

Fitness to Practise Committee – 13 October 2011

Alternative Mechanisms to Resolve Disputes

Executive summary and recommendations

Introduction

As part of the work relating to the work stream 'Alternative Mechanisms to Resolve Disputes', Ipsos MORI were commissioned to undertake a qualitative study to explore the views of key audiences on the potential use of mediation within HPC's regulatory regime. The findings from that study are attached to this paper as appendix. Council will be asked to consider at its meeting in October 2011 the potential next steps to this work.

Ipsos MORI have also made some recommendations as to how HPC can consider other ways to develop the fitness to practise process. Those recommendations can be found on page 35 of the report. For ease of reference, those recommendations are repeated below with commentary from the Executive including whether any action is necessary

- **Investigate offering a two-tier complaints process where there is an advisory service / helpline to provide assistance during the fitness to practise process and also outside of it. This could also offer facilitated dialogue between complainants and registrants that is not intended to reach an agreement but provides an opportunity for each party to express their feelings.**

This recommendation will be considered as part of the work plan for 2012-13

- **Look at ways in which to communicate with employers to prevent them misusing the fitness to practise process as a way to deal with internal disciplinary issues**

In 2010-11 217 notifications were received from employers. This made up 28.59 % of the total number of notifications. Of those cases as at 26 September, a further 31 cases have been closed as they do not meet the standard of acceptance. In the same year, 199 decisions were made by panels of the investigating committee as to whether there was a case to answer. In 82 per cent of cases panels determined that there was a case to answer. Of the 315 hearings that concluded in 2010-11 [] concerned cases where the initial notification was from an employer. [] of those cases were well founded compared to an overall well founded rate of [] per cent. It should also be recognised that cases are carried over from

the previous reporting year at various stages of the process so it is not possible to reconcile the incoming cases with those that are concluded. The fifth cycle of employer events started in July 2011 with events taking place in Liverpool and Birmingham. Both events were fully booked with attendance from almost 200 delegates. Further employer events are scheduled to take place in London, Cardiff, Edinburgh and Belfast during October and November 2011. Those events have a focus on key information employers should know about the fitness to practise process, including when to refer matters to the HPC and what constitutes a fitness to practise allegations. Delegates also have the opportunity to discuss case studies which highlight key issues about referring an allegation.

Members of the FTP team have continued to meet with ambulance services over the course of 2011-12 to discuss key issues (including referral of complaints) around referring matters to the HPC.

The brochure 'The Fitness to Practise Process: Information for Employers' was updated earlier this year. That document provides more information for employers on how the fitness to practise process works. This was part of the work stream on 'expectations of complainants about the fitness to practise process'.

The revised Standard of Acceptance for Allegations includes more detail about 'resolving matters locally' and 'minor employment issues.'

- **Consider taking an advocacy role during the fitness to practise process and provide complainants with opportunities for more direct contact (e.g. face-to-face discussions to talk complainants through the steps in the process)**

It is suggested that some participants would welcome opportunities for face-to-face meetings with HPC to talk them through what can be seen to be an opaque process. This suggestion was also made as part of the recommendations that followed the expectations of the fitness to practise process work. In responding to that recommendation the following comment was made *'The Executive does not consider that it is always appropriate for face-to-face meetings to be part of the case to answer processes unless there are difficulties formulating complaints and a face to face meeting may be necessary. Further meetings between complainants/witnesses and the case manager are sometimes arranged when vulnerable witness assessments are required after a case to answer decision. However, we do propose that we produce operating guidance including risk assessment criteria as to when it is appropriate to hold such a meeting in advance of the case to answer stage. The Executive considers that such meeting should only take place under certain circumstances, for example if the complainant requires additional assistance or support. All registrants and complainants are provided with the telephone number of their case manager and should remain their primary source of contact. The role of the presenting officer in preparing the case includes taking statements from the witnesses.'* That statement still applies. If the Committee is minded for further work to be undertaken regarding this recommendation then the Executive suggests that this (and

the associated resources required to support such meeting) is considered as part of the work plan for 2012-13

- **Continue to improve communications with complainants during the fitness to practise process**

This is an on-going piece of work which remains a key element of the fitness to practise work plan.

Decision

The Committee is asked to discuss the report and agree with the proposals suggested by the Executive in relation to the 'non mediation' recommendations made by Ipsos MORI. Those proposals are as follows

- (a) that the recommendations around a 'two-tier advisory service are considered as part of the work plan for 2012-13;
- (b) that if the Committee considers any further work is required in relation to 'face-to-face meetings that this is considered as part of the work plan for 2012-13; and
- (c) that improving communication with complainants (and for that matter all those involved in the fitness to practise process) remains central to the fitness to practise departmental work plan

Background information

The Committee considered a range of papers at its February 2011 meeting on alternative mechanisms to resolve disputes. It also considered at its May 2011 a paper looking at the use of alternative dispute resolution in HPC's regulatory regime. Copies of those papers can be found at:

<http://www.hpc-uk.org/assets/documents/1000333120110216FTP05-altativemechanismsfordisputes.pdf>

<http://www.hpc-uk.org/assets/documents/100034F820110526FTP08-altmechanismstoresolvedisputes.pdf>

Resource implications

None

Financial implications

None

Appendices

Ipsos MORI Mediation Research

Date of paper

3 October 2011

Ipsos MORI



Mediation Research

Research for the Health Professions
Council: Final Report

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Executive Summary

This qualitative study by Ipsos MORI on behalf of the HPC explored the views of key audiences on the potential use and value of mediation within the HPC's regulatory regime. The research was conducted among members of the public, past complainants, registered professionals and key stakeholders to establish whether there is a place for the use of mediation as a regulatory tool in handling certain types of complaints, and if so, where any mediation process may best sit.

Four discussion groups were conducted, two with members of the general public, and two with registrants. In addition, 18 telephone depth interviews were carried out with registrants, members of the public and employers who were recent complainants. A further ten telephone depth interviews were carried out with key stakeholders identified by the HPC from professional bodies, unions, regulatory bodies and third-sector/not-for-profit organisations.

The key findings are outlined in this executive summary.

Perceptions of mediation

While the overall concept of mediation was familiar to many participants, there was less clarity on the detail. Some misperceptions, for example, were that mediation is not a voluntary process, that its objective is to avoid formal legal proceedings, that an agreement between the two parties is not a necessary outcome, and that there could be no purpose in mediation if there is no fitness to practise issue.

Participants tended to expect that the mediated agreement would include undertakings on behalf of the registrant to do more training or participate in a programme of mentoring or supervision. This is worth considering if the HPC develops the further use of mediation: it will be helpful to demonstrate not only that complainant and registrant can come to a mediated agreement, but also to show that the *content* of that mediated agreement is aligned with the HPC's goal of ensuring public protection

Does mediation fit within the HPC's regulatory regime?

Opinions were divided on whether the HPC should pursue mediation as part of the fitness to practise process. Some participants were supportive of the HPC investigating whether mediation may work, while others did not see a fit because they felt that mediation would widen the HPC's remit.

Participants were mindful of the complexities of the fitness to practise process and the types of cases the HPC deals with. In light of this, many felt that the merits or otherwise of mediation would need to be assessed on a case-by-case basis.

Arguments in favour of the HPC using mediation more widely included that it was seen to be a more flexible alternative route to the current fitness to practise process and could achieve a good outcome for the individual parties involved. Arguments against greater use of mediation revolved around the questions of whether a mediated agreement between two parties would necessarily be aligned with the greater public interest, the perceived risk being that this could undermine the rigour of the fitness to practise process.

Where could mediation fit in the fitness to practise process?

We explored the perceived value of mediation at several key points in the fitness to practise process - where a concern did not meet the standard of acceptance; at the mid-point when the investigating committee determines whether there is a case to answer; and at the end of the process following a formal hearing. Where participants supported greater use of mediation, they felt it could add value at all these stages - though the arguments for and against differed at each stage (as detailed in the report).

Regardless of where the HPC may decide to use mediation, participants identified a number of requirements that need to be met in order to minimise the risk and ensure that the public interest is protected. For instance, it was felt important that the HPC thoroughly investigate every complaint; be involved in the mediation process e.g. as a party to the mediation or as an observer; and, most importantly, approve the mediated agreement. Of the individual mediator, there was a preference for someone who was independent and impartial, skilled in mediation, with an understanding of the professional fields of expertise involved. There was also a desire for transparency in the process, and follow-up to ensure that any actions in the mediated agreement were implemented. Some also felt that in case the mediation process did *not* produce an agreement, there should be a safeguard mechanism in place; for instance, some participants suggested the parties should be required to return to the fitness to practise process.

Additional perceptions of the process and how it might be improved

There was a desire for alternative mechanisms to sit alongside the formal fitness to practise process to lend flexibility to what is perceived as a 'one size fits all' process. Mediation was seen by participants as one way to do this; offering a two-tier complaints process could be another alternative.

Some participants wanted the HPC to provide assistance outside of the fitness to practise process – for example, to give informal advice about a concern without triggering the formal complaints process, or to allow feedback about a registrant concerning lower level issues. Facilitated dialogue between complainants and registrants (that is not intended to reach an agreement but provides an opportunity for each party to express their feelings) was suggested as an option in the process to provide closure for the parties involved.

Complainants expressed a desire for the HPC to play an advocacy role during the fitness to practise process – providing opportunities for face-to-face discussions with complainants to talk them through what can seem to be an opaque process.

Participants identified that some employers use the HPC to resolve staff management issues that should instead be resolved at a local level. They suggested that the HPC could take an enhanced role in some cases and push staff management issues back to employers.

Recommendations and next steps

On the basis of the findings from this research, we put forward five recommendations for consideration by the HPC.

1. Proceed with a pilot to provide empirical data

The HPC has already indicated that it is planning a pilot. The diversity of opinion and polarisation of views across participants suggests that it would be useful for the HPC to test the concept of mediation within its regulatory regime by running a pilot. A pilot would provide empirical evidence about the use and value of mediatory processes.

2. Run a staged pilot which lays the foundation stones for mediation at different points in the fitness to practise process

Feedback from research participants suggests that the perceived benefits and associated risks are different at different points in the fitness to practice process; and that the benefits are perceived as greatest when it is used early in the process. In light of this, we would recommend that any mediation pilot should be designed specifically to examine the benefits and risks of mediation *at each stage* of the fitness to practice process. Given the greater perceived benefits of using mediation early in the fitness to practice process, it may also be worth designing the pilot to look at this stage first. Staged implementation would provide the foundation for subsequent stages and allow learning from early stages to inform the later ones.

In order to gauge the effectiveness of a staged approach, a piece of evaluation work that runs alongside the pilot will be required – a process evaluation that builds the evidence base for mediation and gathers feedback from participants in the process before taking up mediation, on completion of mediation and then again, a couple of months later.

3. Provide clear messages about the HPC's regulatory regime

As a regulator the HPC sets standards of practise and then holds registered professionals to those standards. Decisions are required at the strategic level about whether or not greater use of mediation fits within the HPC's regulatory regime. Such decisions about strategic intent are difficult ones to make, but the HPC needs to be clear

as an organisation on its rationale and context for mediation in a regulatory regime. If the HPC opts to make greater use of mediation as one of its tools, then the organisation must be able to provide clear and consistent messages to external stakeholders (registrants, professional bodies, and members of the public alike) of the reasons why it is encouraging mediation.

4. Communicate explicitly about mediation

There were varying levels of misunderstanding among participants about the details of the purpose and process of mediation. Consequently, their support and opposition for mediation within the HPC's regulatory regime was based on their own perceptions of what mediation means. This misunderstanding was further complicated by a lack of understanding of the fitness to practise process. Therefore it will be critical for the HPC to communicate explicitly about what it means by mediation – the processes involved and the objectives that mediation is looking to achieve – and to continue to improve the clarity of communications about the fitness to practise process itself.

5. Consider additional ways to enhance the fitness to practise process

There were a number of additional mechanisms suggested by participants that the HPC may consider in order to improve the fitness to practise process – mechanisms that would lend flexibility to what is perceived as a 'one size fits all' process:

- Investigate offering a two-tier complaints process where there is an advisory service / helpline to provide assistance during the fitness to practise process and also outside of it. This could also offer facilitated dialogue between complainants and registrants that is not intended to reach an agreement but provides an opportunity for each party to express their feelings.
- Look at ways in which to communicate with employers to prevent them misusing the fitness to practise process as a way to deal with internal disciplinary issues.
- Consider taking an advocacy role during the fitness to practise process and provide complainants with opportunities for more direct contact (e.g. face-to-face discussions to talk complainants through the steps in the process).
- Continue to improve communications with complainants during the fitness to practise process.

1. Introduction

This report presents the findings of a qualitative study conducted by the Ipsos MORI Social Research Institute on the Health Professions Council (HPC). The purpose of the research is to explore the views of key audiences on the potential use of mediation within the HPC's regulatory regime. The research was conducted among members of the public, other HPC stakeholders ('key stakeholders') and the 15 different health professionals that the HPC regulates. The work was commissioned by the HPC through a competitive tendering process.

1.1 Background

The HPC's regulatory regime

The Health Professions Council (HPC) is an independent regulator of health professionals set up to protect the members of the public who use the services of those it regulates. To do this, the HPC maintains a register of health professionals who meet their standards for training, professional skills, behaviour and health. It approves and monitors the UK educational programmes which lead to registration and takes action if a registrant's fitness to practise falls below the standards.

The HPC has been in existence since April 2002 and now regulates 15 professions (around 213,000 registrants), comprising:

- Arts therapists
- Biomedical scientists
- Chiropodists / podiatrists
- Clinical scientists
- Dietitians
- Hearing aid dispensers
- Occupational therapists
- Operating department practitioners
- Orthoptists
- Paramedics
- Physiotherapists
- Practitioner psychologists
- Prosthetists / orthotists
- Radiographers
- Speech and language therapists

Each of these professions has at least one professional title that is protected by law, including those shown above. This means, for example, that anyone using the title 'physiotherapist' or 'dietitian' must be registered with the HPC. It is a criminal offence for someone to claim they are registered with the HPC when they are not, or to use a protected title that they are not entitled to use, and the HPC prosecutes people who commit these crimes.

Next year the regulation of social workers in England will be transferred from the General Social Care Council to the HPC.

The HPC is funded entirely from fees payable by the professionals that it regulates. In 2010-11, it had an annual income of approximately £16 million of which more than 40% (£7.2 million) was spent on the operations of the fitness to practise function.

Previous research

This study forms part of a work stream that the HPC has carried out over the last five years examining the fitness to practise complaints process and identifying ways in which this process could be improved.

In October 2007, Jackie Gulland was commissioned by the HPC to undertake a scoping exercise on existing research on complaints mechanisms.¹ The review found that there was very little published research on complaints against the so called 'non-medical' professions regulated by the HPC. The report also identified a number of barriers to complaining, including difficulties in obtaining information about the complaints procedure, a problem exacerbated by the complexity of organisations providing care.

Another key finding was that whilst most studies of complainants found that people were dissatisfied with the complaints procedure, their satisfaction (or lack of it) depended in part on what they were expecting from the procedure in the first place. Attempting to resolve problems can be stressful and a lack of common understanding of the complaints procedure can be a source of dissatisfaction among users. Communication with complainants and potential complainants about what can and cannot be dealt with is therefore vital. With this in mind, a potential area of future research highlighted in the review was exploring expectations of complainants when they make a complaint to a regulatory body.

