

## **THE HEALTH PROFESSIONS COUNCIL**

Chief Executive & Registrar: Marc Seale

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### **INVESTIGATING COMMITTEE**

MINUTES of the tenth meeting of the Investigating Committee held at **9:00am on Thursday 23 September 2004** at The Thistle Manchester, 3-5 Portland Street, Piccadilly Gardens, Manchester, M1 6DP.

**PRESENT:** Mr N Willis (Chairman)  
Mr M Barham  
Ms C Farrell  
Mr P Frowen  
Mr C Lea  
Miss M MacKellar (Deputy-Chairman)  
Mrs J Pearce  
Mr D Whitmore

#### **IN ATTENDANCE:**

Miss S Butcher (Committee Secretary)  
Mr J Bracken ( Bircham, Dyson, Bell)  
Mr M Calligy (Case Manager, Fitness to Practise)  
Mr M Guthrie (Case Manager, Fitness to Practise)  
Miss K Johnson (Director, Fitness to Practise)  
Miss N O'Sullivan (Secretary to Council)  
Mr Marc Seale (Chief Executive & Registrar)

#### **Item 1.04/30 INTRODUCTION AND WELCOME**

**1.1** The Chairman welcomed Mr Whitmore who had recently been appointed as the alternate Paramedic member on Council to his first meeting of the Committee. Mr Lea was welcomed back to the Committee and it was noted that he is now a full member.

**Item 2.04/31 APOLOGIES FOR ABSENCE**

- 2.1.1 Apologies for absence were received from the following Investigating Committee Members; Mr Munro and Miss Pearson.

**Item 3.04/32 APPROVAL OF AGENDA**

- 3.1 The Investigating Committee approved the agenda.

**Item 4.04/33 MINUTES**

- 4.1 It was agreed that the minutes of the ninth meeting of the Investigating Committee be confirmed as a true record and signed by the Chairman.
- 4.2 The Chairman reported that due to a large number of apologies received from Committee members the previous meeting scheduled for Thursday 29 June 2004 did not take place.

**Item 5.04/34 MATTERS ARISING**

- 5.1 **Matters Arising – Preliminary Meetings (4.1)**
- 5.1.1 The Chairman reported that at the Council meeting Tuesday 14 September the decision not to have preliminary meetings was ratified. The Committee noted that preliminary meetings would only take place if there were matters of a technical/complex nature to be resolved or if the parties had particularly requested that a preliminary meeting took place.
- 5.2 **Matters Arising – Registered Medical Practitioners (4.5)**
- 5.2.1 The Chairman reported that the advertisement for registered medical practitioners had generated 16 applications. Interview dates were currently being identified. The membership of the panel would shortly be agreed.
- 5.2.2 The Committee noted that there was a possibility that the provision in the Health Professions Order which required each Fitness to Practise Committee to include a registered medical practitioner in its membership would be reviewed in the future however for the present the requirement stood.
- 5.3 **Matters Arising – Education and Training Requirements (4.6)**
- 5.3.1 The Chairman reported that Mr Frowen and Mrs Pearce had now completed their panel training sessions. Miss Johnson reported that dates had also been identified for Mr Barham in October, November and December 2004.

- 5.4**        **Matters Arising – Report to Conduct and Competence Committee (4.7)**
- 5.4.1**      The Chairman reported that under Article 27, the Conduct and Competence Committee had a duty to advise the Council as outlined in Article 27 (i), (ii) and (iii). The Committee noted that this advice should follow consultation with the other Practise Committees. There therefore had to be an element of collaboration between all three committees.
- 5.5**        **Matters Arising – Partners (4.8)**
- 5.5.1**      Miss Johnson reported that partner training was currently being undertaken for all those that had not completed this and anticipated its conclusion early next year. The first Partner Conference was to take place that day in Manchester which would give HPC an opportunity to meet and acquire feedback of the processes that have been put in place so far.
- 5.5.2**      Miss Johnson confirmed that the FTP team were concentrating on making the overall FTP processes more succinct for the Fitness to Practise Committees, registrants and panel members.
- 5.6**        **Matters Arising – Database (4.9)**
- 5.6.1**      Miss Johnson reported that the Fitness to Practise team were currently in talks with the IT department to construct a database whereby registrants could be tracked for the timely submission of their reports as required by a Health Professions Order.
- 5.7**        **Matters Arising – Award of Costs (4.11)**
- 5.7.1**      Miss Johnson reported to the Committee that under current HPC legislation costs could not be awarded to registrants.
- 5.8**        **Matters Arising – The Council for the Regulation of Health Professionals (CHRE) (4.16)**
- 5.8.1**      The Chairman confirmed that the CHRE press releases which had been presented to the last meeting of the Investigating Committee had now been made available on the CHRE website. It was confirmed that although this organisation’s name had changed the website was accessed using the old website prefix of CHRP.
- 5.9**        **Matters Arising – Screeners 4.17**
- 5.9.1**      Miss Johnson reported that Council had ratified the decision that screeners were no longer to be used.
- 5.10**      **Framework on Disabilities, Health and Registration (5.04)**
- 5.10.1**     Miss Johnson reported that a Professional Liaison Group had now been established and would convene shortly to assist approved institutions to make decisions on admission to approved programmes.

