

<b>Council</b>
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**Minutes of the 82<sup>nd</sup> meeting of the Council meeting held as follows:-**

**Date:** Wednesday 27 March 2013

**Time:** 10:30 am

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

**Present:** Anna van der Gaag (Chair)  
Pradeep Agrawal  
Jennifer Beaumont  
Frank Burdett  
Mary Clark-Glass  
John Donaghy  
Julia Drown  
Jeff Lucas  
Morag MacKellar  
Arun Midha  
Penelope Renwick  
Keith Ross  
Robert Templeton  
Eileen Thornton  
Joy Tweed  
Diane Waller

**In attendance:**

Bola Bajomo, Management Accountant  
Jonathan Bracken, Solicitor to Council, BDB  
Alison Croad, Policy Officer  
Brendon Edmonds, Acting Director of Education  
Selma Elgaziari, Policy Officer  
Guy Gaskins, Director of IT  
Ebony Gayle, Media and Public Relations Manager  
Michael Guthrie, Director of Policy and Standards  
Louise Hart, Secretary to Council  
Amal Hussein, Education Officer  
Kelly Johnson, Director of Fitness to Practise  
Jacqueline Ladds, Director of Communications  
Tim Moore, Director of Finance

Mark Potter, Stakeholder Communications Manager  
Greg Ross-Sampson, Director of Operations  
Marc Seale, Chief Executive and Registrar

**Item 1.13/19 Chair's welcome and introduction**

1.1 The Chair welcomed all members and observers to the meeting.

**Item 2.13/20 Apologies for absence**

2.1 Apologies were received from Sheila Drayton and Richard Kennett.

**Item 3.13/21 Approval of agenda**

3.1 The Council approved the agenda subject to consideration of an additional paper, the Government's response to the Francis Inquiry, tabled in connection with item 10.

**Item 4.13/22 Declaration of Members' Interests**

4.1 Keith Ross declared an interest since his wife is a Council member of the PSA.

**Item 5.13/23 Minutes of the Council meeting of 7 February 2013  
December 2012 (report ref:- HCPC14/13)**

5.1 The Council considered and approved the minutes of the 81<sup>st</sup> meeting of the Health and Care Professions Council.

**Item 6.13/24 Matters arising (report ref:- HCPC15/13)**

6.1 The Council noted the actions list as agreed at the last meeting and noted that action two had now been completed.

**Item 7.13/25 Chair's report (report ref:- HCPC16/13)**

7.1 The Council received a report from the Chair.

7.2 During discussion, the following points were made:-

- The Chair had attended the King's Fund Francis report event on 27 February. This was an excellent, well attended meeting with Robert Francis present. The two key messages that emerged

from the event was firstly, that a fresh start was required in terms of defining fundamental standards and should these standards not be met, criminal sanctions should be pursued. Secondly, there should be an emphasis on openness where concerns are welcomed and professionals are honest to the public. It was noted that reference was made to the registration of healthcare assistants at the event;

- In relation to the workshop at the Care Quality Commission on 12 March, the Council noted the HCPC had been asked to work in collaboration with the CQC to develop guidance (or supporting information as it has been named) on guidance on clinical supervision for CQC Registered Managers and those working in establishments caring for people on the autistic spectrum or with learning disabilities;
- The suggestion was made that further debate was required in relation to clinical supervision and in response, it was noted that consideration could be given to this issue as part of the review of the Standards of Conduct, Performance and Ethics.
- The Council noted that the PSA had accredited the voluntary registers of the British Association of Counsellors and Psychotherapists and the British Acupuncture Council. Further applications had been received from other groups of psychotherapists and counsellors, play therapists and by the Alliance of private sector practitioners;

7.3 The Council noted the report.

**Item 8.13/26 Chief Executive's report (report ref:- HCPC17/13)**

8.1 The Council received a paper from the Executive.

8.2 During discussion, the following points were made:-

- The occupants of Whitefield House had now vacated the building although HCPC officially take ownership of the building on 8 April;
- The Executive had had a positive meeting with the Department of Health in Leeds on 25 March, in which they confirmed that they were making good progress with the legislation and policy work in relation to the projects on the reconstituted Council and the introduction of Professional Indemnity Insurance as a condition of registration;