In 2009 the HPC commissioned Ipsos MORI to undertake a qualitative study of expectations of the fitness to practise process which included depth interviews with past complainants, discussion groups with HPC registrants and members of the public and interviews with other key stakeholders.

The study concurred with the Gulland report in that members of the public complain for a variety of reasons and that the purpose and scope of the fitness to practise process are not well understood. For instance, there was some confusion as to whether the remit of the HPC would include informal advice and mediation as well as a formal fitness to practise process. Furthermore, all stakeholder groups said they would be keen to see a mediation stage in the fitness to practise process; providing opportunities for an explanation or apology in recognition that this would be a satisfactory resolution to many complaints, and because some complainants were initially only looking to open channels of communication with the healthcare professional in question. Essentially there was an expectation from stakeholder groups that informal resolution would be one option available through the HPC.

¹ Gulland J (2007) Scoping report for the HPC on existing research on complaints mechanisms

The findings of the Ipsos MORI report, in concert with parallel developments in the wider regulatory and judicial world, prompted the HPC to consider alternative dispute resolution and whether it has a place in the HPC fitness to practise process. In 2010 the HPC commissioned Charlie Irvine and colleagues at the University of Strathclyde Law School to review the literature available in this area.² The review identified some of the benefits of ADR in other contexts and outlined the components of good practice. These included offering mediation early in the process; emphasising face-to-face communication between the complainant and registrant; facilitating explanation, apology (where appropriate) and plans for future learning and prevention. The review stressed that the role of a “mediation champion” during the introduction of a mediation scheme was important to successful implementation. It also highlighted two mechanisms by which the HPC could ensure that the outcomes of mediation align with its duty to protect the public – refer back to the Investigating Panel for ratification and/or have an HPC partner as part of the mediation process.

1.2 Objectives

Building on the work that the HPC had already completed in this area, the objectives of this particular study were twofold:

- to gather the views of HPC’s key audiences on the potential use of mediation within its regulatory regime; and
- to establish whether there is a place for the use of mediation as a regulatory tool in handling certain types of complaints, and if so, where any mediation process may best sit.

The findings of this study will inform the approach that the HPC takes towards mediation, as well as adding to the evidence base of professional health and social care regulation more widely.

1.3 Methodology

The qualitative research methodology comprised in-depth telephone interviews with recent complainants to the HPC and with key HPC stakeholders, and discussion groups among health professionals (those registered with the HPC) and members of the public.

Qualitative research with recent complainants

Eighteen telephone depth interviews with recent complainants were conducted between 14 July and 8 August 2011.

² Irvine C, Robertson R, Clark, B (2010) Alternative mechanisms for resolving disputes: a literature review for the Health Professions Council www.hpc-uk.org

The HPC recruited from a list of recent complainants, inviting complainants to take part in the research. Potential interviewees were selected on the basis of the following factors:

- whether they had complained as a member of the general public, a registered health professional or an employer; and
- the stage in the fitness to practise process that their complaint had reached (i.e. not a fitness to practise issue, not referred to a final hearing, referred to a final hearing and proven not to be well founded, or referred to a final hearing and proven to be well founded).

Table 1 displays a breakdown of the sample of the recent complainants provided to Ipsos MORI by the HPC and the number of interviews completed with each type of complainant.³

Table 1 Breakdown of complainants in the sample and those interviewed

	Members of the public		Registered health professionals		Employers	
	Sample provided	Interview complete	Sample provided	Interview complete	Sample provided	Interview complete
Not about fitness to practise ⁴	3	2	3	2	0	-
Not referred to a final hearing ⁵	4	2	3	2	2	2
Referred to a final hearing and case is proven not well founded ⁶	5	2	2	2	5	2
Referred to a final hearing and case is proven well founded ⁷	0	-	0	-	7	2

³ Because of the system of opt-in, it was not possible to know how many of the leads would emerge for the 18 interviews to be conducted from. In consenting to the research, recent complainants were aware that the HPC would provide their contact details to Ipsos MORI (see Appendix 1 for a copy of the opt-in letter).

⁴ This is where a concern has been reported to the HPC, the HPC has carried out a preliminary investigation and determined that the concern does not meet the standard of acceptance – it is not about a professional who is registered with the HPC or it is not about the fitness to practise of the professional.

⁵ This is where a case meets the standard of acceptance for fitness to practise and is considered by an Investigating Committee which decides that there is no case to answer (i.e. that the case does not need to be taken any further).

⁶ This is where the Investigating Committee refers the case to be heard by a panel of another HPC Committee, which decides that the allegation is not proven and the professional's fitness to practise is not impaired.

⁷ This is where the Investigating Committee refers the case to be heard by a panel of another HPC committee, which decides that the allegation is proven and the professional's fitness to practise is impaired. The panel has powers to take no further action or order mediation, caution the professional,

Qualitative research with key stakeholders

Ten key stakeholder interviews were conducted between 18 July and 11 August 2011. The HPC provided Ipsos MORI with a list of 35 key stakeholders from which to conduct the interviews, and Ipsos MORI selected a sample from this list. The sample included a mix of professional bodies, unions, regulatory bodies and third sector/not-for-profit organisations.

Qualitative research with members of the public and registrants

Four discussion groups were held – two in London and two in Birmingham. In each location two groups were held consecutively, one with members of the public and one with health professionals registered with the HPC.

The registrant groups were recruited via telephone by Ipsos MORI's specialist recruitment team from a random sample (stratified by health profession and location – Birmingham and London) of 172 registrants provided by the HPC. A letter was sent in advance to potential participants. Registrants from across the 15 professions that the HPC regulates took part, with a mix of representatives from the different professions in each group. The discussion group members were also mixed in terms of age and gender.

The participants of the other groups were recruited by Ipsos MORI's specialist recruitment team via an on street face-to-face method.

Table 2 gives a summary of the participants recruited for each group:

place conditions of practise on the professional, suspend the professional from practising or strike the professional from the register.

Table 2 Breakdown of Discussion Group Participants

	Location	Date	Gender	Age	Social Grade
Members of the Public Group 1	London	20/07/2011	5 women / 4 men	37-81	C2, D, E
Members of the Public Group 2	Birmingham	16/08/2011	5 women / 3 men	18-32	B,C1
HPC Registrant Group 1	London	20/07/2011	4 women / 4 men	Professions Represented Biomedical Scientist; Clinical Scientist; Dietitian; Occupational Therapist; Paramedic; Physiotherapist; Speech and Language Therapist	
HPC Registrant Group 2	Birmingham	16/08/2011	7 women / 3 men	Art Therapist; Biomedical Scientist, Dietitian; Hearing Aid Dispenser; Operating Department Practitioner; Podiatrist; Speech and Language Therapist	

Source: Ipsos MORI

The in-depth interviews tended to last between 30 – 45 minutes and the discussion groups lasted around 90 minutes each. All discussion groups and in-depth interviews were led by a topic guide, which was developed and agreed with the HPC. Topic guides are included in Appendix 2.

All qualitative in-depth interviews and discussion groups were moderated by an Ipsos MORI moderator. The participants themselves dictated the general content and flow of the discussions, within the framework of the topics introduced by the moderators.

With the permission of participants, all discussions were recorded and then transcribed for analysis. Quotations are cited textually in the analysis to add detail to the interpretation. The identities of participants have been kept confidential throughout.

1.4 Interpretation of qualitative findings

This study explored the attitudes and experiences of participants. The aim was not to generalise to the wider population in terms of the prevalence of attitudes or

behaviours but to identify and explore the different issues and themes relating to the subject being researched.

Care has been taken throughout this report to ensure that comments are not able to be attributed to individual participants.

1.5 Publication of data

The standard Ipsos MORI Terms and Conditions apply to this, as to all studies we carry out. Compliance with the MRS Code of Conduct and our clearing is necessary of any copy or data for publication, use on websites or press releases which contain any data derived from Ipsos MORI research. This is to protect our client's reputation and integrity as much as our own. We recognise that it is in no-one's best interests to have research findings published which could be misinterpreted, or could appear to be inaccurately, or misleadingly, presented.

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2. Perceptions of mediation

We begin this report with a look at general awareness of mediation and the perceptions, misperceptions and expectations participants had for mediation in relation to fitness to practise.

Key Findings: Perceptions of mediation

- Mediation means different things to different people. While the overall concept of mediation was familiar with participants and they had an intuitive awareness of what mediation involved, there was less clarity on the detail. Therefore, if mediation is to be offered, we recommend that the HPC provides complete clarity about what the process will involve and its objectives.
- Some misperceptions, for example, were that mediation is not a voluntary process, that an agreement between the two parties is not a necessary outcome, and that there could be no purpose in mediation if there is no fitness to practise issue.
- Participants tended to expect that the mediated agreement would include undertakings on behalf of the registrant to do more training or participate in a programme of mentoring or supervision.

While detailed awareness of mediation was low, the general concept was familiar across all the audiences we spoke to, and there was an intuitive awareness of what it involved. This was the case for members of the public, some of whom were aware of mediation (and had a positive perception of it) through their work or through dealing with issues such as neighbour disputes, where the local authority or housing provider may offer mediation, and divorce. Examples of other settings in which participants were aware of mediation included the family court and employment tribunal disputes.

Getting into the detail of mediation, the picture became more complex. Most importantly, some participants used the term 'mediation' to mean different things, and had different ideas about what it should involve if offered by the HPC. The message was that if mediation is to be offered, there must be complete clarity about what the process will involve and what its objectives will be in order to manage expectations and provide reassurance that the fitness to practise process itself, with its impartial investigative rigour and power of sanctions to address poor or dangerous practise, is not superseded.

2.1 Awareness of mediation

Most participants were aware of the basics of mediation: that it is a method of addressing disputes that involves bringing together the two parties to meet face-to-face, with a neutral and independent facilitator, to explore ways of resolving or at least overcoming the dispute.

My understanding of mediation is that it's a confidential process, which, if done by an experienced mediator, can be incredibly valuable in bringing two people who are diametrically opposed to actually maybe not agree, but agree to differ rather than just continue on in the same old vein.

Stakeholder

Some members of the public had experience or awareness of different types of mediation through their work or other areas of their life.

The woman came from the housing office and she just offered mediation between the two.

Member of the public, Birmingham

They use a mediator to treat divorce.

Member of the public, London

We do mediation at the workplace with the victims and the offenders... for the victim to be able to ask the offender why they've done what they've done and for the offender to explain it or to apologise.

Member of the public, Birmingham

Participants in their spontaneous understanding were often less clear about the detailed defining features of mediation, for example that it is voluntary rather than compulsory.

They shouldn't be forced into it but if they [are] offered the opportunity to do it then I think that's a good thing.

Member of the public, London

Another participant viewed mediation as being necessarily fixed to the stage prior to any dispute or legal process to see if the formal proceedings can be avoided.

It's a process whereby the complainant and the person complained about could be brought together prior to the instigation of, shall we say, formal proceedings to see if the complaint can be satisfied in any way other than a full hearing.

Stakeholder

Whilst clear on mediation's dispute resolution focus, some participants did not see the face-to-face element as essential.

As far as I'm aware of mediation it's getting the two parties together, it may not be in the same room, but to really try and resolve the issues.

Stakeholder

2.2 Perceptions of mediation

On further discussion of mediation it became apparent that mediation can mean different things to different people. Subsequently, expectations of what mediation can and should achieve differed.

As we have seen, mediation may be viewed as a way to avoid formal processes if possible. Another stakeholder saw mediation in a similar way, but proposed a slightly different type of process to supplement the fitness to practise process – one where reaching agreement is *not* mandated:

Mediation is perhaps not the appropriate term. The purpose of mediation as it's used in the UK today is to come to a resolution as a way to avoid litigation. It is not a replacement for fitness to practise, because [mediation as applied to fitness to practise] would have two parties engaging in dialogue rather than having an agreement that comes out at the end of the mediation process.

Stakeholder

The underlying concern of the stakeholder here is that having a mediation process whereby agreements can be reached might undermine or supersede the formal fitness to practise process. This was one of the more notable concerns that participants in general had about the HPC offering mediation.

What I don't think is appropriate is to replace the current system with mediation because from my perspective it's very clear and helpful that there are the standards for behaviour and practice that are set in conjunction with the professions...if those standards are broken then it's possible that the practitioner is not fit to practice, and therefore you do need a proper process of inquiry and investigation and adjudication.... So it shouldn't be a replacement for that. I know that some people are looking at mediation as a kind of alternative to FTP practices and for me they can't and shouldn't be an alternative.

Stakeholder

Some participants could not see how mediation could be of use at any stage other than early on in the process and, even then, only if a fitness to practise case to answer had been found:

If you're looking to save time, money, heartache, mediation should come in at an early stage... If it's disproved at stage one, what's going to be achieved by mediation because HPC have already decided there's no case to answer... If sanctions have been imposed

then surely you should have the answers already.

Stakeholder

Some stakeholders, registrants and employers who had been through the complaints process could see a role for mediation to address issues of competency where a programme of training/revision, mentoring or supervision was appropriate.

There's competency to practise where people are not bad, but they're not doing their job properly, and mediation would be a tool to explore and one can find out that the management or whoever's complaining are not providing the correct training. Mediation would pick that apart and allow the process to move forward to benefit both parties.

Registrant, London

In such cases, it was suggested that the employer and registered professional could agree a programme of work (the mediated agreement) which would then be approved by the HPC. Technically this type of mediation would be outside the traditional scope of formal mediation because there is a pre-determined outcome requirement – a programme of work – and one which a complainant is unlikely to be able to have meaningful input into because it requires a comprehensive knowledge of the professional standards of practise.

There was an expectation among all audiences that any mediated agreement would have a specific set of outcomes including undertakings to complete a programme of training, mentoring or supervision as deemed appropriate for the issue. Furthermore, there was a sense that the success of the mediation process would be judged on the outcomes included in the mediated agreement.

I suppose it depends on what comes out of the final process. You could put as many policies in place as you wish but it's what's churned out the other end that makes the difference. So if there's no end result and nothing's learned by the process, then it's pointless.

Stakeholder

3. Does mediation fit within the HPC's regulatory regime?

This chapter considers the appropriateness of mediation in the HPC's regulatory regime, specifically as part of the fitness to practise process. We address key questions including whether participants felt that mediation fits within the HPC's remit and whether it is something that the HPC should be making greater use of.

Key Findings: Does mediation fit within the HPC's regulatory regime?

- Opinions were divided on whether the HPC should pursue mediation as part of the fitness to practise process.
- Some participants were supportive of the HPC investigating whether mediation may work because they saw that it could provide an alternative route to resolution – one that was more flexible compared to the current 'one size fits all' process.
- Other participants felt that mediation did not fit with the HPC's primary duty because they thought the purpose of mediation was to achieve a good outcome for the individual parties involved, rather than to protect the health and wellbeing of the public.
- Mediation was not considered to be appropriate for the HPC because it involved compromise and there was a perception that it could put the rigour of the fitness to practise process at risk by placing the regulator's responsibility on the individuals involved.
- Some viewed mediation as a role for other parties such as employers or professional bodies, but not the HPC. However, in cases where there was a small employer or no professional body, then participants felt that it may be appropriate for the HPC to offer mediation.