**5.11 Legal Assessors Reports (6.04/21)**

**5.11.1** Miss Johnson reported that the legal assessor's reports had now been standardised.

**5.12 Mediation (7.04)**

**5.12.1** It was noted that the Investigating Committee has not referred any cases for mediation. Alternative Dispute Resolution (ADR) had been employed to deal with cases which were suitable for mediation. Under the terms of their contract they were not paid a retainer, cases would be dealt with on a case by case basis. If the number of cases being referred to mediation increased the possibility of negotiating a retainer fee would be considered.

**Item 6.04/35 CHAIRMAN'S REPORT**

**6.1** The Chairman thanked Miss Johnson for the processes and procedures introduced within the Fitness to Practise department. The Chairman noted how helpful this was in enabling panel members to undertake their work more effectively. The dates that were now produced for forthcoming Committee meetings were also noted to be a valuable resource which assisted members in their diary planning.

**Item 7.04/36 DIRECTOR OF FITNESS TO PRACTISE REPORT**

**7.1** The Committee noted that a review of a Conditions of Practise order took place on 23<sup>rd</sup> July 2004.

**7.2** One case was unfounded.

**7.3** Miss Johnson reported that since the last meeting of Council, panels of the Investigating Committee have considered 41 cases and found there was a case to answer in 13 cases and requested further information in 8 cases. There are currently 35 cases awaiting consideration by a panel of the Investigating Committee.

**7.4** Miss Johnson reported that there are currently 48 cases within the remit of the Conduct and Competence Committee. Of these cases, dates for 17 had been set and 7 are awaiting review hearings. Miss Johnson reported that approximately 2-3 cases are heard per week. The Committee noted that 3 of the cases were unaccounted for on the statistics produced. Miss Johnson reported that the remaining 3 cases were still under review due to the conditions that had been set. The Committee noted that health cases in particular could take longer to process due to the requirement of seeking evidence for their health claims.

- 7.5 Miss Johnson reported that there were currently 8 cases within the remit of the Health Committee. Of those cases dates for 3 had been set and 2 were awaiting review hearings one of which would be reviewed in March 2005.
- 7.6 Miss Johnson reported that since the last meeting of Council, a panel of the Conduct and Competence Committee had considered 2 applications for an interim order and imposed one.
- 7.7 Miss Johnson reported that there were currently 274 active registration appeal cases. Since last meeting of Council, 65 cases had been reviewed, legal advice had been taken on 45 cases, 20 cases had reached a hearing, 27 appeals had been withdrawn and hearing dates for a further 86 appeals had been arranged.
- 7.8 Miss Johnson reported that an international registration officer was currently assisting the Fitness to Practise team on a secondment basis. A new case manager, Mr Guthrie has been appointed and had been in post since 23<sup>d</sup> August 2004. A team administrator had also been appointed who was due to start on Monday 25<sup>th</sup> October 2004.
- 7.9 Miss Johnson reported that a further three, two day training sessions had been arranged for 25<sup>th</sup> and 26<sup>th</sup> October 2004, 2<sup>nd</sup> and 3<sup>d</sup> December 2004 and 12<sup>th</sup> and 13<sup>th</sup> January 2005 where all remaining partners (including ODP's) would be trained. Council members who had not yet attended a session would be invited. The statistics for panel members used and trained were noted by the Committee.
- 7.10 Miss Johnson reported that a review day for legal assessors would take place on 24<sup>th</sup> November 2004. Feedback from this session would be made available to Fitness to Practise Committees at their next meetings.

