
 - that a review of the feasibility and practicality of sending questionnaires to registrants and complainants is undertaken; and
 - that the Executive review whether the legislative framework should be amended to deal with fitness to practise in the round.

ACTION: Director of Fitness to Practise to submit the recommendations in paragraph 9.7 to the Council at its meeting of 7 July 2011.

Item 10 CHRE review of the NMC FTP directorate (FTP 21/11)

- 10.1 The Committee received a paper for discussion/approval from the Executive regarding a CHRE review of the Nursing and Midwifery Council's (NMC) FTP directorate. The review had been requested by the NMC to consider

the progress since the CHRE's special report to the Minister of State for Health on the NMC, which was published in June 2008.

- 10.2 The paper included the CHRE report and corresponding analysis by the Executive as appendices. To inform the Committee's discussion, the paper included a summary of guidance HPC publishes for those involved in the fitness to practice process. The paper also provided a summary of operational guidance provided for the FTP Department
- 10.3 The Committee agreed that the Executive should continue to review similar reports in the future to ensure that HPC's fitness to practise function remains fit for purpose. The Committee noted that this was a valuable quality assurance exercise.

Item 11 Models of adjudication (FTP 22/11)

- 11.1 The Committee received a paper for discussion/approval from the Executive on models of adjudication.
- 11.2 The Committee noted that the GMC was working to overhaul its tribunal function, following the decision of the Government not to continue with the establishment of the Office of the Health Professions Adjudicator (OHPA). The intention in establishing the OHPA had been for it to take responsibility for decision making in GMC FTP cases.
- 11.3 As the changes were largely consistent with changes proposed for OHPA, to inform their discussion the Committee were provided with the HPC response to the OHPA consultation on its long term vision.
- 11.4 The Committee noted that the FTP (and adjudication) process would be kept under review as HPC reviewed the approach it should take towards the establishment of voluntary registers.
- 11.5 The Committee was not minded to recommend any further work as a result of the GMC review. The Committee agreed that the Executive should continue to monitor developments in adjudication and report to the committee as appropriate.

Item 12 Alternative mechanisms to resolve disputes (FTP 23/11)

- 12.1 The Committee received a paper for discussion/approval from the Executive providing analysis of the use of mechanisms for resolving disputes outside of the FTP process already in use at HPC.
- 12.2 The report was part of the ongoing work stream to investigate the use of alternate mechanisms to resolve disputes, and followed discussions on the subject at the meetings of 16 February 2011 and 21 October 2010.
- 12.3 The Committee noted that a stakeholder workshop was due to take place in the afternoon following the meeting. The workshop was intended to collect

the views of stakeholders on the use of mediation in the HPC's regulatory regime. Conclusions would feed into the development of further work, including any pilot.

12.4 The Committee discussed the report, during which discussion, the following points were raised:

12.4.1 The project should take account of the decision in the case: *Solicitors Regulation Authority v Dennison (2011)*, whereby the Administrative Court found that the SRA tribunal had been excessively lenient in its sanctions. The Court found that the Tribunal had not taken adequate account of the responsibility to maintain public confidence in the solicitors' profession when passing judgement.

12.4.2 The FTP process was particularly transparent and fair. Mediation should not reduce the transparency of the process.

12.4.3 The review should consider whether any decision to submit a case to mediation could be subject to judicial review.

12.5 The Committee agreed that the discussions recorded under item 12.4, as well as the views of stakeholders from the afternoon workshop, should be taken into account when developing further work in this area

Item 13 Practice note: Standard of acceptance for allegations (FTP 24/11)

13.1 The Committee received a paper for discussion/approval from the Executive. The paper regarded a practice note which provided guidance to Panels on the criteria for meeting HPC's standard of acceptance for allegations.

13.2 The practice note had been amended following internal review to ensure that it was consistent with HPC's health and character policy.

13.3 The Committee noted that future practice note amendments should take account of the case: *Jones v Kaney (2011)*, in which the Supreme Court removed the immunity of expert witnesses from prosecution, if their testimony can be shown to be negligent.

13.4 The Committee recommended that the Council approve the practice note.

ACTION: Director of Fitness to Practise to submit the practice note to the next meeting of the Committee.

Item 14 Practice note: Article 30(2) (FTP 25/11)

14.1 The Committee received a paper for discussion/approval from the Executive. The paper regarded a new practice note which provided guidance to Panels

on the criteria by which applications can be made to review decisions under Article 30(2) of the Health Professions Order

14.2 The practice note had been developed to clarify practice under Article 30(2) of the Health Professions Order 2001, whereby an application for review of a decision may be made, not only by the registrant concerned, but also by other people “concerned or otherwise”.

14.3 The Committee recommended that the Council approve the practice note.

ACTION: Director of Fitness to Practise to submit the practice note to the next meeting of the Council.