As we have seen participants generally were positive about the concept of mediation. However, this did not necessarily translate to an endorsement of mediation within the HPC's regulatory regime, and there were mixed views about whether mediation could fit within the fitness to practise process. While some participants were open minded and supported the HPC in investigating the merits of mediation within its regulatory regime, others were more cautious and some felt that there is not a place for mediation at all because it does not fit within the HPC's current remit. In general, this broke down as follows: the participants who were least familiar with the fitness to practise process (principally, members of the public) were most likely to be positive about the HPC offering mediation, while those who were most familiar (eg registrants, past complainants or key stakeholders) were less sure that mediation should be a

role for the HPC. However, as the participant comments illustrate below, this distinction was by no means cut and dried.

... it's not appropriate for everyone, but [mediation] can be an excellent choice for people. And you know, when it works it works very, very well.

Stakeholder

I think they [the HPC] should be encouraged to use every method appropriate to the individual case to reach their objective. Their objective is to protect the public and mediation is one of the tools in the tool box that they may or may not choose to use.

Complainant (registrant)

I did think, "oh that's a really good idea" when I first [heard], but actually I am not quite sure what place it would have, given the responsibilities of the HPC to legally protect the public from harm.

Complainant (employer)

Overall, stakeholders, registered professionals, past complainants and members of the public alike were mindful of the complexities of the fitness to practise process and the types of cases that the HPC deals with. Consequently, the overwhelming response from all participants to the question of whether mediation was a role for the HPC was: "it depends". This theme had multiple aspects: it depended on the objectives of mediation; it depended on the type of case in question; it depended on the specific individuals involved and whether employers are involved. There was a sense that the merits or otherwise of mediation needed to be assessed on a case-by-case basis because "every case is unique to its own fact".

I think each case would have to be assessed on its own merit and depending what it is I don't think you could say carte blanche we only mediate on XYZ cases...

Complainant (registrant)

But I don't see why it should necessarily be completely incompatible with their overarching statutory role, again because they have the process in place to do the vetting of cases, and they're obviously very clear on the instances in which mediation just could not be offered in terms of the severity of the complaint or the general circumstances...

Stakeholder

All participants asked further questions about the parameters and outcomes of mediation expressed in various ways. For example, was it about compromise; was it to provide an alternative route to the existing fitness to practise process; or was it intended as a preventative measure to avoid a concern becoming a fitness to

practise complaint? One stakeholder pointed to other regulators who do this, such as the General Optical Council which is seen to deal with non-fitness to practise issues effectively using mediation. The rest of this chapter discusses various elements relating to the parameters for and desired outcomes from mediation.

To provide an alternative, more flexible route to resolution

The formality and rigour of the formal fitness to practise process was deemed to be necessary and appropriate (and participants were unanimous in this opinion). Participants in support of mediation saw that it could enhance the fitness to practise process by offering an alternative process that is less formal and one that provides greater flexibility.

There needs to be a degree of flexibility I think, so I think mediation is needed.

Stakeholder

On the other hand, some were concerned that mediation would be too flexible and put the rigour of the fitness to practise process at risk because they felt it would detract from the seriousness of the fitness to practise process; standards may not be upheld and cases may not be treated fairly.

A regulator is there to be objective and say “Actually no these are the lines, these are what you work within” and they shouldn’t be blurred. Whereas mediation feels like the idea of it is that you find compromise on both sides

Complainant (employer)

There was also a sense that in using mediation the HPC would be abdicating its responsibilities as a regulator because the objectives of the individual involved differ from that of the HPC.

Contrary to this, while many recent complainants we spoke to felt that mediation was not something that would have been helpful in their own particular case, they were generally positive about the general idea of mediation being suggested by the HPC in other cases. As one member of the public pointed out:

I think the disadvantage of it is no matter what the case was or whether I was the complainant or the person who’s having the complaint against I don’t think I’d want to face the other person in a room. Well if I found someone complaining against me I wouldn’t want to see them and if I was the one making the complaint I don’t think I’d want to see that person either.

Member of the public, Birmingham

In addition to uncovering whether people want mediation, complainants and stakeholders stressed a desire for any mediation process to be sensitive and

receptive to the needs of the individuals involved. One stakeholder summed it up as follows:

Some people will embrace the process. Others will obviously fight against it and say no, this is what it is and this is the way it needs to be done sort of things. We have that ourselves within our own disciplinary procedure you know. Some people are happy to look for mediation, quite happy to sit round a table. Others sometimes feel intimidated. You know, they're having to face a manager or a senior manager or whatever, and talk face to face to them. So in that respect then I would imagine it depends on the character of the person as well.

Stakeholder

Mediation meets the interest of the individuals involved so it doesn't fit with the HPC's core role

Many participants saw the primary purpose of mediation as dispute resolution between the affected parties – valuable in achieving a good outcome for the individual parties involved. As a result, they did not see a natural fit with the HPC's role of protecting the health and wellbeing of the public and felt that mediation sat outside of the remit of the HPC, or was not the HPC's primary duty.

Mediation or dispute resolution may be in the patient's interest, but it is not in the public interest.

Stakeholder

In fact, several stakeholders were adamant that it was not the HPC's role to attend to the well-being of individual parties involved in disputes.

I think the prime objective of mediation with the HPC is to ensure that the person is safe to practice their art on the public. I don't see mediation in this context to keeping people happy. I think that's wrong.

Stakeholder

[The HPC's role] isn't to find compromise and make it all a bit softer and more comfortable for everybody. To me when you get to the stage of a regulator being involved it really is giving a sense of the gravity and the magnitude of the situation. It shouldn't be a sort of a soft option.

Complainant (employer)

While some stakeholders felt very strongly that the role of the HPC was not about making the individual parties feel better, others recognised that the formal process

could be difficult for the parties to go through and that something to soften the process could be useful even though it was not the HPC's primary consideration.

[Making the individuals feel better] – it's not their primary consideration, I suppose you'd have to say that. But in that, you know, the regulator is regulating human beings, I don't see why there couldn't be something in place in certain circumstances to avoid the battering and the bruising.

Stakeholder

Mediation is not a regulator's job – others should do it

Some registrants and complainants who saw value in mediation but did not consider it to be part of the HPC's remit, suggested that mediation should be the responsibility of employers or professional bodies instead.

Internally within the Trust I would see us doing the mediation and trying to manage things but my initial thought is the regulator should be hard and fast and very clear about the expectations.

Complainant (employer)

Conversely, where other parties were not available or able to address the issues concerned, participants felt that there may be a role for the HPC – particularly when the registrant is an independent practitioner or where a small employer is involved that lacks internal mechanisms for dispute resolution:

A practitioner within an NHS or independent sector service ...will have their own disciplinary procedures to go through and it's more likely to come with a successful outcome in terms of people understanding what has happened within a process.

Complainant (employer)

[Mediation may be useful for] resolution of longer term problems that are just going to sit there and fester if they're not addressed. And if HPC aren't addressing them, and whether it's a part of their role is a separate question, there may be instances where nobody else is going to address it.

Stakeholder

One stakeholder flagged the importance of ensuring that when the employer representative of a larger organisation (such as a Trust) is involved in mediation, then the HPC would need to ensure that the representative has a good knowledge of the professional standards and requirements (e.g. a health professional within the organisation such as a head of department rather than a member of the HR department).

Participants who were familiar with the intricacies of the fitness to practise process, particularly stakeholders or employers who had submitted complaints, found it hard to see a fit for mediation in big formal cases where many more than just two people involved (e.g. solicitors and Trust organisations).

Stakeholders and employer complainants also suggested that there may be a role for mediation between the HPC and the registrant (rather than the complainant and the registrant) because complainants have different agendas and expectations which are not necessarily in the public interest. In the eyes of one stakeholder, a complainant was a witness to the issue and the HPC (not the complainant) was the party who had been wronged.

...the patient is in effect a witness to the event; they are not the individual who is wronged in that sense. It's the HPC that is wronged from my view and the individual [registrant] has wronged their professional status, they have not wronged the patient. If they've wronged the patient, there are other avenues for the patient to take and that's civil action.

Stakeholder

Another stakeholder acknowledged while it was not the HPC's role to make people feel better, it did fall within the HPC remit to ensure that individuals involved have their rights protected and have outcomes and processes clearly communicated. This is linked to some additional ways that the HPC could meet the needs of individuals involved in the fitness to practise process (discussed in chapter five).

Some participants saw a role for mediation to help the parties to understand the HPC's decision more clearly. For instance, one employer complainant who felt that the outcome of the HPC's investigation had not delivered as hard a line as the Trust's own disciplinary procedures, suggested that mediation may have been helpful for the registrant in their case.

...[the registrant] was left kind of, I suppose angry and aggrieved that we had deemed him unfit to practice, because he couldn't practice as a qualified member of staff, but the HPC who he is professionally accountable to, didn't deem him as unfit, so you can imagine that actually caused conflict for him.

Complainant (employer)

Stakeholders and registrants alike voiced concerns about the motivations of the different parties involved, and felt that these would need to be considered in deciding whether mediation was appropriate for the HPC or not. As highlighted in previous research Ipsos MORI conducted for the HPC's fitness to practise directorate, complainants had expectations that their clinical issues would be resolved when they submitted a complaint to the HPC.

We do the case notes from the HPC hearings and having attended some HPC hearings as well. I think sometimes that doesn't satisfy

the people that are taking those cases up, I mean they don't actually necessarily want that person to be punished, what they want is their clinical issues resolved to their satisfaction and the HPC cannot really do that so I am wondering if that may be a role for mediation whether that's carried out by the HPC or by A N Other organisation.
Stakeholder

4. Where could mediation fit in the fitness to practise process?

We asked participants for their views on where mediation may fit within the fitness to practise process. The HPC had already completed some work in identifying possible points in the fitness to practise process where mediation may be of value. These were the three key decision points for the HPC in the fitness to practise process:

1. at the beginning of the fitness to practise process when a concern is submitted and does not meet the standard of acceptance for a fitness to practise issue;
2. in the middle of the fitness to practise process when an investigating committee finds whether there is a case answer; and
3. at the end of the process after a formal hearing is held.

These propositions were put to participants to gauge their reactions to these suggestions, their preferences and to provide insight into the reasons for their views on these options.

Key Findings – Where could mediation fit in the fitness to practise process?

- Participants perceived that mediation could sit at the beginning of the process when a concern did not meet the standard of acceptance for a fitness to practise issue. Here it was felt that mediation would not affect the fitness to practise process itself and was therefore seen as less of a risk. However, it would extend the HPC's remit and some participants thought that the HPC should have no involvement in issues that are not fitness to practise.
- Mediation could be used at a mid point in the fitness to practise process when an investigating committee finds whether there is a case to answer. Participants felt this could become an option to offer a less formal process for resolution and could reduce the length of the process. However, some participants were concerned that doing so would extend the HPC's remit, blurring their current role, and may give the perception that the issue is not being taken seriously.

- The use of mediation at the end of the fitness to practise process, after a formal hearing has been held would provide the opportunity for face-to-face dialogue between the parties and therefore closure (something that a formal hearing is not considered to provide). However, participants felt that this would lengthen the process therefore increasing resource requirements, and that it is not part of the HPC's core role of protecting the public because it only looks after the interests of the individuals involved.
- Regardless of where the HPC may decide to use mediation, participants identified a number of requirements that need to be met in order to minimise the risk and ensure that the public interest is protected. For instance, it was felt important that the HPC thoroughly investigate every complaint; be involved in the mediation process e.g. as a party to the mediation or as an observer; and, most importantly, approve the mediated agreement. Of the individual mediator, there was a preference for someone who is independent and impartial, who is skilled in mediation and also has an understanding of the professional fields of expertise involved. There was also a desire for transparency in the process, a back-up if mediation failed and follow-up to ensure that any actions in the mediated agreement have been implemented.

4.1 Three possible points where mediation could be used

It is important to note that participants found it difficult to think about mediation at the three different points in the fitness to practise process. As we have seen, this stems from the complexity of the process; mis-understandings about mediation and what it entails; and differing views as to the purpose of mediation as discussed in the previous chapter.

The table overleaf summarises the advantages and disadvantages that participants identified from introducing mediation at three key decision points in the fitness to practise process. We discuss the various arguments put forward about mediation in each stage in the process in more detail before concluding with the elements that participants felt were important for ensuring that mediation meets the public interest.

Point in the fitness to practise process where mediation may be used	Pros	Cons
1. At the beginning of the fitness to practise process when a concern is submitted and does not meet the standard of acceptance for a fitness to practise issue	Helps to resolve disputes for which there are no alternative mechanisms of resolution	<p>Extends the HPC's remit beyond fitness to practise</p> <p>Mediation only looks after the individuals involved and does not protect the public</p>
2. In the middle of the fitness to practise process when an investigating committee finds whether there is a case answer	<p>Prevents the need for a formal hearing</p> <p>Offers a less formal process for resolution</p> <p>Reduces the length of the process and allows the HPC to resolve cases more quickly</p> <p>Achieves more satisfactory and practical outcomes than through a purely adversarial system</p>	<p>Extends the HPC's remit beyond fitness to practise if there is no case to answer</p> <p>Mediation only looks after the individuals involved and does not protect the public</p> <p>May give perception that the issue is not being taken seriously</p> <p>If mediation is offered before a hearing judgement is made, there is a risk of "plea bargaining"</p> <p>Increases the need for resources; it is not a cheap or easy option because it needs proper facilitation and both sides need to be fully prepared</p> <p>Blurs the current role of the HPC</p>
3. At the end of the process after a formal hearing is held	<p>An opportunity for apology</p> <p>Face-to-face dialogue to "rehumanise" the other party</p> <p>Helps parties involved to understand the HPC's decision more clearly</p> <p>Helps to determine the next steps (e.g. programme of retraining, supervision, mentoring)</p> <p>Provides closure when the hearing judgement provides a clear outcome for the practitioner, but leaves the complainant hanging</p>	<p>It is not a cheap or easy option because it needs proper facilitation and both sides need to be fully prepared</p> <p>Unnecessary because parties have already had an opportunity to hear from each side at the hearing</p> <p>Mediation only looks after the individuals involved and does not protect the public</p> <p>The registrant is unlikely to agree to it because they have already been punished</p> <p>It is not the HPC's role as a regulator to make the parties involved feel better</p> <p>Lengthens the process</p>

Stage 1: At the beginning of the fitness to practise process when a concern is submitted and does not meet the standard of acceptance for a fitness to practise issue

Participants tended to want the option of mediation ‘up front’ in the fitness to practise process because they saw it as a more cost-effective way of resolving disputes with the potential to prevent concerns from escalating to formal fitness to practise complaints. Mediation at this point was considered particularly appropriate for issues that were highly subjective (i.e. personality issues or differences in opinions) and was perceived as less risky than at other stages of the fitness to practise process.

I think in cases where it’s a sort of subjective complaint that it might be better to have mediation earlier in the process. I mean obviously, if you have some sort of complaint against a person where they clearly haven’t upheld the standards of the profession, whereas it’s more a black and white type case then it might be better later.