**Action: KJ**

- 7.11 The Committee noted that there had been an increase in anonymous letters of allegation received by the FTP department. Miss Johnson clarified that in such scenarios the team had to seek further information from a hospital trust or the police, whichever was the most appropriate route for enquiry. The Committee noted that in a lot of instances, the police did not always automatically submit this information. Miss Johnson and her team would be writing to all Chief Constables throughout the U.K. to explain the purpose and role of the HPC, emphasising the importance of the timely submission of information regarding convictions so that the HPC could take action as appropriate.
- 7.12 Miss Johnson reported that the Fitness to Practise team had been reviewing the way FTP/Registration Appeal panels were run and had

introduced new systems. The Committee noted that a new filing system had been implemented and the team was also working with the IT department to create a tracking system for FTP cases.

- 7.13** The Committee noted that following a review of the FTP/Registration appeal processes, all standard letters had been redrafted, making processes clearer for the registrant and new practice notes have been drafted and would be submitted to Committee's and Council for approval.

**Action: KJ**

- 7.14** The Committee noted that the team was also working on creating brochures for the FTP processes and would be working towards creating a witness support programme, particularly for the Conduct and Competence interim order hearings which would also improve processes.

- 7.15** The Committee noted that a member of the team attended an FTP forum CRHE once a month. Fitness to practise representatives from the other 8 health care regulators also attended. The Chairman asked if the Committee could receive feedback from these meetings.

**Action: KJ**

#### **Item 8.04/38 ALLEGATIONS**

- 8.1** The Investigating Committee received a paper from the Director of Fitness to Practise regarding allegations, for discussion/approval.
- 8.2** Miss Johnson reported that the practice note set out the form in which Council accepted allegations and what process would be followed in accepting anonymous allegations. The Committee noted that in order for an allegation to be accepted it should be put in writing, and that a certificate of conviction or caution counted as an allegation. The Committee noted that HPC sought to operate fair and transparent procedures and, therefore, as a matter of policy the Council, would normally not take further action in respect of allegations which are made anonymously. Anonymous allegations in this context mean's an allegation made by a person whose identity was unknown to the HPC rather than by a person who had asked the HPC not to disclose his or her identity. However, the primary function of the Health Professions Council was to protect the public and therefore, there were circumstances in which an anonymous allegation relating to serious and credible concerns about a registrant's fitness to practise would be considered. In such circumstances the Council should consider exercising its power under Article 22(6) of the Health Professions Order 2001 to deal with a letter as if it was an allegation.

- 8.3** The Committee requested further clarification of how the information referred to in the document was sought. Miss Johnson clarified that this related to the facility whereby the Fitness to Practise team were given the powers to make further investigations via police channels, for example notices after conviction should be submitted to HPC by the police but in a lot of instances the police did not automatically submit this information. This document would help in defining the procedures which should be followed to ensure that all relevant information was received.
- 8.4** The Investigating Committee agreed that the practice note on allegations be approved and that it should be referred to Council for ratification.

**Action: SB/KJ**

**Item 9.04/37 INFORMATION REQUESTED BY INVESTIGATING PANELS**

- 9.1** The Investigating Committee received a paper from the Director of Fitness to Practise on the procedures by which investigating panels received information about cases for discussion/approval.
- 9.2** Miss Johnson reported that the Committee was asked to authorise the Director of Fitness to Practise and HPC Case Managers to request as much information about a case as possible under Article 26(2)(c) of the Health Professions Order 2001. It was noted that by giving the above persons these powers, more information would be made available to assist panels in their decision making processes. It was noted that more cases were being received by the Fitness to Practise team and by being given this power Miss Johnson would not need to come back to the committees in order to sanction seeking more information on each and every individual case.
- 9.3** The Committee also noted that it was not being requested to give blanket powers to seek further information in all cases and that as a wider range of cases were considered, the Committee would be requested to give further specific powers to the Fitness to Practise Director and the Case Managers to seek further information.
- 9.4** The Investigating Committee agreed that the paper be agreed to in principle, and that Mr Bracken would draft the resolution to be included in the minutes (please see below 9.5). The Committee noted that this resolution was not subject to ratification by Council.
- 9.5** The Investigating Committee should note that the resolution reads as follows:

That in addition to their discretionary powers under Article 25(1) of the Health Professions Order 2001, the Director of Fitness to Practise and HPC Case Managers (in their capacity as authorised persons) shall, before a case is considered by a Panel of the Committee:

- (a) in cases where a registrant has been convicted or cautioned for an offence (and unless the information is included in the notice of conviction or caution), undertake further inquiries regarding the circumstances of the conviction, including but not limited to whether the events leading to the conviction or caution occurred whilst the registrant was on duty; and
- (b) in cases which have been referred to the Committee by a registrant's employer, undertake further inquiries regarding any capability or disciplinary proceedings which the employer has conducted, is conducting or is proposing to conduct in relation to the registrant.