- A procurement manager had been appointed and was due to take up the post in April;
- That 50% of the social worker (England) cases that were transferred from the GSCC had now been dealt with and the number of complaints received in relation to social workers in England was broadly in line with expectations;
- In response to a question about the likelihood of the number of those registrants represented at tribunals increasing as a result of the introduction of professional indemnity as a condition of registration, the Council noted that since the majority of HCPC's registrants already had insurance or indemnity cover in place, this was not expected to happen;
- In response to a question about the additional information requested by the PSA as part of HCPC's performance review, the Council noted that following our initial submission to the PSA, there are inevitably clarifications requested by the PSA or further information is required, on occasions as a result of an issue highlighted by another regulator within their submission. Following this, a meeting is held with the PSA before their draft report is sent to the regulator for comment. The Council noted that the PSA were looking at the value of the performance reviews and whether there was a different, more effective way of engaging with the regulators;
- In response to a question about protection of title cases, the Council noted that there were currently 50 open cases and one case whereby HCPC was seeking to prosecute on individual. It was noted that normally, HCPC was informed of individuals who were not registered but using protected titles by members of the public and professional bodies. The process is to write to these individuals to tell them to stop using a protected title and it is unusual for HCPC to have to take further action.

8.3 The Council noted the report.

## Strategy and Policy

### **Item 9.13/26 Budget for year to 31 March 2014 (report ref:- HCPC18/13)**

- 9.1 The Council received a paper for discussion/approval from Executive.
- 9.2 The Council noted that the budget had been prepared in accordance with the budget process and timetable, with the Finance and Resources Committee having considered drafts at their meeting in January and March. It was further noted that the overall position of the budget

showed an operating surplus of £741k compared to the 2012/2013 reforecast surplus of £374k.

9.3 The Council approved the budget for the year to 31 March 2014.

**Item 10.13/27 Report of the Mid Staffordshire NHS Foundation Trust Public Inquiry (report ref:- HCPC19/13)**

10.1 The Council received a paper to discuss from the Executive.

10.2 The Council noted that in February 2013, the Mid Staffordshire NHS Foundation Trust Public Inquiry reported to the Secretary of State for Health. The Executive had reviewed the Inquiry report in order to review the recommendations which are relevant or most salient to the role of the HCPC as a regulator of health and care professionals, to review the other recommendations which might be relevant to the HCPC as an organisation and to discuss and identify the HCPC's actions in response to the Inquiry's recommendations.

10.3 During the course of discussion, the following points were made:-

- That whilst it was important to review those recommendations made by Francis, HCPC should also consider a broader review to understand the spirit of the Francis report and what that means for statutory regulation in the round;
- That there were too many recommendations and by looking at these in detail, there is the risk that something could be lost. There would be more value in standing back and examining the culture and what could be done to change this;
- There was consensus on the suggestion to stand back and take a broader view. However, the view was expressed that there were some recommendations that could easily be implemented in the short-term and that would have a relatively large impact;
- That the focus of this report was very narrow and HCPC needed to ensure that the wider picture was considered, including consideration of similar investigations ongoing in the other UK countries;
- The Council noted that this had been discussed at the recent PSA symposium and there was strong agreement that this needed to be a seminal report. The main discussions at the symposium focussed on professionalism, leadership, transparency and culture;
- HCPC has a duty to be leading in terms of ensuring the robustness of the Standards of Education and Training, the scrutiny of student placements and professionalism;