Registrant, Birmingham

If you made a complaint about me and the HPC decided it was a fitness to practise issue and you were to decide “I’m happy now”, that it doesn’t take away the threat that I would possibly pose to another patient. So surely the only time you could bring mediation into it is once fitness to practise has been decided that that’s not an issue.

Registrant, London

[Mediation] right at the beginning is important because you might find that some people are quite hasty in putting a complaint in and if there’s a chance for a bit of breathing space to sit down and say “Well actually do you understand the implications of reporting this person?”, to think about, and have a discussion around that, and they’ve thought about what their actions were.

Registrant, Birmingham

However others, particularly some stakeholders and registrants, were clear that where a case does not concern a fitness to practise issue, then the HPC should have no involvement in the case.

If there clearly isn’t a case to answer I think it’s up to the parties concerned if they wish to go to mediation and it shouldn’t be something that HPC provide as a resource.

Stakeholder

...so perhaps the individual could say, “actually I would like you to mediate, I would like some mediation on this because I am sitting here, I have gone through this, I have been fairly treated by the HPC but I feel that my organisation is not upholding what you said”. So perhaps the route into it could either be via the organisation needing mediation or the individual as an outcome of a hearing.

Complainant (employer)

Registrants and stakeholders were also concerned that there would be little obligation for a registered professional to take part in mediation if the HPC deemed that it was not a fitness to practise issue.

If it was in cases when it wasn’t a fitness to practise issue, then what’s your obligation to go to mediation? ‘Cause you’re not going to get struck off by the HPC or complained about by them then really you don’t then feel that you have to go to the mediation because there’s no comeback.

Registrant, London

Stage 2: In the middle of the fitness to practise process when an investigating committee finds whether there is a case to answer

Registrants, members of the public and stakeholders saw the benefits in a process that was quicker than a formal hearing by which the parties reach an outcome that is satisfactory to everyone, and identified that the costs and burden on the HPC would decrease as a result. They were also positive about the idea of a less formal process that would reduce the burden on the parties involved.

[Mediation] would feel less formal and less intimidating for everybody involved and it may, you know, enable better relationships after complaints have been made.

Complainant (employer)

Stakeholders and registrants felt that mediation could be appropriate in cases where the HPC and the registrant understand the issues and agree about what happened. For example, issues about a registrant’s health or competence where a formal hearing was not required, but mediation could help identify gaps in training as mentioned earlier.

On the other hand, participants identified a risk that having two separate routes at this point – mediation vs. formal hearing – would result in inconsistent decisions. Several stakeholders pointed out that this may be addressed by appropriate guidance and criteria for decision makers.

Other stakeholders proposed that mediation at this point would not necessarily realise cost savings because it was a resource intensive process and there was a risk of drop-outs should one of the parties change their mind and decide not to go ahead.

It's not a cheap option. It's something that needs proper facilitation and preparation on both sides, both parties need to understand what the potential benefits of it are and what the risks of it are because there are risks associated with it in terms of people opening themselves up and saying what they think and what they feel.

Stakeholder

Some participants found it difficult to see how mediation could have a place later in the fitness to practise process because the mediator had a neutral role and this would not be appropriate the further through the process, and the more serious, the case gets.

The concept of mediation before a hearing judgement is made did not sit well with participants. Stakeholders identified a risk of “plea bargaining” at this point, particularly when the registrant did not accept that they had done something wrong.

It would be dangerous when a registrant says yes to mediation to get a better outcome.

Stakeholder

There was also a feeling that mediation at this stage could duplicate processes.

Stage 3: At the end of the process after a formal hearing is held

In general participants saw limited value in having mediation at the end of the fitness to practise process (e.g. after sanctions awarded at a formal hearing). There was a feeling that this would go against the purpose of mediation because the hearing would have already provided a resolution.

Again, what's the point of having the mediation if they've made their decision? ... That would then seem to me to go against the whole concept of mediation...

Registrant, Birmingham

As at stage one, some complainants, registrants and stakeholders were unsure whether registrants would agree to mediation, particularly if it followed a formal investigation and hearing.

The registrant thinks 'hang on I have been through the mill here, I am not going to go through that as well, I have already been punished, and as far as I am concerned it is finished, you have won your case'.

Complainant (employer)

Furthermore, participants expressed concern about the outcome of mediation being a factor in the panel's decisions about sanctions.

I think one would have to be extremely clear about what the purpose of that was because in a sense it's kind of devolving some level of responsibility to the practitioner and the client and actually the responsibility is with the adjudication panel.

Stakeholder

Although one stakeholder suggested that it could be worthwhile in providing the parties involved with some closure (particularly for the complainant because the hearing judgement provides a clear outcome for the registrant) and an opportunity to "rehumanise" each other, this was in the sense of a facilitated dialogue process rather than formal mediation (see chapter five).

For the practitioner [the hearing outcome] is very clear [but]... in terms of the patient or patients that are involved, it's an ending of a sort but the problem with it is that in some circumstances it can leave people you know at the kind of penultimate chapter of the book as it were.

Stakeholder

Some participants also felt that mediation at this point could help parties to understand the HPC's decision more clearly. Again, this seemed more in a facilitated dialogue sense rather than formal mediation. Similarly, an employer suggested that mediation could help resolve differences between an employer's decision and the HPC's decision if, for instance, the employer had placed greater restrictions on the registrant than the HPC.

Others viewed mediation as unnecessary at this point because they felt the parties would have already had an opportunity to hear from each side at the hearing.

It [mediation] may be helpful for the patient and registrant to have discussion, but there is no purpose for mediation if the patient attended the hearing and heard the evidence.

Stakeholder

In the eyes of some participants a formal hearing delivers on the HPC's remit to protect the public by ensuring that registrants are safe to practise, but mediation would only look after the interests of the individuals involved and not the public interest.

[HPC has] the responsibility to protect the public and mediation is simply there ... to keep both sides happy. That's not really the object [of the fitness to practise process] is it? It's to prove to the public that this person will be capable at the end of it.

Stakeholder

Another stakeholder suggested that mediation may have a subsequent place in the fitness to practise process: for reviews that are held by the HPC (e.g. after two years). These could be mediated, rather than go through a formal hearing.

As in stage one, there were fears among registrants and stakeholders that the registrant would not agree to take part in mediation. Some participants also felt that mediation at this stage would lengthen an already long process.

4.2 Requirements for mediation to meet the public interest

Stakeholders, registrants, members of the public and past complainants alike were supportive of the HPC's primary purpose to protect the public interest and ensure the safety of people who use the services of registered health professionals. As a result, it would seem to be important that the HPC ensures that mediation meets the public interest and participants made a number of suggestions for achieving this. These included discussions around who the mediators should be and the skills and knowledge they require, to involvement of the HPC in the mediation process, including signing off the mediated agreement.

Thorough investigation of every complaint

First and foremost people wanted reassurance that each complaint would be thoroughly investigated. They saw this as critical to maintain the credibility of the regulator and ensure that any fitness to practise issues are addressed.

Should the HPC be a party to the mediation?

Some stakeholders and employers felt that the HPC should be a party to the mediation, while others argued that mediation is a two party process. One suggestion was that the HPC could be an observer but not part of the mediation process. However, this could raise issues of confidentiality that would need to be considered because the parties (particularly the registrant) may not be as open and honest in the mediation, as compared with when the HPC is not present.

An HPC panel should sign-off the agreement

Complainants, registrants, stakeholders and members of the public all agreed that the HPC would need to approve any mediation agreement that was reached, and that this would be an important part of protecting the public interest.

Shouldn't there be more monitoring of the outcome and taking action if needs be in completing the [mediation] process?

Member of the public, Birmingham

A report needs to be written and signed off by the HPC I think would be the best way forward 'cause then mediation remains independent until the final report is published but with the understanding that the HPC receive the report and action may be taken upon that report.

Complainant (employer)

But this would not be easy if mediation was undertaken in the traditional sense because mediation is a confidential process:

You get into practical difficulties if the sign-off of that agreement, which is done confidentially with the mediator, then has to be assessed by a professional person to see whether it's relevant.

Stakeholder

Furthermore, there was a belief from all participants that the HPC's decision should be final. One member of the public compared this with the role of the financial ombudsman in a dispute between an individual and an insurance company:

...so if you take it to the financial ombudsman, and he says, look, the insurance company just pay what they think is the value of the car, end of story. Now you can't argue with that guy can you?

Member of the public, London

Independence and impartiality of the mediator

All participants said they desired a mediation process that was fair and unbiased. Members of the public (including complainants) expressed concern about a mediator's power to influence the case one way or another and suggested therefore that the mediator may need to be someone totally independent of the HPC. Otherwise, there was a perceived risk that people would question whether the mediator would be more supportive of the health professional. This view was supported by some complainants who felt that the HPC was on the side of the professional and therefore would not be appropriate to mediate.

There was some confusion among participants as to whether a mediator would act as an advocate or be totally independent. This misunderstanding was more likely among those less familiar with the details of mediation (e.g. members of the public, some registered professionals).

I don't see how an HPC funded mediator could be neutral because the HPC is a regulatory body.

Registrant, Birmingham

The HPC should be more concerned about the facts of the case so that's why I don't see their role as being the mediator. I think it's slightly conflicting with their role too... 'cause they're interested in protecting the public.

Stakeholder

Independent oversight of the mediation process

Some participants felt that mediators should be totally independent of the HPC to ensure the integrity of the process. For example, one stakeholder felt that the HPC is currently losing support from registrants as they are not representing their members

adequately, and therefore while agreeing that mediation is a good tool, would rather someone other than the HPC administered it. Others thought that it would be appropriate for the mediator to be a member of the HPC provided they had the appropriate skills (discussed below). Importantly, stakeholders, members of the public, complainants and registrants equated independence with being unbiased and impartial and viewed this as being an important characteristic of any mediator.

Skills and knowledge of the mediator

There was a consensus that the mediator would need to be a very highly skilled person. There was a perception that HPC staff are not skilled mediators, and there were mixed views as to whether mediation should be outsourced or whether HPC staff could be trained appropriately.

If this is a programme that's put into place then HPC staff need to be properly trained in mediation; and mediation now is quite a big business and there are national standards for practice, national training guidelines and so forth so you know that would be the first thing to do.

Stakeholder

In addition to having strong mediation skills, a number of participants felt that mediators should perhaps have relevant medical training and an understanding of the fields of expertise of the professional(s) involved. In their eyes, the mediation process could involve a lot of discussion around professional roles, practise and expected standards, and as a consequence, they felt that the mediator should have relevant training or experience in the professional area. Participants felt that this would help ensure that a good mediated agreement is achieved.

Need to have an alternative if a mediated agreement can not be reached

In light of the voluntary nature of mediation and the risk of drop-outs, all participants requested that there be a default process (e.g. to a public hearing) should mediation fail to reach an agreement between the parties.

They should be offered mediation and if it works, then great. [if it doesn't then it] just goes back into the process that would have been carried out anyway.

Member of the public, Birmingham

Transparency

Transparency was viewed as an important part of ensuring the wider public interest. The HPC maintains this by holding hearings in public and having each decision written out, so stakeholders, registrants and complainants alike wanted some reassurance that any mediation process would also have transparency considerations.

If mediation is taken up, then the HPC needs to make sure that it is involved and enough information is put into the public domain about the outcome.

Stakeholder

Implementation and follow-up of the agreement

Participants felt that it was important for the HPC to monitor and ensure that registrants are held to any undertakings set out in a mediated agreement.

‘Cause if it didn’t happen, if they said they were going on training and then didn’t go on training, there’d have to be a consequence to that.

Member of the public, Birmingham

5. Additional perceptions of the process and how it might be improved

In addition to thinking about meditation, we also listened for ways that participants suggested the HPC could improve the fitness to practise process. This chapter considers mechanisms other than mediation that participants raised.

Key Findings: Alternatives participants identified in addition to mediation

- There was a desire for alternative mechanisms to sit alongside the formal fitness to practise process to lend flexibility to what is perceived as a 'one size fits all' process. Mediation was seen by participants as one way to do this; offering a two-tier complaints process could be another alternative.
- Some participants would like the HPC to provide assistance outside of the fitness to practise process – for example, to give informal advice about a concern without triggering the formal complaints process, or to allow feedback about a registrant concerning lower level issues. Facilitated dialogue between complainants and registrants (that is not intended to reach an agreement but provides an opportunity for each party to express their feelings) was suggested as an option in the process to provide closure for the parties involved.
- Complainants expressed a desire for the HPC to play an advocacy role during the fitness to practise process – providing opportunities for face-to-face discussions with complainants to talk them through what can seem to be an opaque process.
- Participants thought that some employers used the HPC to resolve staff management issues that should instead be resolved at a local level. They suggested that the HPC could take an enhanced role in some cases and push staff management issues back to employers.

In discussing the fitness to practise process, participants felt that it was thorough and that it was an appropriately serious, formal and impartial accountability mechanism to hold registered professionals to standards. However, they perceived that there were a number of issues that could be addressed in order to improve the process:

- The process was considered to be too long and complex, and participants were concerned that a protracted complaints process could adversely affect all involved.

- Participants felt that the process was not always proportionate, that it did not take into account the complainants' desired outcome which may be short of a full hearing and disciplinary sanctions, and that it was 'black and white' with limited flexibility to adapt to the seriousness of the case.
- Complainants sometimes did not understand the outcomes of the process.
- The process, particularly the hearing, was seen to be adversarial and stressful for complainants.
- There was a certain perceived 'remoteness' to the fitness to practise process because complainants felt they had little opportunity to influence its course or express what they would like to see come out of it.
- Some complainants felt that communications from the HPC were distant and impersonal because they were by letter or email rather than face-to-face or by telephone.
- Registrants and stakeholders reported that there was a tendency for employers to refer cases to the HPC that would be more appropriately dealt with through internal disciplinary procedures.

The discussions we had with registrants, complainants, stakeholders and the public emphasised that every case was unique, no single approach was right in all circumstances, and that what people wanted in terms of approach and outcomes likewise varied from case to case. Some participants felt that the fitness to practise complaints process could appear to be a 'one size fits all' formal process – one that was not always sensitive to what the complainant wanted or to the nature and seriousness of the complaint.

I think it would be foolish to say that it [mediation] can't help [HPC to protect the public interest], but it isn't the answer to everything. I think there will be situations where it is extremely useful and helpful and get things back on an even keel as it were. In some ways it's trying to think is there one size fits all, and there never is, because each complaint and process is different from the last one.

Stakeholder

Other mechanisms and approaches were raised during discussions with participants, as possible ways to address some of the issues they identified with the process – some still less formal than mediation – a process that has its own air of formality, being strictly defined and with its emphasis on reaching a binding agreement. In the rest of this chapter the perceptions of each of these other less formal approaches to resolution are described.

Two tier process for complaints

Complainants sometimes expressed the view that the HPC appeared 'distant and remote'. Being able to speak to someone not just during the complaints process but also outside it, for example to get advice informally on whether there may be grounds

to be concerned about a colleague or employee's fitness to practise without the formal process being triggered, would be welcomed.

Maybe if someone could ring you and say “what do you feel about this, do you think this is somebody that you feel is fit to carry on working or that we need to be unduly concerned about”.