#### **Item 10.04/38 TIME EXTENSIONS**

- 10.1** The Investigating Committee received a paper from the Director of Fitness to Practise on time extensions for registrants for discussion/approval.
- 10.2** The Investigating Committee was requested to approve the recommendation that the Director of Fitness to Practise and HPC Case Managers be appointed as the authorised persons to provide a once only 28 day extension of time and to resolve that if any further extension of time was required, a request was made to the panel.
- 10.3** Miss Johnson reported that the Fitness to Practise team frequently received requests from registrants requesting an extension of the period of time permitted for submission of supporting information to be used in their case hearings. Authorising the above persons to extend the period would avoid the need to convene a panel to take a decision regarding an extension. It was noted that the Fitness to Practise team were therefore being expeditious in the following of these procedural rules.
- 10.4** Mr Bracken confirmed that registrants could not be obliged to apply for a time extension before the end of the 28 day period.
- 10.5** The Investigating Committee agreed that the Director of Fitness to Practise and HPC Case Managers be authorised to issue time extensions of 28 days and that if further extensions were required, the registrants should request this in writing, detailing their reasons and that this should be put before a panel for decision.
- 10.6** The Committee noted that this agreement did not require ratification by Council.

#### **Item 11.04/39 INVESTIGATING COMMITTEE PROCEDURES**

- 11.1** The Committee received a paper to note from the Director of Fitness to Practise on decisions of the Investigating Committee.
- 11.2** Miss Johnson reported to the Committee that at its last meeting on 15<sup>th</sup> April 2004 the Committee had discussed whether an investigating panel's reason for arriving at a decision that there was a case to answer should be referred to the receiving committee.
- 11.3** Miss Johnson explained that it was the role of the investigating panel to determine whether they felt there was a case to answer and that the reasons for this decision should be included in the notice of allegation. The receiving panel was therefore aware of the reasons why the investigating panel had reached a decision.
- 11.4** The Committee noted the paper.

#### **Item 12.04/40 RESOLUTIONS AGREED IN WRITING**

- 12.1** The Committee received a paper to note from the Secretary to the Committee.
- 12.2** Miss Butcher reported that the 29 June meeting of the Investigating Committee had been cancelled as a large number of apologies were received and the meeting was deemed to be inquorate. The Committee noted that the agenda had contained a number of items which required agreement by the Committee in time for July Council meeting and that therefore the Acting Secretary had circulated the following resolutions to members for agreement in writing:
  - (i)** That the Committee was asked to increase the membership of the Committee by one person; that applications be sought for a new committee member using the agreed process; and that the new appointment should be recommended to Council for ratification.
  - (ii)** That the experimental screening process should be ended and that for the time being screeners should not be appointed.
  - (iii)** That preliminary meetings would only be held where it was clear that the complexity of a case demanded that such a meeting was held.
  - (iv)** That the Director of Fitness to Practise and all persons appointed as HPC Case Managers be appointed by the Committee as authorised persons for the purposes of Article 25(1) of the Health Professions Order 2001.
- 12.3** The Committee noted the resolutions and also that these had been approved by Council at the July Council meeting.

#### **Item 13.04/41 COMMITTEE MEMBERSHIP**

- 13.1** The Committee received a paper to note from the Secretary to the Committee.
- 13.2 Replacement Member**  
Miss Butcher reported that the Privy Council had appointed Mr Whitmore as the alternate paramedic member on Council in place of Mr Collins. The Committee noted that in keeping with Council's policy that new members on Council should automatically fill the vacancies created by the Council member they were replacing Mr Whitmore had automatically become a member of the Investigating Committee. Mr Collins had resigned from Council, the Education and Training Committee and the Investigating Committee on 16 October 2003.
- 13.3 Appointment of New Member**  
Miss Butcher reported that that as detailed in minute 12.1(i) above the Investigating Committee had agreed to increase its membership by one. This was in accordance with its Rules. Mr Lea had been nominated to the Committee using the procedure agreed by Council for appointment to statutory and non-statutory Committees. The Council ratified this decision at its meeting held on 14 September 2004.
- 13.4** The Committee noted that at its March 2004 meeting Council had agreed that ex-officio membership of committees should no longer continue. This had reduced the membership of the Investigating Committee by one.
- 13.5** The Committee noted this decision.