- That there was a tension for academic staff should there be a problem with a placement since it may be problematic for the institution when a placement is withdrawn;
- It was important to look at how universities organise placements;
- That there would be value in considering the inter-relationship between systems and regulation;
- The suggestion was made that urgent action needed to be taken in relation to student placements;
- A further suggestion was made that a focus group should be held and include those working at Mid-Staffs and Winterbourne to look at why they felt that they could not? come forward;
- A concern was expressed that in implementing some of the recommendations, this could lead to a blurring of boundaries between organisations. For example, there was a recommendation that the GMC and NMC should look at system failures. However, the concern was that this was a role for the CQC not the NMC/GMC and furthermore, this would be funded by the registrants of the NMC and the GMC which did not seem to be an appropriate use of funds;
- With reference to the recommendation in relation to joint proceedings, there was support for a joint code of conduct for all professions and the suggestion was made that HCPC should lead on this. It was however noted that this was possibly something that the Law Commission would be looking to do as part of their work on streamlining regulator's legislation;
- The suggestion was made that a feedback mechanism be introduced so that students could feedback on their impression of the care that was being provided in their placements. Concern was expressed that this would place too high an expectation on students;
- In relation to student placements, the suggestion was made that HCPC look to strengthen this part of an approval visit and perhaps a view of placements across professions should be taken rather than professions being looked at on an individual basis;
- The view was expressed that the emphasis of the report is protecting patients through quality of care and this could be done by looking at information sharing and empowering people to speak up;

- The suggestion was made that practise placements should be looked at now rather than waiting for a review of the Standards of Education and Training as this would have an almost immediate impact on public protection;
- A further suggestion was made that it might be easier in the short-term to look at the guidance attached to the standards of education and training.

10.4 The Council noted that HCPC was holding an event with professional bodies on 9 May 2013 to talk about the Francis Inquiry and Council members were welcome to attend. Further information would be sent to members in due course.

10.5 The Council agreed:-

- (i) the Executive be requested to look at those recommendations that could be implemented in the short-term; and
- (ii) A discussion be held as part of a strategy session to look at the broader issues;
- (iii) to have an absolute commitment to follow up on the report and those recommendations applicable to the HCPC.

**Item 11.13/28 Duty of Candour (report ref:- HCPC20/13)**

11.1 The Council received a paper for discussion from the Executive.

11.2 The Council noted that Recommendation 181 of the Report of the Mid Staffordshire NHS Foundation Trust Public Inquiry (the Francis Report) states that "A statutory obligation should be imposed to observe a duty of candour." This paper examines the possible steps that the Health and Care Professions Council (HCPC) could take towards introducing a 'duty of candour' without the need for legislation.

11.3 During the course of discussion, the following points were made:-

- That there were two areas of work currently underway where the introduction of discussions on this duty could be incorporated, namely the "Big Conversation" an initiative being led by Karen Middleton, Chief Health Professions Officer, with its focus on professionalism. The other option would be through the standards of conduct, performance and ethics, the review of which is due to be undertaken by the Executive later this year;
- The suggestion was made that we should introduce the duty into our standards in a similar way to the GMC and NMC;

- Concern was expressed that by introducing this into our standards would mean that it would also be introduced into FtP proceedings;
- There was concern that the term “whistleblowing” was used too widely;
- The suggestion was made that the introduction of this duty be considered as part of the forthcoming review of the standards of conduct, performance and ethics;
- The Council discussed the complexities in this area, noting that if a registrant demonstrated insight by being honest with a service user then this would be a relevant factor in FtP proceedings. Furthermore, an apology was not necessarily an admission of guilt.

11.4 The Council agreed to take this forward as part of the forthcoming review of the standards of conduct, performance and ethics.

**Item 12.13/29 The regulation of unregistered health practitioners in New South Wales (report ref:- HCPC21/13)**

12.1 The Council received a paper for approval from the Chair of Council.

12.2 The Council noted that in New South Wales (NSW), Australia, the Health Care Complaints Commission operates a ‘negative registration scheme’ for unregistered health practitioners. This scheme applies to all practitioners who are not otherwise statutorily regulated and provides a mechanism by which those unfit to work in healthcare can be removed from practice.

12.3 In February 2013, Marc Seale, Chief Executive and Registrar and Anna van der Gaag, Chair of Council, undertook a fact-finding visit to New South Wales to find out more about these arrangements.