Complainant (employer)

Furthermore, one complainant wanted a mechanism to be able to provide feedback about a registrant without escalating it to a formal complaint, for instance about lower level development issues (such as bedside manner). This could be achieved through providing a second tier process for handling such complaints.

One of the key features of mediation that makes it what it is (rather than simply a dialogue) is that it requires both participants to sign up to a written agreement at the end. There is therefore a level of formality built into the process. However, often all that a complainant wants is an apology and a chance to air their concerns. The issue may be rooted in personality issues or feuds rather than real fitness to practise concerns. Therefore there may be room to provide facilitated dialogue *without* the requirement to reach an outcome or agreement. Reacting to one of the scenarios presented in the discussion group, one registrant said:

It looks like there's some personality clash there, and in that instance you would hope that somebody could sit round a table with them and try and get it out of their system without going through either a complaint through the professional body or through the HPC.

Registrant, Birmingham

Facilitated dialogue may work best where no power relationships are involved. An independent individual rather than a manager could act as the facilitator.

If I was managing a situation where two people had a personality clash the power thing might get in the way, so I might ask a colleague to sit with them and just talk it through. So it's not a power thing, I'm not trying to manage it as a manager, but you're trying to manage the situation so it gets sorted. You could as a colleague and just say “Look, just come and have a chat to these to people, as another HPC person”.

Registrant, Birmingham

Advocacy role for the HPC

Many members of the public who had made a complaint in the past had felt at a disadvantage in the complaints process. In the eyes of some, the HPC took the side of the professional and none were particularly keen on meeting the professional face-to-face in a mediation scenario due to the hurt caused by the perceived poor treatment they received. Some also spoke about the emotional risk being too great – that they would quickly get upset in such a situation.

Some participants said they would welcome opportunities for face-to-face meetings with the HPC to talk them through what can seem to be an opaque process – particularly to a member of the public who is even less likely than a registrant or employer to have insight into how the process works. Some members of the public who were complainants expressed some dissatisfaction with the HPC's communications, and some of the questions they were asked – in one case being asked to recall exact dates and times of appointments over the course of three years – only added to their distress.

While some complainants felt that the HPC was on the side of professionals, registrants did not share this perception. In fact, they tended to view the HPC as a 'strict' regulator and talked about the nervousness they felt upon receiving a letter through the mail from the HPC (which included the invitation to take part in this research).

Enhanced role for HPC in relation to employers

As mentioned, some participants were concerned that employers can sometimes misuse the HPC complaints process to avoid having to deal internally with under-performing staff.

They're using HPC as a management tool which is not what it's there for.

Registrant, London

Participants suggested that HPC should take a more robust stance with employers, ensuring that the issue really is appropriate for the HPC to deal with, or whether it is something that should be dealt with locally through the employer's own processes.

Whenever the Trust goes to the HPC, maybe the HPC need to say "Hold on a second, is this an issue for us, or is it an issue for you to deal with?"

Registrant, Birmingham

One registrant described an incident where a patient complained to their service because certain information was shared with their GP. They presented this as typical of many complaints: they are not really about fitness to practise, and could be resolved through dialogue and prevented from going further. Another registrant pointed out that:

Most establishments have their patient liaison officers anyway.

Registrant, London

While participants acknowledged that many places where HPC registrants work have a mechanism in place for addressing patient complaints, they also recognised that the HPC is placed in a difficult position because it is obliged to investigate all concerns that are submitted.

As well as pushing back on employers and not allowing them to 'misuse' the HPC to deal with staff issues they should be addressing themselves, some participants

suggested that the HPC could also take a more proactive role in helping those employers that do have ingrained problems with staff to resolve these problems and improve the organisational culture.

HPC needs to be wary of being used as a devolvement of management's responsibilities to sort out a lot of the issues that arise between their staff. Though where there are endemic cultural problems in an organisation – poor training or poor provision of resources – then I believe that the HPC can act as a mediator to identify and advise a department where problems have been flagged up.

Registrant, London

6. Recommendations and next steps

We have compiled the following five recommendations for the HPC on the basis of the findings of this research.

1. Proceed with a pilot to provide empirical data

The HPC has already indicated that it is planning a pilot. The diversity of opinion and polarisation of views across participants suggests that it would be useful for the HPC to test the concept of mediation within its regulatory regime by running a pilot. A pilot would provide empirical evidence about the use and value of mediatory processes.

2. Run a staged pilot which lays the foundation stones for mediation at different points in the fitness to practise process

As outlined in chapter four, feedback from research participants suggests that the perceived benefits and associated risks are *different* at different points in the fitness to practise process; and that the benefits are perceived as greatest when it is used early in the process. In light of this, we would recommend that any mediation pilot should be designed specifically to examine the benefits and risks of mediation *at each stage* of the fitness to practise process. Given the greater perceived benefits of using mediation early in the fitness to practise process, it may also be worth designing the pilot to look at this stage first. Staged implementation would provide the foundation for subsequent stages and allow learning from early stages to inform the later ones.

In order to gauge the effectiveness of a staged approach, a piece of evaluation work that runs alongside the pilot will be required – a process evaluation that builds the evidence base for mediation and gathers feedback from participants in the process before taking up mediation, on completion of mediation and then again, a couple of months later.

3. Provide clear messages about the HPC's regulatory regime

As a regulator the HPC sets standards of practise and then holds registered professionals to those standards. Decisions are required at the strategic level about whether or not greater use of mediation fits within the HPC's regulatory regime. Such decisions about strategic intent are difficult ones to make, but the HPC needs to be clear as an organisation on its rationale and context for mediation in a regulatory regime. If the HPC opts to make greater use of mediation in its regulatory regime, then the organisation must be able to provide clear and consistent messages to external stakeholders (registrants, professional bodies, and members of the public alike) of the reasons why it is encouraging mediation. In this way, the HPC would be conveying its role as regulator in a more dynamic way.

4. Communicate explicitly about mediation

As discussed in chapter two, there were varying levels of misunderstanding among participants about the details of the purpose and process of mediation. Consequently, their support and opposition for mediation within the HPC's regulatory regime was based on their own perceptions of what mediation means. This

misunderstanding was further complicated by a lack of understanding of the fitness to practise process. Therefore it will be critical for the HPC to communicate explicitly about what it means by mediation – the processes involved and the objectives that mediation is looking to achieve – and to continue to improve the clarity of communications about the fitness to practise process itself.

5. Consider additional ways to enhance the fitness to practise process

In chapter five we discussed additional mechanisms the HPC may consider in order to improve the fitness to practise process – mechanisms that would lend flexibility to what was perceived as a ‘one size fits all’ process:

- Investigate offering a two-tier complaints process where there is an advisory service / helpline to provide assistance during the fitness to practise process and also outside of it. This could also offer facilitated dialogue between complainants and registrants that is not intended to reach an agreement but provides an opportunity for each party to express their feelings.
- Look at ways in which to communicate with employers to prevent them misusing the fitness to practise process as a way to deal with internal disciplinary issues.
- Consider taking an advocacy role during the fitness to practise process and provide complainants with opportunities for more direct contact (e.g. face-to-face discussions to talk complainants through the steps in the process).
- Continue to improve communications with complainants during the fitness to practise process.

Appendices

Appendix 1: Invitation to recent complainants

Dear [NAME]

The Health Professions Council (HPC) has recently commissioned Ipsos MORI to conduct a piece of research looking at the use of mediation in the HPC's processes.

I am aware that you made a complaint to the HPC in [DATE].

The HPC is considering whether there might be a place for mediation in the HPC's fitness to practice processes – whether mediation should be offered and where in the processes it might sit. Ipsos MORI's independent research will help the HPC to determine whether mediation would be of any benefit to the regulation that the HPC delivers. We will do this by gathering feedback from past complainants, registrants, members of the public and others with an interest in this area.

I am writing to you to ask whether you would be willing to be included in the group of potential participants from which we will randomly select people to take part in the research.

The research would involve taking part in an in-depth telephone interview with a researcher from Ipsos MORI. It is envisaged that the **interview will last 30-40 minutes** and will cover your experience of HPC's fitness to practice complaints process. In recognition of your contribution and time **we would like to offer you £30 to cover any expenses**.

Ipsos MORI is an independent research organisation, operating according to strict industry codes of practice. **Your answers will be treated in the strictest confidence** unless you specifically wish to be identified. In the report that Ipsos MORI prepares for the HPC, individual responses will be analysed and presented anonymously alongside those of many others.

If you would be willing to take part in this research I would be grateful if you could contact XXX at HPC **to confirm no later than 30 June 2011**. Ipsos MORI will then be in touch with you to arrange a time for an interview that is convenient for you.

We do hope you will participate in an interview, and we look forward to your valued feedback.

Yours sincerely

Kelly Johnson

Director of Fitness to Practise

Appendix 2: Topic guides

Interviews with recent complainants

HPC Research: Discussion Guide for Depth Interviews with Past Complainants Final version: 11 July 2011

Objectives

- To gather the views of recent past complainants on the potential use of mediation within its regulatory regime.
- To establish whether there is a place for the use of mediation as a regulatory tool in handling certain types of complaints, and if so, where any mediation process may best sit.

Outline of the research programme

- 18 interviews with recent complainants. Complainants may be a member of the public, a registrant or an employer. They have been selected based on their type of case (cases which the HPC believes may be eligible for mediation):
 1. Not about fitness to practise
 2. Referred to a final hearing and case is proven to be well founded
 3. Referred to a final hearing and case is proven not to be well founded
 4. Not referred to a final hearing
- 10 interviews with key stakeholders (these include professional bodies, regulatory bodies, unions, charitable/patient/advocacy organisations)
- 2 discussion groups with members of the public and 2 discussion groups with HPC registered health professionals

Structure of interviews

Section	Notes	Approx timing
1. Introduction	Introduces the research and outlines the 'rules' of the interview.	5 mins
2. Case background	Establishes the matter of the concern, the outcome, and the reasons for satisfaction/dissatisfaction with the outcome.	10 mins
3. Introducing mediation – and how it might have worked in your situation	Explains mediation and investigates whether the participant thinks that mediation would have been appropriate in their specific case or in any case.	10 mins
4. Thinking about the HPC offering mediation in general: Arguments for and against mediation	Challenges the participant by presenting them with the arguments for and against mediation and asks them to make a judgement.	15 mins

5. Closing comments	Recap of the most important issues – advantages and disadvantages.	5 mins
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Background information about mediation

The mediator acts in an impartial advisory role, helping the parties to communicate with one another (e.g. to identify their needs, clarify issues, explore solutions and negotiate their own agreement). The mediation model that the HPC may consider using is a ‘norm advocating’ approach where a representative of the HPC (perhaps a registered professional) would take part in the mediation to ensure that any agreement in the public interest or, in the alternative, that the mediated outcome was agreed subsequently by an HPC panel. This would depend on where in the process mediation is used. If mediation is used prior to the fitness to practise process, then it may not be appropriate for a panel to agree the outcome. However, if mediation is used to potentially reduce the sanction then the HPC envisages that a panel would definitely need to sign off the agreement.

The HPC is clear about the **types of cases that would not be appropriate for mediation**.

These include:

- serious misconduct;
- abuse of trust; boundary violations, predatory or manipulative behaviour;
- serious or persistent lapses in professional competence;
- criminal acts, dishonesty or fraud;
- serious concerns arising from the health of the registrant;
- substance abuse;
- where the registrant has frequently been the subject of allegations; or
- where mediation would be impossible because the registrant is recalcitrant or the complainant does not want to face the registrant again.

Discussion Areas	Aim/Notes
1. Introduction	5 mins
<p>Introduce self and Ipsos MORI</p> <p>Interview will take approximately 35-45 minutes</p> <p>As you probably know, the Health Professions Council is responsible for protecting the health and wellbeing of people who use the services of registered health professionals.</p> <p>The HPC currently regulates members of 15 different professions. It keeps a register of professionals who meet the standards for training, professional skills and behaviour. The HPC can take action if someone on the register falls below its standards.</p> <p>I understand that you used the HPC to raise a concern about a health professional in the past – is that correct? IF NO: CLOSE INTERVIEW</p> <p>As set out in the letter you received about this research, the HPC is currently exploring whether there is a place for mediation to be used as a regulatory tool in handling certain types of complaints, and if so, where any mediation process</p>	<p>Introduces the research and outlines the ‘rules’ of the interview (including those we are required to tell them about under MRS and Data Protection Act guidelines).</p> <p>Emphasises that the focus of the interview will be on mediation and whether it could help improve the complaints process.</p>

<p>may best sit.</p> <p>Ipsos MORI has been commissioned by the HPC to speak to past complainants like you, and other stakeholders, to get their views about mediation.</p> <p>I'm interested in what you have to say about this – there are no right or wrong answers.</p> <p>Explain confidentiality and MRS and Data Protection Act guidelines. In the report that Ipsos MORI prepares for the HPC, individual responses will be analysed and presented anonymously alongside those of many others.</p> <p>Ask participant for permission to record. Explain that recording will be only used to help us when it comes to report writing.</p>	
<p>2. Case background</p>	<p>10 mins</p>
<p>I'd like to start with discussing your case. Could you please briefly tell me what your concern was about?</p> <p>What was the outcome of the process?</p> <p>How satisfied or dissatisfied were you with that outcome? Why was that? Did you feel as though the issue had been resolved, or did you feel like there was unfinished business? Why/ why not?</p> <p>Are there other ways you would have liked the HPC to deal with your case? [DON'T PROMPT, BUT LOOK FOR THE RESPONDENT SPONTANEOUSLY MENTIONING PROCESSES THAT SOUND LIKE MEDIATION. IF THEY DO MENTION THOSE, EXPLORE WHY THEY RECOMMEND THEM, AND WHAT ADVANTAGES THEY THINK THEY WOULD BRING]</p>	<p>Establishes the matter of the concern, the outcome, and the reasons for satisfaction/dissatisfaction with the outcome.</p>
<p>3. Introducing mediation – and how it might have worked in your situation</p>	<p>10 mins</p>
<p>I'd now like to discuss mediation and what it is.</p> <p>Mediation is used to resolve disputes. With the assistance of a neutral and independent mediator, the parties meet face-to-face to identify the disputed issues, develop options, consider alternatives and attempt to reach a mutually acceptable outcome. Mediation is a voluntary process – all parties must agree to take part and are free to leave the process at any time.</p> <p>Typically, the mediator will meet each party separately and ask them to explain how they see the current situation, how they would like it to be in the future and what suggestions they have for resolving the disagreement.</p>	<p>Explains mediation and what it involves.</p> <p>Investigates whether the participant thinks that mediation would have been appropriate, or not, in their specific case.</p> <p>Investigates whether they think that mediation would be appropriate in any case, or not.</p>

<p>If both parties agree to meet, then the following steps take place:</p> <ol style="list-style-type: none"> 1. the mediator explains the structure of the meeting and ask the parties to agree to some basic rules, such as listening without interrupting; 2. each party has a chance to talk about the problem as it affects them. The mediator will try to make sure that each party understands what the other party has said, and allow them to respond; 3. the mediator helps both parties identify the issues that need to be resolved. Sometimes this leads to solutions that no one had thought of before, helping the parties to reach an agreement; 4. the agreement is then recorded and signed by both parties and the mediator. <p>The HPC is thinking that this mediation process could be used in more cases, but the HPC is clear that there are some cases where mediation would never be appropriate.</p> <p>How do you think mediation would have worked in your situation? If the HPC had suggested mediation to you, what would you have thought? Where might mediation have fitted into your situation most effectively (if at all)?</p> <p>What difference do you think it would have made to the outcome/what was actually agreed between you and the person you were complaining about?</p> <p>What difference to you think it would have made to how you were left feeling?</p> <p>What do you think would have been the benefits to you of agreeing to mediation? PROBE FOR: FACE-TO-FACE MEETING, EXPLANATION OR APOLOGY FROM REGISTRANT, CLOSURE, BETTER UNDERSTANDING OF PROCESS</p> <p>What do you think would have been the adverse effects to you of agreeing to mediation? PROBE FOR: LENGTHEN THE PROCESS, ...?</p> <p>What difference do you think it would have made to the person you were complaining about? [DON'T PROMPT, BUT LOOK FOR WHETHER THE VIEW IS EXPRESSED THAT THIS IS A "SOFT TOUCH" FOR REGISTRANTS, OR THAT IT MEANS THEY WOULD GET "LET OFF"]</p> <p>Overall, would it have been a good idea, or would it not have been appropriate?</p>	
<p>4. Thinking about the HPC offering mediation in general: Arguments for and against mediation</p>	<p>15 mins</p>

THROUGHOUT THIS SECTION, TRY TO PROBE BOTH SIDES OF THE ARGUMENT – THE PROMPTS BELOW GIVE AN INDICATION OF THE AREAS TO COVER, BUT SHOULD BE USED FLEXIBLY

We've been talking about how mediation might have worked in your situation. I'd now like to ask what you think about the idea *in general* of the HPC encouraging mediation

To what extent do you think that it is appropriate, or not, for a regulator like HPC to suggest mediation?

