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Fitness to Practise Forum: 12<sup>th</sup> September 2007

Paper title: Standards for Advocates

Executive summary and recommendations

## **Introduction**

Rule 2 of procedure rules (as amended) for all three practice committees provide that:

*“Presenting Officer” means a person appointed by—*

*(a) the Council to present the case on its behalf at any hearing before the Committee which relates to an allegation against a health professional; or*

*(b) the Registrar to represent him at any hearing before the Committee which relates to a register entry allegation against a health professional;*

Currently, HPC uses its Fitness to Practise Case Managers to present interim orders and reviews of interim orders, and Solicitors or Legal Executives employed by Kingsley Napley (who are HPC’s “Fitness to Practise” lawyers) to present all other cases. However, in line with the policy of reducing reliance on lawyers where appropriate (such as vulnerable witness assessments and witness statements) and the forthcoming reorganisation of the Fitness to Practise department (which will take place following the recruitment and appointment of Lead Case Managers), HPC Case Managers will act as presenting officers in some Article 30 review cases, documents only registration appeals, conviction fitness to practise cases and in cases of incorrect or fraudulent entry. They will also applications to have a witness assessed as vulnerable and in applications to dispose of cases via consent.

The Executive has now developed Standards for HPC Advocates. Their purpose is to help HPC Advocates contribute to fair and effective FTP proceedings and to maintain public confidence in the regulatory process, by ensuring that HPC Advocates act in the manner which is the public is entitled to expect from those who represent a statutory regulator.

Presenting Officers are Council appointments so therefore this paper is to note only. Council will be asked to approve these standards at a future meeting.

## **Decision**

This paper is to note only.

**Background information**

None

**Resource implications**

None

**Financial implications**

None

**Appendices**

HPC Standards for Advocates

**Date of paper**

28<sup>th</sup> August 2007

# **Health Professions Council**

## **STANDARDS FOR HPC ADVOCATES**

### **Introduction**

HPC is the statutory regulator of several health professions. Its function is to maintain professional standards and protect the public. HPC strives to do so in a fair, open and transparent manner.

Although allegations are only made against a small proportion of its registrants, one of the most visible aspects of HPC's work is the conduct of fitness to practise ('FTP') proceedings to determine such allegations. The advocates who represent HPC in those proceedings ('HPC Advocates') are part of HPC's "public face" and, as such, their conduct and performance should reflect the values of HPC. As HPC sets and holds others to high professional standards, it is only right that advocates who present cases in the public interest on its behalf should also be held to similar professional standards.

These are the standards expected of all HPC Advocates. Their purpose is to help HPC Advocates contribute to fair and effective FTP proceedings and to maintain public confidence in the regulatory process, by ensuring that HPC Advocates act in the manner which the public is entitled to expect from those who represent a statutory regulator.

### **Ethical Conduct**

HPC Advocates must always act, and be seen to act, in the public interest. Doing so requires them to act fairly, independent of other interests and in a manner that robustly supports public protection but also respects the rights of the health professional who is the subject of an allegation ('the registrant concerned').

HPC Advocates must adhere to the highest ethical standards and those who are practising lawyers must also comply with any relevant professional conduct rules.

HPC Advocates must conduct proceedings in a firm, fair and honest manner. They must provide information which is clear, accurate and unambiguous and never knowingly mislead.

HPC Advocates must be aware of the needs of all witnesses, especially victims or those who are vulnerable, and must treat all witnesses, including the registrant concerned, with consideration and respect.

HPC Advocates must respect human rights and act in a manner which is consistent with HPC's obligation as a public authority to comply with the Human Rights Act 1998.

## **Preparation**

HPC Advocates should always be fully prepared to present their case. Preparation is the key to effective advocacy and, as it is HPC that initiates and manages FTP proceedings, HPC Advocates will rarely have a valid reason for not being fully prepared.

HPC Advocates must have a thorough working knowledge of the rules of procedure for FTP proceedings, including the relevant rules of evidence.

HPC Advocates must have a good understanding of how FTP proceedings are conducted and be familiar with any relevant Practice Directions and HPC's Indicative Sanctions Policy.

HPC Advocates must always read case papers fully, so that they are properly prepared, fully understand the facts of the case and any relevant law and are able to assist the Panel.

HPC Advocates must comply with the Standard Directions which apply in FTP proceedings or any Special Directions which have been given by the Panel.

HPC Advocates must focus on the issues in dispute and, where appropriate, make use of HPC's active case management process to simplify the case by agreeing facts, documents or witness statements which are not in dispute.

HPC Advocates must ensure that, so far as possible, all relevant documents are included in the case bundle exchanged prior to the hearing. Where this cannot be achieved, they should ensure that they have sufficient copies of any document they propose to present to the Panel and that such documents are accessible and in the appropriate order.

HPC Advocates must comply with HPC's case and file management procedures.

## **Before the Panel**

HPC Advocates must be neat, tidy and appropriately dressed. An untidy or inappropriate appearance is discourteous to the Panel and may be construed as a failure to recognise the seriousness of FTP proceedings and their impact upon the registrant concerned.

HPC Advocates must be courteous at all times to everybody taking part in FTP proceedings, not least the registrant concerned. Normally, witnesses in such proceedings are asked to take the oath or affirm before giving evidence and HPC Advocates should not speak or write when a witness is doing so.

HPC Advocates must present their case in a clear and modulated voice and should seek to minimise the distractions which may arise from their mannerisms or habits.

HPC Advocates must use simple, concise language which avoids the unnecessary use of slang, jargon, technical or legalistic terms. Where such terms cannot be avoided they should be explained.

HPC Advocates must maintain appropriate eye contact with the Panel and witnesses and make use of active listening skills.

HPC Advocates must be sensitive to diversity and equality and choose language and vocabulary which takes account of the knowledge and abilities of their audience.

### **Presenting your case**

As each case is different, it would be inappropriate for HPC to set standards for HPC Advocates concerning the detailed conduct of cases. The tactical choices involved are the essence of the art of advocacy. However, as a minimum, HPC would expect the following guidance to apply in most cases:

- the overall approach adopted should be to put the key points and arguments of HPC's case before the Panel thematically and in a logical sequence;
- an opening statement should be made which introduces HPC's case without overstating it and which anticipates and deals with probable lines of defence. Arguments should not be introduced here but saved for closing argument;
- examination in chief should be conducted on the basis of a thorough knowledge of the case and the relevant witness statements. Non-leading questions should be used to put all relevant evidence before the Panel in a logical manner;
- cross-examination should only be planned in outline but planned nonetheless. So far as possible, closed questions should be used – both leading and non-leading - to expose inconsistencies and elicit evidence to support HPC's case;
- witnesses should only be re-examined when it is necessary to do so;
- a closing speech should be made which draws upon all prior preparation and explains HPC's case to the Panel;
- where appropriate, clear and reasoned submissions or recommendations should be made to the Panel.