12.4 During discussion, the following points were made:-

- That the Scheme was primarily seeking to address serial offences caused by a minority of care workers;
- There was consensus that this was a good framework in which to operate a negative registration scheme should HCPC be tasked with taking this forward for a particular group;



- Concern was expressed that interim orders only remain in force for up to 8 weeks although it was noted that the Australian legal system was different to the UK;
- It was questioned whether we could assert that a negative registration system would provide the “safety net” when serious breaches came to light as stated under paragraph 10.4;
- That there had been a positive response from stakeholders from the care sector in England in relation to a negative licensing proposal;
- That HCPC now needed to write to the Department of Health (DH) setting out the negative licensing proposal as its preferred option for adult social care workers;
- The suggestion was made that in writing to the DH, we needed to make it clear that HCPC considered statutory regulation remained the “gold standard.” It was noted that HCPC’s policy statement in relation to the negative licensing proposal already articulated this position;
- It was noted that, in relation to paragraph 1.2, there had in fact been 180 responses to the national consultation. It was further noted that, with reference to paragraph 1.7, whilst NSW did not have a disclosure and barring scheme, they did undertake “working with children checks;”
- With regard to paragraph 10.2, it was noted that any adaptation of the NSW Scheme would need to take into account Article 8 of the Human Rights Act.

12.5 The Council noted the paper.

**Item 13.13/30 Policy on the provision of Legal Services (report ref:- HCPC22/13)**

13.1 The Council received a paper for approval from the Executive.

13.2 The Council noted that the paper set out HCPC’s policy in respect of the provision of legal services and sets out where legal input is required and the approach taken in relation to the provision of legal services.

13.3 During the course of discussion, the following points were made:-

- That HCPC tender for the contract every four to five years;

- That if a registrant appeals a decision of the panel at final hearing stage, we currently engage with BDB to represent HCPC;
- That legal assessors are not included within this contract as they are treated as “partners” of HCPC to ensure independence.

13.4 The Council approved the policy for the provision of legal services.

**Item 14.13/31 Outcomes of the consultation on standards for prescribing (report ref:- HCPC23/13)**

- 14.1 The Council received a paper for approval from the Executive.
- 14.2 The Council noted that In July 2012, the Department of Health announced that medicines legislation would be changed to allow appropriately trained chiropodists/podiatrists and physiotherapists to become independent prescribers. The HCPC consulted on new standards for prescribing between October 2012 and January 2013.
- 14.3 The Council noted that this paper sets out a summary of the responses received to the consultation and identifies the changes being made to the standards in response.
- 14.4 The Council noted that if a standard was introduced in relation to service user involvement, these standards would be amended accordingly. However, this would be subject to a separate discussion by Council at their meeting in July.
- 14.5 In response to a question about the level of response to the consultation, the Council noted that the Executive were encouraged by the level of response to this consultation, particularly given that the proposals would only directly affect two of the professions regulated by HCPC.
- 14.5 The Council agreed:-
- (i) the attached paper (subject to any editing amendments and final legal scrutiny);
  - (ii) the standards for prescribing and that they will become effective from an appropriate date following the necessary legislation being in place;
  - (iii) that at the same time as the standards for prescribing become effective, the relevant supplementary prescribing standard in the standards of proficiency to be published for physiotherapists and radiographers will be removed;

- (iv) that once the prescribing standards are effective, these will also apply to programmes delivering supplementary and independent prescribing to chiropodists/podiatrists; and
- (v) that the standard relating to supplementary prescribing in the standards of proficiency for chiropodists/podiatrists will be removed once these revised standards have been agreed by the Council following consultation, been published and become effective.