IF YES, APPROPRIATE:

Why do you think it could be helpful if the HPC did more to encourage mediation – what would be the benefits – and to whom? [EXPLORE – they may see different benefits for different stakeholders]

At what point in the process do you think it would have been appropriate for the HPC to suggest mediation in your case? Why?

Do you think it would always be appropriate for the HPC to suggest mediation?

When do you think would it be important for the HPC to suggest mediation?

When do you think it would not be appropriate for the HPC to suggest mediation?

IF NO, NOT APPROPRIATE:

Why not? What do you think would be the problem/disadvantages if the HPC suggested more mediation? Who would lose out most, who would it put at a disadvantage?

Would it ever be appropriate for the HPC to suggest mediation?

Are there situations where you feel it would be appropriate for the HPC to suggest mediation? What are these?

IN THE PRECEDING DISCUSSION, LISTEN OUT FOR UNPROMPTED MENTIONS OF THE FOLLOWING ADVANTAGES AND DISADVANTAGES. IF THESE ARE NOT MENTIONED SPONTANEOUSLY, EXPLORE RESPONDENT VIEWS ON AS MANY OF THEM AS TIME ALLOWS

From other research that we have done, some people think

Challenges the participant by presenting them with the arguments for and against mediation and asks them to make a judgement.

<p>that mediation is not appropriate because:</p> <ul style="list-style-type: none"> - the regulator should be focused on eliminating poor practise rather than resolving disputes; - it is not the regulator's role to make the registrant or the complainant feel better; - it would add more layers to what is already a complicated complaints process; - FOR REGISTRANT OR EMPLOYER INTERVIEWS: in cases where an employer is involved it should be the employer's role to facilitate resolution, and not the HPC's. <p>Others believe that mediation is appropriate because:</p> <ul style="list-style-type: none"> - it fits with the HPC's core role of protecting the health and wellbeing of people who use the services of registered health professionals; - it would reduce the pressure on individuals involved in the complaints process by offering a less formal process; - it would only be offered for a small number of cases. <p>What do you think? Where do you sit on these issues? Why?</p> <p>One of the things that the HPC is responsible for is looking after the wider public interest. Do you think the HPC would be achieving this by suggesting mediation? In what ways do you think suggesting mediation is meeting the wider public interest?</p> <p>If the HPC want to make sure mediation is meeting the public interest, what things would they have to do? PROBE ON: HPC panel sign-off the mediated agreement between the complainant and the registrant; the attendance of a HPC representative (a registered professional) if mediation is used outside of the fitness to practise process; ensure that poor practise is punished.</p>	
<p>5. Closing comments</p>	<p>5 mins</p>
<p>If the HPC does decide to go down this route and suggest mediation in more cases, what do you see as the biggest benefits from this?</p> <p>And what are the biggest disadvantages of doing so?</p> <p>Any other comments?</p> <p>As a thank you for taking part, we will send you a cheque for £30. RECORD FULL NAME FOR CHEQUE AND ADDRESS DETAILS FOR SENDING CHEQUE TO</p>	<p>Recap of the most important issues – advantages and disadvantages</p>

Interviews with key stakeholders

HPC Research: Discussion Guide for Depth Interviews with Key Stakeholders Final: 13 July 2011

Objectives

- To gather the views of HPC's key stakeholders on the potential use of mediation within its regulatory regime.
- To establish whether there is a place for the use of mediation as a regulatory tool in handling certain types of complaints, and if so, where any mediation process may best sit.

Outline of the research programme

- 10 interviews with key stakeholders (these include professional bodies, regulatory bodies, unions, charitable/patient/advocacy organisations)
- 18 interviews with recent complainants. Complainants may be a member of the public, a registrant or an employer. They have been selected based on their type of case (cases which the HPC believes may be eligible for mediation):
 5. Not about fitness to practise
 6. Referred to a final hearing and case is proven to be well founded
 7. Referred to a final hearing and case is proven not to be well founded
 8. Not referred to a final hearing
- 2 discussion groups with members of the public and 2 discussion groups with HPC registered health professionals

Structure of interviews

Section	Notes	Approx timing
1. Introduction	Introduces the research and outlines the 'rules' of the interview.	3 mins
2. Understanding of, and general views towards, mediation and fitness to practise processes	Gauges unprompted understanding of mediation and the fitness to practise process before introducing mediation and the fitness to practise process in more detail. Establishes the general, high level views of stakeholders after mediation and the fitness to practise processes are explained.	10 mins
3. Views on mediation in relation to specific case studies	Explores the application of mediation in more detail, supported by case study examples. Aims to discuss two different types of cases as time allows.	10 mins
4. Exploring key areas of interest	Explores three specific issues in more detail: protecting the individuals involved; protecting the public interest; and HPC acceptance of the mediated agreement.	5 mins
5. Closing comments	Recap of the most important issues for HPC to consider.	2 mins

Background information about mediation

The mediator acts in an impartial advisory role, helping the parties to communicate with one another (e.g. to identify their needs, clarify issues, explore solutions and negotiate their own agreement). The mediation model that the HPC may consider using is a ‘norm advocating’ approach where a representative of the HPC (perhaps a registered professional) would take part in the mediation to ensure that any agreement is in the public interest or, in the alternative, that the mediated outcome was agreed subsequently by an HPC panel. This would depend on where in the process mediation is used. If mediation is used prior to the fitness to practise process, then it may not be appropriate for a panel to agree the outcome. However, if mediation is used to potentially reduce the sanction then the HPC envisages that a panel would definitely need to sign off the agreement.

The HPC is clear about the **types of cases that would not be appropriate for mediation**.

These include:

- serious misconduct;
- abuse of trust; boundary violations, predatory or manipulative behaviour;
- serious or persistent lapses in professional competence;
- criminal acts, dishonesty or fraud;
- serious concerns arising from the health of the registrant;
- substance abuse;
- where the registrant has frequently been the subject of allegations; or
- where mediation would be impossible because the registrant is recalcitrant or the complainant does not want to face the registrant again.

Discussion Areas	Aim/Notes
1. Introduction	3 mins
<p>Introduce self and Ipsos MORI.</p> <p>Interview will take approximately 30 minutes.</p> <p>As you probably know, the Health Professions Council is responsible for protecting the health and wellbeing of people who use the services of registered health professionals.</p> <p>As set out in the letter you received about this research, the HPC is currently exploring whether there is a place for mediation to be used as a regulatory tool in handling certain types of complaints, and if so, where any mediation process may best sit.</p> <p>Ipsos MORI has been commissioned by the HPC to speak to key stakeholders, like you, as well as past complainants, registrants and members of the public, to get their views about mediation.</p> <p>I’m interested in what you have to say about this – there are no right or wrong answers.</p> <p>Explain confidentiality and MRS and Data Protection Act guidelines. In the report that Ipsos MORI prepares for the</p>	<p>Introduces the research and outlines the ‘rules’ of the interview (including those we are required to tell them about under MRS and Data Protection Act guidelines).</p>

<p>HPC, individual responses will be analysed and presented anonymously alongside those of many others. Anything you say will be kept confidential unless you would like any comments to be attributed to you.</p> <p>Ask participant for permission to record. Explain that recording will be only used to help us when it comes to report writing.</p>	
<p>2. Understanding of, and general views towards, mediation and fitness to practise processes</p>	<p>10 mins</p>
<p>I'd like to start with what you think about when you hear HPC talking about suggesting mediation. What do you understand the process of mediation to be?</p> <p>Do you have a sense of where mediation may fit into the HPC's regulatory regime and it's fitness to practise process?</p> <p>Mediation is used to resolve disputes. With the assistance of a neutral and independent mediator, the parties meet face-to-face to identify the disputed issues, develop options, consider alternatives and attempt to reach a mutually acceptable outcome. Mediation is a voluntary process – all parties must agree to take part and are free to leave the process at any time.</p> <p>Typically, the mediator will meet each party separately and ask them to explain how they see the current situation, how they would like it to be in the future and what suggestions they have for resolving the disagreement.</p> <p>If both parties agree to meet, then the following steps take place:</p> <ol style="list-style-type: none"> 5. the mediator explains the structure of the meeting and ask the parties to agree to some basic rules, such as listening without interrupting; 6. each party has a chance to talk about the problem as it affects them. The mediator will try to make sure that each party understands what the other party has said, and allow them to respond; 7. the mediator helps both parties identify the issues that need to be resolved. Sometimes this leads to solutions that no one had thought of before, helping the parties to reach an agreement; 8. the agreement is then recorded and signed by both parties and the mediator. <p>The HPC is thinking that this mediation process could be used in more cases, but the HPC is clear that there are some cases where mediation would never be appropriate.</p> <p>I'd like to briefly talk through the steps in the fitness to</p>	<p>Gauges unprompted understanding of mediation and the fitness to practise process before introducing mediation and fitness to practise in more detail.</p> <p>Provides all stakeholders with the same information about mediation and the fitness to practise process to ensure that they all start from the same informed position when giving their views.</p> <p>Establishes the general, high level views of stakeholders towards mediation.</p>

<p>practise process:</p> <ol style="list-style-type: none"> 1. An allegation is received and given to a case manager. If the case is not about fitness to practise then it is closed. 2. If the case is about fitness to practise, an investigation is carried out. 3. The registered professional is given information and they have 28 days to respond. 4. The case is considered by the Investigating Committee which decides whether there is a case to answer. 5. If the Committee decides there is no case to answer, the case is closed. 6. If there is a case to answer, a final hearing is convened and the panel makes a judgement about whether the case is well founded. If it is well founded, then sanctions are imposed. <p>The HPC is considering whether mediation may have a role in four different types of cases:</p> <ol style="list-style-type: none"> 1. Cases that are not about fitness to practise (i.e. closed after determined that the case does not reach the standard of acceptance for allegations because for instance, it is not a fitness to practise issue) 2. Cases that are investigated and not referred to final hearing (i.e. no case to answer) 3. Cases that are referred to a final hearing and case is proven to be well founded (i.e. sanctions are imposed) 4. Cases that are referred to a final hearing and case is proven not to be well founded (i.e. no sanctions are imposed) <p>Having heard this explanation about the fitness to practise process and mediation and how they may fit together, do you have any initial comments or reactions?</p> <p>What do you think about the idea in general of the HPC encouraging mediation?</p> <p>What do you consider to be the pros and cons of the HPC suggesting mediation in more cases?</p> <p>NOTE SPECIFIC ARGUMENTS THAT ARE RAISED TO EXPLORE IN MORE DETAIL WITH THE CASE STUDIES</p>	
<p>3. Views on mediation in relation to specific case studies</p>	<p>10 mins</p>
<p>I would now like you to consider two scenarios of cases where the HPC may suggest mediation.</p> <p>READ OUT TWO CASE STUDIES: ONE REGISTRANT COMPLAINANT AND ONE PUBLIC COMPLAINANT</p>	<p>Explores the application of mediation in more detail, supported by case study examples.</p> <p>Aims to discuss two</p>

<p>FOR EACH CASE STUDY, EXPLORE THE FOLLOWING AREAS:</p> <p>Do you think it would be appropriate or not for the HPC to suggest mediation in this case? Why?</p> <p>What would be the benefits of suggesting mediation in this case – and to whom? [EXPLORE – they may see different benefits for different stakeholders]</p> <p>What would be the disadvantages of suggesting mediation in this case? Who would lose out most; who would it put at a disadvantage?</p> <p>Are there other situations where you feel it would be appropriate for the HPC to suggest mediation? What are these?</p> <p>IN THE PRECEDING DISCUSSION, LISTEN OUT FOR UNPROMPTED MENTIONS OF THE FOLLOWING ADVANTAGES AND DISADVANTAGES. IF THESE ARE NOT MENTIONED SPONTANEOUSLY, EXPLORE RESPONDENT VIEWS ON AS MANY OF THEM AS TIME ALLOWS</p> <p>From other research that we have done, some people think that mediation is not appropriate because:</p> <ul style="list-style-type: none"> - the regulator should be focused on eliminating poor practise rather than resolving disputes; - it is not the regulator’s role to make the registrant or the complainant feel better; - it would add more layers to what is already a complicated complaints process; - FOR REGISTRANT OR EMPLOYER INTERVIEWS: in cases where an employer is involved it should be the employer’s role to facilitate resolution, and not the HPC’s. <p>Others believe that mediation is appropriate because:</p> <ul style="list-style-type: none"> - it fits with the HPC’s core role of protecting the health and wellbeing of people who use the services of registered health professionals; - it would reduce the pressure on individuals involved in the complaints process by offering a less formal process; - it would only be offered for a small number of cases. <p>What do you think? Where do you sit on these issues? Why?</p>	<p>different types of cases as time allows.</p>
<p>4. Exploring key areas of interest</p>	<p>5 mins</p>
<p><u>Protecting the individuals involved</u></p> <p>The HPC’s current regulatory regime uses the fitness to practise process to ensure that the health and wellbeing of people who use the services of registered health</p>	<p>Explores three specific issues in more detail.</p>

<p>professionals is protected. However, feedback from complainants who have been through the fitness to practise process and a review of literature suggests that mediation could provide a better outcome for both complainants and registrants (e.g. by way of explanation or apology from the registrant, better understanding of the process, closure, learning points, increased satisfaction).</p> <p>Do you think it is the HPC's responsibility to make the complainant and registrant feel better or not?</p> <p>Does it fit within the HPC's remit or not? Why?</p> <p><u>Protecting the public interest</u></p> <p>One of the things that the HPC is responsible for is looking after the wider public interest. Do you think the HPC would be achieving this by suggesting mediation? In what ways do you think suggesting mediation is meeting the wider public interest?</p> <p>If the HPC want to make sure mediation is meeting the public interest, what things would they have to do? PROBE ON: sign-off the mediated agreement between the complainant and the registrant; ensure that poor practise is punished; only use in certain cases – which types?</p> <p><u>Accepting the mediated agreement</u></p> <p>If the HPC do decide to suggest mediation in more cases, would it be enough that both parties are happy with the outcome? Should the HPC be obliged to assess the mediated agreement and confirm that it is sufficient? What would be required for this?</p> <p>PROBE ON HPC PROPOSALS FOR 'NORM ADVOCATING' MEDIATION:</p> <ul style="list-style-type: none"> - the attendance of a HPC representative (a registered professional) if mediation is used outside of the fitness to practise process e.g. standard of acceptance is not met; - sign-off by a HPC panel if mediation is used as part of the fitness to practise process e.g. to reduce a sanction. <p>How do you feel about these suggestions? What do you like about them? What are your concerns?</p> <p>Should the HPC be able to take action if it deems that the outcome is not sufficient? In what way?</p>	
<p>5. Closing comments</p>	<p>5 mins</p>
<p>If the HPC does decide to go down this route and suggest mediation in more cases, what do you see as the biggest</p>	<p>Recap of the most important issues –</p>

<p>benefits from this?</p> <p>And what are the biggest disadvantages of doing so?</p> <p>Any other comments?</p> <p>CONFIRM HOW SPECIFICALLY THEY WISH THEIR COMMENTS TO BE ATTRIBUTED (I.E. THEMSELVES PERSONALLY, THEIR ORGANISATION OR SECTOR)</p>	<p>advantages and disadvantages</p>
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Discussion group with members of the public

Objectives

- To gather the views of HPC's key stakeholders on the potential use of mediation within its regulatory regime.
- To establish whether there is a place for the use of mediation as a regulatory tool in handling certain types of complaints, and if so, where any mediation process may best sit.