#### **Item 14.04/42 DECISION MAKING**

- 14.1** The Committee received a paper for information from the Director of Fitness to Practise.
- 14.2** Miss Johnson reported that a new format for decision making had been introduced to assist panel members publishing their decisions. A similar format would be produced for the publication of interim orders.
- 14.3** The Committee noted that it was possible for a panel to make an interim suspension order against a registrant to have immediate effect at the conclusion of a hearing. This would come into effect immediately and would cover the 28 day period during which time the registrant could lodge an appeal.

- 14.4** Miss Johnson reported that there are now 3 Hearing Officers/Case Managers; Mr Guthrie, Miss Seall and Miss Adams who could help panel members draft their decisions. The Fitness to Practise Department now had laptops and freestanding printers where such tasks could be undertaken.
- 14.5** The Committee noted the Notice of Decision and Order paper was a very comprehensive and concise document which would assist panel members in undertaking their duties successfully and efficiently. The assistance of the Hearing Officers/Case Managers was also welcomed.

**Item 15.04/43 INFORMATION FROM OPINION LEADER RESEARCH**

- 15.1** The Committee received a paper to note from the Director of Fitness to Practise.
- 15.2** Miss Johnson reported that a group of panel members was convened on the 20<sup>th</sup> August to discuss the evaluation of the HPC fitness to practise hearings process. Opinion Leader Research (OLR) undertook an evaluation of the fitness to practise processes at the start of the year and would be launching a revised version of the questionnaire at the Partners Conference 23<sup>rd</sup> and 24<sup>th</sup> September 2004. The Committee noted that there were some reservations regarding the methodology and subsequent nomenclature used by OLR. The Committee noted that the Fitness to Practise team would be using the outcome of the questionnaire and the attached evaluation to review fitness to practise proceedings.
- 15.3** The Committee noted that in principle it agreed with the use of focus groups to evaluate HPC processes however it also noted that a small sample had been used in the study and that a focus group should normally comprise of 8-10 people. There was a need for more research before any conclusions could be reached.

**Item 16.04/44 ROLE OF THE HEARING OFFICER/CASE MANAGER**

- 16.1** The Committee received a paper to note from the Fitness to Practise Director.
- 16.2** Miss Johnson reported that in future the case managers/hearing officers would assist Fitness to Practise Panels by taking a more active role at a hearing. The Committee noted that the HPC case manager would introduce each case, would indicate what papers had been received; note any supporting documentation, the date that the letter requesting observations was dispatched and any response that had been received. They would indicate whether the HPC had any comment on the matter. The case manager would indicate when the case had been at a previous

investigating panel and what further information had been requested. The case manager would type the finding for the panel. Miss Johnson reported that the case manager would also perform these functions as the hearing officer at interim orders and final hearings.

**16.3** The Committee welcomed the information provided.

#### **Item 17.04/45 LIST OF UPCOMING PAPERS**

- 17.1** The Committee received a paper for information from the Fitness to Practise Director.
- 17.2** Miss Johnson reported that the Fitness to Practise team was working on a number of areas to improve the fitness to practice procedures and to ensure that these processes were in line with the Health Professions Order 2001 and Procedure Rules.
- 17.3** The Committee noted the following upcoming papers (for information only); Self-Referrals, Witness Support Programme and Restorations.

**Action: KJ**

#### **Item 18.04/46 ANY OTHER BUSINESS**

- 18.1** Mr Bracken reported that the Registration Committee had referred a paper on self referrals to the Investigating Committee. The Committee noted that historically self-referral cases had been processed as allegations. The procedure could not continue as it discouraged voluntary disclosure of convictions by registrants. A procedure was required which allowed the registrant to seek advice regarding the disclosure of a conviction. This advice would be issued with the warning that a self-referral could be referred to the Investigating Committee.
- 18.2** It was agreed that a paper on this matter should be circulated to the Committee electronically for agreement and that following this agreement the matter should be referred to the Education and Training Committee.

**Action: SB/KJ**

#### **Item 19.04/47 DATE & TIME OF NEXT MEETING**

- 19.1** The next meeting of the Investigating Committee would be held at 11:00am on Thursday 11 November 2004.
- 19.2** Further meetings would be held on the following dates;

Thursday 10 February 2004