**Item 15.13/32 HCPC's draft response to the Department of Health's consultation on the Health Care and Associated Professions (Indemnity Arrangements) Order 2013 (report ref:- HCPC24/13)**

- 15.1 The Council received a paper for approval from the Executive.
- 15.2 The Council noted that In October 2012, the Council were provided with an update on the position in terms of introducing indemnity cover arrangements as a condition of registration. The Department of Health (England) began a consultation on proposals to introduce a requirement for healthcare professionals to have indemnity insurance on 22 February 2013. The Department is undertaking the consultation on behalf of all UK health administrations.
- 15.3 The Council noted the proposal that all healthcare professionals should be required to have professional indemnity insurance as a condition of registration with HCPC. This requirement could be met through an employer or by holding separate cover which could be secured through a professional body. Whilst the Department's proposals do not currently extend to social workers in England, there is a specific question within the consultation to seek views about whether the arrangement should be extended to social workers in England.
- 15.4 It was noted that the Department of Health's consultation will run for twelve weeks and views are sought from stakeholders. HCPC will shortly begin drafting guidance for registrants explaining how this will affect them and also our plans on checking that indemnity arrangements are place.
- 15.5 During the course of discussion, the following points were made:-
  - That the response under question one was repetitive and needed amending;
  - In response to a question about social workers, it was noted that they were not included within the EU Directive hence there was no intention to include them within domestic law. Furthermore, any suggestion to include them within domestic legislation could be deemed as "gold plating."

- That the reason that any legislation in relation to social workers would need to be UK wide is because of the issue of those social workers working across the borders;
- The suggestion was made that academics may fall out of regulation since they decide not to register as a result of this additional requirement as it could be considered costly and burdensome. However, it was noted that registrants would need to self-declare that their indemnity was appropriate and adequate for their scope of practice and so if a registrant considered that they did not require cover, they were able to make this declaration.

15.6 The Council agreed the response to the consultation, subject to amendment of the response to question one.

**Item 16.13/33 Consultation on changes to the profession-specific standards of proficiency for speech and language therapists (report ref:- HCPC25/13)**

- 16.1 The Council received a paper for approval from the Executive.
- 16.2 The Council noted that the review of the profession specific standards follows from the Council's approval of new generic standards of proficiency in March 2011. A consultation paper and draft standards for speech and language therapists was considered by the Education and Training Committee on 7 March 2013.
- 16.3 A query was raised in relation to a standard under 8.2 relating to the English Language requirement since this standard was repeated under 14.21. It was noted that if similar concerns were raised in response to the consultation, consideration would be given to removing one of these references.
- 16.4 The Council approved the consultation document and draft standards of proficiency for speech and language therapists for public consultation, subject to any necessary minor editing changes and formal legal scrutiny.

**Item 17.13/34 Indicative Sanctions Policy (report ref:- HCPC26/13)**

- 17.1 The Council received a paper for approval from the Executive.
- 17.2 The Council noted that the Executive had undertaken a review of the Council's Indicative Sanctions Policy as per the normal review cycle to ensure that it remains fit for purpose.
- 17.3 The Council agreed that this paper should be further reviewed in light of today's discussion on "the Duty of Candour" and a revised version submitted to a future meeting of Council.

**Item 18.13/35 Practice Notes (report ref:- HCPC27/13)**

- 18.1 The Council received a paper for approval from the Executive.
- 18.2 The Council noted that at its meeting in February 2013, the Fitness to Practise Committee recommended the Practice Notes for approval by the Council. A review of these Practice Notes formed part of the Fitness to Practise Directorate work plan for 2012-13. The changes (where appropriate) to the Practice Notes were marked as track changes.
- 18.3 The Council approved the following Practice Notes:
- (i) Half-Time Submissions;
  - (ii) Case to Answer Determinations;
  - (iii) Discontinuance;
  - (iv) Interim Orders; and
  - (v) Postponement and Adjournment of Proceedings.

**Item 19.13/36 Policy and Standards Department workplan 2013/2014 (report ref:- HCPC28/13)**

- 19.1 The Council received a paper for approval from the Executive.
- 19.2 The Council noted that the 'standards work plan' had been replaced by a short statement setting out our approach to formal consultation with stakeholders and to periodic review of the standards.
- 19.3 During the course of discussion, the following points were made:-
- That in light of the discussion on the Francis Inquiry, consideration should be given to bringing forward the review of the Standards of conduct, Performance and Ethics;
  - The Council noted in response that this timetable had to take into account the restructure of Council since a PLG was required and this could not start until a new Council was in post.