Outline of the research programme

- 2 discussion groups with members of the public and 2 discussion groups with HPC registered health professionals
- 18 interviews with recent complainants. Complainants may be a member of the public, a registrant or an employer. They have been selected based on their type of case (cases which the HPC believes may be eligible for mediation):
 9. Not about fitness to practise
 10. Referred to a final hearing and case is proven to be well founded
 11. Referred to a final hearing and case is proven not to be well founded
 12. Not referred to a final hearing
- 10 interviews with key stakeholders (these include professional bodies, regulatory bodies, unions, charitable/patient/advocacy organisations)

Structure of discussion group

Section	Notes	Approx timing
1. Introduction	Introduces the research and outlines the 'rules' of the discussion.	10 mins
2. Introducing the HPC and the fitness to practise process	Introduces the HPC, its core functions and the fitness to practise process.	10 mins
3. Introducing mediation – and where it might fit	Introduces mediation and the key elements in the process. Gauges initial reactions on whether mediation fits within the HPC's regulatory regime	10 mins
4. Views on mediation in relation to specific case studies	Explores the application of mediation in more detail, supported by two or three case study examples.	40 mins
5. Exploring individual vs public interest		15 mins
6. Conclusion and wrapping up	Recap of the most important issues – advantages and disadvantages	5 mins

Background information about mediation

The mediator acts in an impartial advisory role, helping the parties to communicate with one another (e.g. to identify their needs, clarify issues, explore solutions and negotiate their own agreement). The mediation model that the HPC may consider using is a ‘norm advocating’ approach where a representative of the HPC (perhaps a registered professional) would take part in the mediation to ensure that any agreement is in the public interest or, in the alternative, that the mediated outcome was agreed subsequently by an HPC panel. This would depend on where in the process mediation is used. If mediation is used prior to the fitness to practise process, then it may not be appropriate for a panel to agree the outcome. However, if mediation is used to potentially reduce the sanction then the HPC envisages that a panel would definitely need to sign off the agreement.

The HPC is clear about the **types of cases that would not be appropriate for mediation**. These include:

- serious misconduct;
- abuse of trust; boundary violations, predatory or manipulative behaviour;
- serious or persistent lapses in professional competence;
- criminal acts, dishonesty or fraud;
- serious concerns arising from the health of the registrant;
- substance abuse;
- where the registrant has frequently been the subject of allegations; or
- where mediation would be impossible because the registrant is recalcitrant or the complainant does not want to face the registrant again.

Discussion Areas	Aim/Notes
<p>1. Introduction</p> <p>Thanks participants for taking part. Introduce self, Ipsos MORI and the aim of the discussion: to discuss the Health Professions Council, it’s role in the regulation of health professionals, and whether there is a place for mediation within its regulatory processes.</p> <p>Role of Ipsos MORI – research organisation commissioned by HPC to gather opinions of members of the public, registered health professionals and other key stakeholders. All opinions are valid; disagreements are welcome, but need to be agreeable and respectful.</p> <p>Confidentiality – reassure all respondents that their comments will be anonymous. Participants’ names have been given to us in confidence for the purposes of this discussion.</p> <p>Ask permission to digitally record and say report will be published with anonymised quotations.</p> <p>I would like to begin by spending a couple of minutes introducing ourselves. Please could you introduce yourselves to the group by telling us:</p> <ul style="list-style-type: none"> - your first name; - where you’re from; 	<p>10 mins</p> <p>Introduces the research and outlines the ‘rules’ of the interview (including those we are required to tell them about under MRS and Data Protection Act guidelines).</p>

<p>- how long you have lived there?</p>	
<p>2. Introducing the HPC and the fitness to practise process</p>	<p>10 mins</p>
<p>Have you heard of the Health Professions Council before today? Do you know what it stands for? Do you know what it does?</p> <p>If I said that the HPC is a regulator, what ideas does that conjure up? What does regulation mean to you?</p> <p>BRIEFLY EXPLAIN THE HPC AND ITS ROLE: As you may know, the Health Professions Council is responsible for protecting the health and wellbeing of people who use the services of registered health professionals.</p> <p>The HPC currently regulates 15 different professions and has around 215,000 health professionals on its register.</p> <p>HANDOUT LIST OF PROFESSIONS: This handout shows which professionals are legally obliged to register with the HPC if they would like to use the respective professional title.</p> <p>The HPC can take action against the health professionals that they regulate if the title of a profession is misused, or if professional standards are not being obliged.</p> <p>Now that you've heard a bit about what the HPC does, what are your thoughts/reactions to this? How does that compare with what you thought a regulator might do?</p> <p>EXPLAIN THE HPC'S FITNESS TO PRACTISE ROLE: The HPC is responsible for:</p> <ul style="list-style-type: none"> - setting standards for professions; - approving courses that meet the standards; - registering people who pass the courses; and - holding those who are registered to its standards. <p>One of the ways in which the HPC holds the health professionals to its standards is through the fitness to practise complaints process.</p> <p>People who have a concern about a health professional's standard of practise can raise this with the HPC who will investigate the matter.</p> <p>The purpose of the Fitness to Practise process is to protect the health and wellbeing of people who use the services of health professionals.</p> <p>HAND OUT DIAGRAM OF FITNESS TO PRACTISE PROCESS.</p> <p>The fitness to practise process involves several steps:</p>	<p>Introduces the HPC, its core functions and the fitness to practise process.</p>

<p>7. An allegation is received and given to a case manager. If the case is not about fitness to practise then it is closed.</p> <p>8. If the case is about fitness to practise, an investigation is carried out.</p> <p>9. The registered professional is given information and they have 28 days to respond.</p> <p>10. The case is considered by the Investigating Committee which decides whether there is a case to answer.</p> <p>11. If the Committee decides there is no case to answer, the case is closed.</p> <p>12. If there is a case to answer, a final hearing is convened and the panel makes a judgement about whether the case is well founded. If it is well founded, then sanctions are imposed.</p> <p>What do you think of this process?</p> <p>What do you like/dislike about the process?</p>	
<p>3. Introducing mediation</p>	<p>10 mins</p>
<p>The HPC is currently exploring whether it should be suggesting mediation as a way of resolving complaints.</p> <p>Have you heard of mediation before today? What are the key things that are involved in mediation? PROBE: What is the purpose? Who are the parties involved? What is the process of mediation?</p> <p>PROMPT TO ENSURE THAT THE FOLLOWING THINGS ARE INCLUDED:</p> <ul style="list-style-type: none"> ▪ Mediation is used to resolve disputes. ▪ Neutral and independent mediator, the parties meet face-to-face to identify the disputed issues, develop options, consider alternatives and attempt to reach a mutually acceptable outcome. ▪ Mediation is a voluntary process – all parties must agree to take part and are free to leave the process at any time. ▪ Typically, the mediator will meet each party separately and ask them to explain how they see the current situation, how they would like it to be in the future and what suggestions they have for resolving the disagreement. <p>If both parties agree to meet, then the following steps take place:</p> <p>9. the mediator explains the structure of the meeting and ask the parties to agree to some basic rules, such as listening without interrupting;</p>	<p>Introduces mediation and the key elements in the process.</p> <p>Gauges initial reactions on whether mediation fits within the HPC’s regulatory regime</p>

<p>10. each party has a chance to talk about the problem as it affects them. The mediator will try to make sure that each party understands what the other party has said, and allow them to respond;</p> <p>11. the mediator helps both parties identify the issues that need to be resolved. Sometimes this leads to solutions that no one had thought of before, helping the parties to reach an agreement;</p> <p>12. the agreement is then recorded and signed by both parties and the mediator.</p> <p>What do you think about the idea of mediation? What do you like/dislike about the process?</p> <p>How does mediation compare with the fitness to practise process? Is it better or worse? How?</p> <p>What do you think about the idea of the HPC encouraging mediation to help resolve complaints? What would be the benefits? What would be the disadvantages? EXPLORE FOR DIFFERENT PARTIES INVOLVED</p> <p>Where do you think the HPC could use mediation in the fitness to practise process? PROBE: When a complaint is lodged? After an investigation is carried out? Instead of a final hearing? When a case is closed?</p>	
<p>4. Views on mediation in relation to specific case studies</p>	<p>40 mins</p>
<p>I would now like you to different scenarios – examples of real cases that the HPC deals with and where the HPC is thinking that it might be able to suggest mediation.</p> <p>HAND OUT CASE STUDY WHERE A MEMBER OF THE PUBLIC LODGES THE ALLEGATION. READ THROUGH AND THEN DISCUSS THE KEY QUESTIONS FOR EACH CASE.</p> <p>Scenario Two:</p> <ol style="list-style-type: none"> 1. Would it be appropriate or inappropriate for HPC to offer mediation to Kully and Daniel in this scenario? Why or why not? 2. Imagine that you are Kully. What are your thoughts/motivations about being offered mediation? What are the benefits for you in agreeing to mediation? What are the adverse effects for you in agreeing to mediation? For you to accept mediation in this instance, what would need to be “designed in” to the mediation process? 3. Now imagine that you are Daniel. What are your thoughts/motivations about being offered mediation? 	<p>Explores the application of mediation in more detail, supported by case study examples.</p> <p>Aims to discuss at least two case studies where a member of the public lodges the allegation. If time allows, discuss a third case study.</p>

What are the benefits for you in agreeing to mediation?
 What are the adverse effects for you in agreeing to mediation? For you to accept mediation in this instance, what would need to be “designed in” to the mediation process?

4. If the HPC offered mediation to Kully and Daniel, do you think it would be fulfilling its role as a regulator to ensure the health and well-being of people who use services of Psychologists? Why or why not?
5. If the HPC offered mediation to Kully and Daniel, do you think it would be fulfilling its role as a regulator to act in the public interest and protect the public? Why or why not?

Scenario Three:

1. Would it be appropriate or inappropriate for HPC to offer mediation to Mawa and Fay in this scenario? Why?
2. Imagine that you are Mawa. What are your thoughts/motivations about being offered mediation? What are the benefits for you in agreeing to mediation? What are the adverse effects for you in agreeing to mediation? For you to accept mediation in this instance, what would need to be “designed in” to the mediation process?
3. Now imagine that you are Fay. What are your thoughts/motivations about being offered mediation? What are the benefits for you in agreeing to mediation? What are the adverse effects for you in agreeing to mediation? For you to accept mediation in this instance, what would need to be “designed in” to the mediation process?
4. The Panel has decided that the fitness to practise issues have been addressed by Fay through the Trust’s internal disciplinary procedures. If mediation helps Mawa to understand the actions that Fay has taken and feel better about the outcome of the hearing, is it in the public interest for the HPC to offer mediation?

Scenario Five:

1. Would it be appropriate or inappropriate for HPC to offer mediation to Mohammed and Mrs Hood in this scenario? Why?
2. Imagine that you are Mrs Hood. What are your thoughts/motivations about being offered mediation? What are the benefits for you in agreeing to mediation? What are the adverse effects for you in agreeing to mediation? For you to accept mediation in this instance,

<p>what would need to be “designed in” to the mediation process?</p> <p>3. Now imagine that you are Mohammed. What are your thoughts/motivations about being offered mediation? What are the benefits for you in agreeing to mediation? What are the adverse effects for you in agreeing to mediation? For you to accept mediation in this instance, what would need to be “designed in” to the mediation process?</p> <p>4. Mrs Hood and Mohammed agree to go to mediation, but fail to reach a mutually accepted outcome. What, if anything, should happen next? Are there other solutions for resolving the complaint?</p> <p>5. Mrs Hood and Mohammed agree to go to mediation, and reach a mutually accepted outcome. Should the HPC have the power to assess the outcome? Should the HPC be obliged to assess the outcome? Should the HPC be able to take action if they deem that the outcome is not sufficient?</p> <p>IN THE CASE STUDY DISCUSSIONS, LISTEN OUT FOR UNPROMPTED MENTIONS OF THE FOLLOWING ADVANTAGES AND DISADVANTAGES. IF THESE ARE NOT MENTIONED SPONTANEOUSLY, EXPLORE PARTICIPANT VIEWS ON AS MANY OF THEM AS TIME ALLOWS.</p> <p>From other research that we have done, some people think that mediation is not appropriate because:</p> <ul style="list-style-type: none"> - the regulator should be focused on eliminating poor practise rather than resolving disputes; - it is not the regulator’s role to make the registrant or the complainant feel better; - it would add more layers to what is already a complicated complaints process; - in cases where an employer is involved it should be the employer’s role to facilitate resolution, and not the HPC’s. <p>Others believe that mediation is appropriate because:</p> <ul style="list-style-type: none"> - it fits with the HPC’s core role of protecting the health and wellbeing of people who use the services of registered health professionals; - it would reduce the pressure on individuals involved in the complaints process by offering a less formal process; - it could provide a better outcome for both complainants and registrants (e.g. by way of explanation or apology from the registrant, better understanding of the process, closure, learning points, increased satisfaction). - it would only be offered for a small number of cases. <p>What do you think? Where do you sit on these issues? Why?</p>	
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<p>5. Exploring individual vs public interest</p> <p>How do you think mediation looks after the individuals involved in the complaint? (e.g. by way of explanation or apology from the registrant, better understanding of the process, closure, learning points, increased satisfaction).</p> <p>How do you think mediation looks after the wider public interest? (i.e. protect the health and wellbeing of people who use the services of health professionals).</p> <p>Which of these is most important and why?</p> <p>Therefore should the HPC do more or less to encourage mediation?</p>	<p>15 mins</p>
<p>6. Conclusion and wrapping up</p> <p>To conclude, if the HPC decides to go down this route and suggest mediation in more cases, what would you say is the main benefit and the main disadvantage of doing so?</p> <p>Any other words of advice for the HPC in terms of suggesting mediation in more fitness to practise cases?</p> <p>THANK AND CLOSE</p>	<p>5 mins</p> <p>Recap of the most important issues – advantages and disadvantages</p>

Discussion groups with registrants

HPC Research: Discussion Guide for Groups with Registered Professionals Final: 13 July 2011

Objectives

- To gather the views of HPC's key stakeholders on the potential use of mediation within its regulatory regime.
- To establish whether there is a place for the use of mediation as a regulatory tool in handling certain types of complaints, and if so, where any mediation process may best sit.