Item 15 Investigating committee decision review (FTP 26/11)

15.1 The Committee received a paper for discussion/approval from the Executive providing an analysis of an audit of decisions made by HPC investigating Committees between September 2010 and March 2011.

15.2 This was the second such review, which was developed to be presented to the Committee on a regular basis as a quality assurance mechanism, and to inform improvements to the process by the Department. The Committee had considered the first audit, covering April to August 2010, at its meeting of 21 October 2010.

15.3 The review provided analysis in four areas, which had been considered in respect of each investigating Committee decision: investigation; decision; other considerations; and policy issues.

15.4 The Committee noted that the Panel had not referred to the realistic prospect test in only 13 cases (4% of cases).

15.5 The Committee noted the ongoing work planned by the Department as a consequence of the review. The Committee noted that this was a valuable quality assurance exercise.

Item 16 Not well founded case review (FTP 27/11)

16.1 The Committee received a paper for discussion/approval from the Executive providing an analysis of cases where a Panel had determined that allegations against a registrant were not adequately substantiated (based on sound judgment, reasoning, or evidence).

16.2 This was the second such review. The Committee considered an audit, covering April to August 2010, at its meeting of 21 October 2010. The review was undertaken to monitor decisions taken by Panels, and to provide outcomes which could be used to improve understanding of the FTP process, and to assist Panels in decision making.

- 16.3 The Committee noted that there had been a reduction in the number of 'not well founded' cases. There was not enough historical data to draw conclusions on this reduction. Department would analyse and report on patterns in the data as they became apparent.
- 16.4 The Committee noted that there had been an increase in the percentage of cases in which the CHRE had identified learning points arising from HPC FTP decisions. The Executive had contacted CHRE to determine whether the change reflected a new CHRE approach or whether the increase was indicative of perceived problems with HPC's procedures.
- 16.5 The Committee agreed that the paper was very helpful in assessing whether the Executive was monitoring its processes effectively.
- 16.6 The Committee approved the paper FTP 27/11, including recommendations for continuing work to ensure that, wherever possible, only appropriate allegations reach the final stage.

Item 17 Adjourned/part heard/cancelled final hearings (FTP 28/11)

- 17.1 The Committee received a paper for discussion/approval from the Executive providing an audit of hearings which took place between April 2010 and July 2011 but which did to conclude as expected.
- 17.2 The review had been requested by the Committee at its meeting of 21 October 2010, and provided an analysis of the hearings, along with information on what steps that had been taken to increase the amount of cases which concluded within the days allocated.
- 17.3 The Committee noted that it was extremely reassuring to be provided with this data, as it provided evidence that the Department was functioning well.
- 17.4 The Committee approved the report, and agreed that the Executive continue to monitor final hearings that are adjourned, part heard and cancelled.

Item 18 Transfer of regulatory functions from the GSCC to HPC (FTP 29/11)

- 18.1 The Committee received a verbal update from the Chief Executive regarding the regulation of social workers in England project.
- 18.2 At the Council meeting on 14 October 2010, the Council agreed that there would be a standing item on every Council and Committee agenda, whereby the Executive would update the meeting on the progress of the project. As the project was developing rapidly, a verbal report on progress would be made to each meeting.
- 18.3 Members had been provided with an update at the Council meeting on 12 May. Following the delay of the Health and Social Care Bill there was no further information, and therefore no update necessary.

The Committee noted the following papers:

Item 19 Vetting and barring scheme update (FTP 30/11)

Item 20 Case Management System update (FTP 31/11)

Item 21 Any other business

21.1 There were no additional items for consideration this day.

Item 22 Date and time of next meeting:

22.1 10.30am on Thursday 13 October.

Item 23 Resolution

The Committee agreed to adopt the following resolution:-

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

- (i) information relating to a registrant, former registrant or application for registration;
- (ii) information relating to an employee or office holder, former employee or applicant for any post or office;
- (iii) 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;
- (iv) negotiations or consultation concerning labour relations between the Council and its employees;
- (v) any issue relating to legal proceedings which are being contemplated or instituted by or against the Council;
- (vi) action being taken to prevent or detect crime to prosecute offenders;
- (vii) the source of information given to the Committee in confidence; or
- (viii) 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
24	vii
25	iv
26	v

Item 24 Minutes of the private meeting of 16 February 2011 (FTP 32/11)

24.1 The minutes were accepted as a true record and signed by the Chair.

Item 25 Transfer of regulatory functions from the GSCC to HPC (FTP 33/10)

25.1 Members had been provided with an update at the Council meeting on 12 May. Following the delay of the Health and Social Care Bill there was no further information, and therefore no update necessary.

Item 26 Legal Proceedings (FTP 34/10)

26.1 The Committee received an update regarding legal proceedings that were being dealt with by the Fitness to Practise Department.

26.2 The Committee noted the update.

Chair:

Date:

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