However, given the DH assurances around the legislative timetable for the restructure of Council, the Executive did not anticipate any slippage to this timetable;

- The suggestion was made that some work should be done around why people were not raising complaints or concerns. In response, the Council noted that this would be covered in part by the work of the FtP department;
- The Council noted that research would be commissioned this year in relation to the standards of conduct, performance and ethics, CPD standards, audit and process and guidance for disabled people wishing to become healthcare professionals.

19.4 The Council approved the Policy and Standards work plan 2013-2014.

#### Corporate Governance

##### **Item 20.13/37 Restructure of Council – Communications Committee (report ref:- HCPC29/13)**

- 20.1 The Council received a paper for approval from the Executive.
- 20.2 The Council noted that this paper was drawn up following discussion at the Strategy session held in February.
- 20.3 Concern was expressed that whilst there was consensus that the Communications Committee should be disbanded, this should be on a pilot basis before any decision is made about absorbing other Committees's agendas into the work of Council.
- 20.4 The Council agreed that:-
- (i) The Communications Committee be disbanded following their final meeting on 28 February 2013; and
  - (ii) Subject to a comprehensive review of the management of the Council agenda, a decision will be taken as to whether the Finance and Resources and Fitness to Practise Committees be disbanded once the reconstituted Council comes into effect.

##### **Item 21.13/38 Minutes of the Finance and Resources Committee held on 31 January 2013 (report ref:- HCPC30/13)**

- 21.1 The Council received a paper for approval from the Executive.
- 21.2 The Council approved the recommendations therein.

**Item 22.13/39 Minutes of the Fitness to Practise Committee held on 14 February 2013 (report ref:- HCPC31/13)**

- 22.1 The Council received a paper for approval from the Executive.
- 22.2 The Council approved the recommendations therein.

**Item 23.13/40 Minutes of the Communications Committee held on 28 February 2013 (report ref:- HCPC32/13)**

- 23.1 The Council received a paper for approval from the Executive.
- 23.2 The Council approved the recommendations therein.
- 23.3 The Council wished to place on record their thanks to Sheila Drayton as Chair of the Committee and to members of the Committee for their hard work and contribution.

Items to note

The Council noted the following items:-

**Item 24.13/41 Public Protection Research (report ref:- HCPC33/13)**

**Item 25.13/42 Reports from Council representatives at external meetings (report ref:- HCPC34/13)**

**Item 26.13/43 Minutes of the Education and Training Committee held on 7 March 2013 (report ref:- HCPC35/13)**

**Item 27.13/44 Any other business**

- 27.1 There were no further items for consideration.

**Item 28.13/45 Date & time of next meeting:**

- 28.1 The next meeting of the Council would be held on Thursday 9 May 2013 at 10:30am. This meeting would be followed by the Francis Inquiry stakeholder event.

**Item 29.13/46 Resolution**

- 29.1 The Council agreed to adopt the following resolution:-

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

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

Item	Reason for Exclusion
30	c
31	c, d
32	b

**Item 30.13/47 Legal Services Tender (report ref:- HCPC36/13)**

- 30.1 The Council received a paper for approval from the Executive.
- 30.2 The Council noted that whilst legal services were not covered by the OJEU procurement policy, HCPC would pursue a similar process.
- 30.3 The Council agreed the approach to the tender for the provision of legal services.

**Item 31.13/48 Minutes of the private part of the Finance and Resources Committee held on 31 January 2013 (report ref:- HCPC37/13)**

- 31.1 The Council considered and approved the recommendations contained within the minutes of the private part of the Finance and Resources Committee held on 31 January 2013.



**Item 32.13/49 Minutes of the private part of the Remuneration Committee held on 5 March 2013 (report ref:- HCPC38/13)**

32.1 The Council considered and approved the recommendations contained within the minutes of the private part of the Remuneration Committee held on 5 March 2013.

Chair: .....

Date: .....

Unconfirmed