Outline of the research programme

- 2 discussion groups with members of the public and 2 discussion groups with HPC registered health professionals
- 18 interviews with recent complainants. Complainants may be a member of the public, a registrant or an employer. They have been selected based on their type of case (cases which the HPC believes may be eligible for mediation):
 13. Not about fitness to practise
 14. Referred to a final hearing and case is proven to be well founded
 15. Referred to a final hearing and case is proven not to be well founded
 16. Not referred to a final hearing
- 10 interviews with key stakeholders (these include professional bodies, regulatory bodies, unions, charitable/patient/advocacy organisations)

Structure of discussion group

Section	Notes	Approx timing
1. Introduction	Introduces the research and outlines the 'rules' of the discussion.	10 mins
2. Introducing the HPC and the fitness to practise process	Introduces the HPC, its core functions and the fitness to practise process.	10 mins
3. Introducing mediation – and where it might fit	Introduces mediation and the key elements in the process. Gauges initial reactions on whether mediation fits within the HPC's regulatory regime.	10 mins
4. Views on mediation in relation to specific case studies	Explores the application of mediation in more detail, supported by two or three case study examples.	40 mins
5. Exploring key areas of interest	Looks in more detail at views towards protecting the individuals involved and protecting the wider public interest.	15 mins
6. Conclusion and wrapping up	Recap of the most important issues – advantages and disadvantages.	5 mins

Background information about mediation

The mediator acts in an impartial advisory role, helping the parties to communicate with one another (e.g. to identify their needs, clarify issues, explore solutions and negotiate their own agreement). The mediation model that the HPC may consider using is a ‘norm advocating’ approach where a representative of the HPC (perhaps a registered professional) would take part in the mediation to ensure that any agreement is in the public interest or, in the alternative, that the mediated outcome was agreed subsequently by an HPC panel. This would depend on where in the process mediation is used. If mediation is used prior to the fitness to practise process, then it may not be appropriate for a panel to agree the outcome. However, if mediation is used to potentially reduce the sanction then the HPC envisages that a panel would definitely need to sign off the agreement.

The HPC is clear about the **types of cases that would not be appropriate for mediation**. These include:

- serious misconduct;
- abuse of trust; boundary violations, predatory or manipulative behaviour;
- serious or persistent lapses in professional competence;
- criminal acts, dishonesty or fraud;
- serious concerns arising from the health of the registrant;
- substance abuse;
- where the registrant has frequently been the subject of allegations; or
- where mediation would be impossible because the registrant is recalcitrant or the complainant does not want to face the registrant again.

Discussion Areas	Aim/Notes
<p>1. Introduction</p> <p>Thanks participants for taking part. Introduce self, Ipsos MORI and the aim of the discussion.</p> <p>This research is being conducted on behalf of the Health Professions Council. They are interested in whether there is a place for the use of mediation as a regulatory tool in handling certain types of complaints, and if so, where any mediation process may best sit.</p> <p>Role of Ipsos MORI – research organisation commissioned by HPC to gather opinions of registered health professionals, members of the public and other key stakeholders. All opinions are valid; disagreements are welcome, but need to be agreeable and respectful.</p> <p>Confidentiality – reassure all respondents that their comments will be anonymous. Anything which you have said will be kept confidential – i.e. it will not be attributed to you, nor will we divulge who has actually taken part (though the original list of potential participants was provided to Ipsos MORI by HPC).</p> <p>Ask permission to digitally record and say report will be published with anonymised quotations.</p>	<p>10 mins</p> <p>Introduces the research and outlines the ‘rules’ of the interview (including those we are required to tell them about under MRS and Data Protection Act guidelines).</p>

<p>I would like to begin by spending a couple of minutes introducing ourselves. Please could you introduce yourselves to the group by telling us:</p> <ul style="list-style-type: none"> - your first name; - where you're from; - in what profession you practice; - whether NHS or private, or both; - and for how long you have been practising? 	
<p>2. Introducing the HPC and the fitness to practise process</p>	<p>10 mins</p>
<p>As you probably know, the Health Professions Council is responsible for protecting the health and wellbeing of people who use the services of registered health professionals.</p> <p>Start with thinking about the HPC in general. What are the main purposes and goals of the HPC? WRITE UP ON FLIP CHART</p> <p>How well would you say you know the HPC and its role?</p> <p>What does the HPC do well? What does it not do so well?</p> <p>IF THE FOLLOWING IS NOT COVERED IN PRECEDING DISCUSSION, ADD TO FLIP CHART</p> <p>The HPC's remit is to:</p> <ul style="list-style-type: none"> - set standards for professions; - approve courses that meet the standards; - register those who pass the courses; and - hold those who are registered to its standards. <p>Now let's focus on the fitness to practise process. What is this? What steps does it involve? What is the purpose of this process?</p> <p>HAND OUT DIAGRAM OF FITNESS TO PRACTISE PROCESS.</p> <p>The purpose of the Fitness to Practise process is to protect the health and wellbeing of people who use the services of health professionals.</p> <p>I'd like to briefly talk through the steps in the fitness to practise process:</p> <ol style="list-style-type: none"> 13. An allegation is received and given to a case manager. If the case is not about fitness to practise then it is closed. 14. If the case is about fitness to practise, an investigation is carried out. 15. The registered professional is given information and they have 28 days to respond. 	<p>Introduces the HPC, its core functions and the fitness to practise process.</p>

<p>16. The case is considered by the Investigating Committee which decides whether there is a case to answer.</p> <p>17. If the Committee decides there is no case to answer, the case is closed.</p> <p>18. If there is a case to answer, a final hearing is convened and the panel makes a judgement about whether the case is well founded. If it is well founded, then sanctions are imposed.</p>	
<p>3. Introducing mediation</p>	<p>10 mins</p>
<p>The HPC is currently exploring whether it should be suggesting mediation as a way of resolving complaints.</p> <p>What do you understand the process of mediation to be? What are the key elements?</p> <p>PROMPT TO ENSURE THAT THE FOLLOWING THINGS ARE INCLUDED:</p> <ul style="list-style-type: none"> ▪ Mediation is used to resolve disputes. ▪ Neutral and independent mediator, the parties meet face-to-face to identify the disputed issues, develop options, consider alternatives and attempt to reach a mutually acceptable outcome. ▪ Mediation is a voluntary process – all parties must agree to take part and are free to leave the process at any time. ▪ Typically, the mediator will meet each party separately and ask them to explain how they see the current situation, how they would like it to be in the future and what suggestions they have for resolving the disagreement. <p>If both parties agree to meet, then the following steps take place:</p> <ol style="list-style-type: none"> 13. the mediator explains the structure of the meeting and ask the parties to agree to some basic rules, such as listening without interrupting; 14. each party has a chance to talk about the problem as it affects them. The mediator will try to make sure that each party understands what the other party has said, and allow them to respond; 15. the mediator helps both parties identify the issues that need to be resolved. Sometimes this leads to solutions that no one had thought of before, helping the parties to reach an agreement; 16. the agreement is then recorded and signed by both parties and the mediator. <p>Do you have a sense of where mediation may fit into the HPC's regulatory regime and it's fitness to practise process?</p>	<p>Introduces mediation and the key elements in the process.</p> <p>Gauges initial reactions on whether mediation fits within the HPC's regulatory regime</p>

<p>What do you think about the idea in general of the HPC encouraging mediation?</p> <p>What do you consider to be the pros and cons of the HPC suggesting mediation in more cases?</p>	
<p>4. Views on mediation in relation to specific case studies</p>	<p>40 mins</p>
<p>I would now like you to consider a scenario of a case where the HPC may suggest mediation.</p> <p>HAND OUT CASE STUDY WHERE A REGISTRANT LODGES THE ALLEGATION. READ THROUGH AND THEN DISCUSS THE KEY QUESTIONS FOR EACH CASE.</p> <p>Scenario One:</p> <ol style="list-style-type: none"> 6. Would it be appropriate or inappropriate for HPC to offer mediation to Helen and Anne in this scenario? Why? 7. Imagine that you are Anne. What are your thoughts/motivations about being offered mediation? What are the benefits for you in agreeing to mediation? What are the adverse effects for you in agreeing to mediation? For you to accept mediation in this instance, what would need to be “designed in” to the mediation process? 8. Now imagine that you are Helen. What are your thoughts/motivations about being offered mediation? What are the benefits for you in agreeing to mediation? What are the adverse effects for you in agreeing to mediation? For you to accept mediation in this instance, what would need to be “designed in” to the mediation process? <p>Scenario Five:</p> <ol style="list-style-type: none"> 1. Is it appropriate or inappropriate for HPC to offer mediation to Ali and Simone in this scenario? Why? Why not? 2. Imagine that you are Ali. What are your thoughts/motivations about being offered mediation? What are the benefits for you in agreeing to mediation? What are the adverse effects for you in agreeing to mediation? For you to accept mediation in this instance, what would need to be “designed in” to the mediation process? 3. Now imagine that you are Simone. What are your thoughts/motivations about being offered mediation? What are the benefits for you in agreeing to mediation? 	<p>Explores the application of mediation in more detail, supported by case study examples.</p> <p>Aims to discuss at least two case studies where a registrant lodges the allegation. If time allows, discuss a third case study.</p>

What are the adverse effects for you in agreeing to mediation? For you to accept mediation in this instance, what would need to be “designed in” to the mediation process?

4. Ali and Simone agree to go to mediation, but fail to reach a mutually accepted outcome. How would this impact on the sanctions imposed?
5. Ali and Simone agree to go to mediation, and reach a mutually accepted outcome. Should the HPC be able/obliged to assess whether outcome is sufficient? Why/why not? If the HPC accepts the outcome of Ali and Simone’s mediation, how would this impact on the sanctions imposed?

Scenario Six:

6. Would it be appropriate or inappropriate for HPC to offer mediation to NHS Enterprise and Leon in this scenario? Why or why not?
7. Imagine that you are NHS Enterprise. What are your thoughts/motivations about being offered mediation? What are the benefits for you in agreeing to mediation? What are the adverse effects for you in agreeing to mediation? For you to accept mediation in this instance, what would need to be “designed in” to the mediation process?
8. Now imagine that you are Leon. What are your thoughts/motivations about being offered mediation? What are the benefits for you in agreeing to mediation? What are the adverse effects for you in agreeing to mediation? For you to accept mediation in this instance, what would need to be “designed in” to the mediation process?
9. NHS Enterprise and Leon agree to go to mediation, but fail to reach a mutually accepted outcome. What, if anything, should happen next? Are there other solutions for resolving the complaint?
10. Is there a role, or not, for the HPC to resolve staff management and relations issues that NHS Enterprise has? Why? Does it help to protect the public?
11. NHS Enterprise and Leon agree to go to mediation, and reach a mutually accepted outcome. Should the HPC have the ability to accept or reject the outcome? Should the HPC be able to take action if they deem that the outcome is not sufficient? In what way?

IN THE CASE STUDY DISCUSSIONS, LISTEN OUT FOR

<p>UNPROMPTED MENTIONS OF THE FOLLOWING ADVANTAGES AND DISADVANTAGES. IF THESE ARE NOT MENTIONED SPONTANEOUSLY, EXPLORE PARTICIPANT VIEWS ON AS MANY OF THEM AS TIME ALLOWS.</p> <p>From other research that we have done, some people think that mediation is not appropriate because:</p> <ul style="list-style-type: none"> - the regulator should be focused on eliminating poor practise rather than resolving disputes; - it is not the regulator’s role to make the registrant or the complainant feel better; - it would add more layers to what is already a complicated complaints process; - in cases where an employer is involved it should be the employer’s role to facilitate resolution, and not the HPC’s. <p>Others believe that mediation is appropriate because:</p> <ul style="list-style-type: none"> - it fits with the HPC’s core role of protecting the health and wellbeing of people who use the services of registered health professionals; - it would reduce the pressure on individuals involved in the complaints process by offering a less formal process; - it could provide a better outcome for both complainants and registrants (e.g. by way of explanation or apology from the registrant, better understanding of the process, closure, learning points, increased satisfaction). - it would only be offered for a small number of cases. <p>What do you think? Where do you sit on these issues? Why?</p>	
<p>5. Exploring key areas of interest</p>	<p>15 mins</p>
<p><u>Protecting the individuals involved</u></p> <p>Mediation could provide a better outcome for both complainants and registrants (e.g. by way of explanation or apology from the registrant, better understanding of the process, closure, learning points, increased satisfaction). Do you think it is the HPC’s responsibility to make the complainant and registrant feel better or not? Does it fit within their remit or not? Why?</p> <p><u>Protecting the public interest</u></p> <p>One of the things that the HPC is responsible for is looking after the wider public interest. Do you think the HPC would be achieving this by suggesting mediation? In what ways do you think suggesting mediation is meeting the wider public interest?</p> <p>If the HPC want to make sure mediation is meeting the public interest, what things would they have to do? PROBE ON:</p>	<p>Looks in more detail at views towards protecting the individuals involved and protecting the wider public interest.</p>

<p>sign-off the mediated agreement between the complainant and the registrant; the attendance of a HPC representative (a registered professional) if mediation is used outside of the fitness to practise process; ensure that poor practise is punished; only use in certain cases – which types?</p> <p>EXPLORE HPC PROPOSALS FOR ‘NORM ADVOCATING’ MEDIATION:</p> <ul style="list-style-type: none"> - the attendance of a HPC representative (a registered professional) if mediation is used outside of the fitness to practise process e.g. standard of acceptance is not met; - sign-off by a HPC panel if mediation is used as part of the fitness to practise process e.g. to reduce a sanction. <p>How do you feel about these suggestions? What do you like about them? What are your concerns?</p>	
<p>6. Conclusion and wrapping up</p>	<p>5 mins</p>
<p>To conclude, if the HPC decides to go down this route and suggest mediation in more cases, what would you say are the main benefit and the main disadvantage of doing so?</p> <p>Any other words of advice for the HPC in terms of suggesting mediation in more fitness to practise cases?</p> <p>THANK AND CLOSE</p>	<p>Recap of the most important issues – advantages and disadvantages</p>