
Fitness to Practise Committee

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

Date: Wednesday 16 February 2011

Time: 10:30 am

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

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

In attendance:

Alison Abodarham, Head of Adjudication
Jonathan Dillon, Lead Hearings Officer
Alison Dittmer, Policy Officer
Anna van der Gaag, Chair of Council
Michael Guthrie, Director of Policy and Standards
Kelly Johnson, Director of Fitness to Practise
Steve Rayner, Secretary to the Committee
Eleanor Wilson, Hearings Officer

Part 1 – Public Agenda

Item 1 Chair's welcome

- 1.1 The Chair welcomed members to the Committee.

Item 2 Apologies for absence

- 2.1 There were no absences.

Item 3 Approval of agenda

- 3.1 The Committee approved the agenda.

Item 4 Declaration of members' interests

- 4.1 The Chair declared an interest in Item 8 (Fitness to Practise Department work plan 2011-2012), and Item 10 (Audit of final FTP decisions). At the time of the meeting, the Chair's wife was a member of the Commission for Health Regulatory Excellence. The Committee did not consider that this precluded the Chair from discussions.

Item 5 Minutes of the meeting of 21 October 2010 (FTP 01/11)

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

Item 6 Matters arising (FTP 02/11)

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

Item 7 Director of Fitness to Practise report (FTP 03/11)

- 7.1 The Committee received a paper for discussion from the Executive providing a summary of the work of the Fitness to Practise Department (the Department) from October 2010 to January 2011. The paper also included key statistical data on the fitness to practise process.
- 7.2 The Committee discussed key activities for the Department, during which discussion, the following points were raised:

Hearings

- 7.2.1 The Hearings team had scheduled an unusually high number of hearings in January to resolve the backlog caused by the adverse weather in December.
- 7.2.2 Current work planned to further reduce the length of time included; more frequent contact, and improved service standards, with legal representatives; and further efficiency savings in the use of resources and facilities by the Hearings team.
- 7.2.3 The Committee noted that the number of 'not well founded' decisions in 2010-11 was high.

ACTION: **Director of Fitness to Practise** to provide a paper on the level of 'not well founded' decisions to the next meeting of the Committee.

High Court Appeals

- 7.2.4 Of four appeals, two were awaiting dates to be set by the Administrative Court. One case was due to be heard by the Small Claims Court
- 7.2.5 In respect of the Brennan case, the decision of the Panel had been overturned on the grounds of poor reasoning. The decision had been remitted to the same Panel for reconsideration. HPC had been ordered to pay costs of £12,000.
- 7.2.6 The Committee noted that alternative mechanisms for resolving disputes were available, and were appropriate, in some circumstances.
- 7.2.7 The Committee noted that HPC's rate of appeals was lower than that of other regulators.
- 7.2.8 As some of the cases were ongoing, the Director was not able to provide further information on the cases to the Committee. A more detailed report would be provided when the current cases had been concluded.

ACTION: **Director of Fitness to Practise** to provide a paper on the progress of High Court Appeals to the next meeting of the Committee.

Item 8 Fitness to Practise Department work plan 2011-2012 (FTP 04/11)

- 8.1 The Committee received a paper for discussion/approval from the Executive setting out the draft FTP work plan for 2011-12. The paper included an update on the work plan for 2010-11 as an appendix.

- 8.2 To inform the Committee's discussion, the paper also included an update on the project regarding the expectations of complainants; the index of FTP process operating guidance; and the risk register as it relates to the FTP Department.
- 8.3 The Committee noted that the main projects in the coming year would be the development and launch of the case management system for FTP cases, and the transfer of regulatory functions from the GSCC to the HPC.
- 8.4 Other key activity included the cycle of appointments for Panel members and the development of easy-read versions of HPC brochures.
- 8.5 The Committee noted that the workplan would be subject to review once the transitional order regarding the GSCC transfer had been released.
- 8.6 The Committee noted the large amount of work planned by the Department, and offered congratulations to the department for reducing the length of time cases took to reach final hearing.
- 8.7 The Committee approved the FTP workplan for 2011/12.

Update on 2010/2011 workplan

- 8.8 The Committee acknowledged the high volume of work completed in the 2010-2011 work plan.
- 8.9 The Committee received a presentation from the Head of Adjudication including a short dvd which had been developed to provide information for people attending hearings.
- 8.10 The video had been developed as part of the ongoing work on expectations of complainants, and as part of the Departments' work to improve communication and information provision.
- 8.11 The Committee noted that the dvd would help witnesses and registrants understand the hearings process. The dvd was available on the HPC website:

<http://www.hpc-uk.tv>

Item 9 Alternative mechanisms for resolving disputes (FTP 05/11)

- 9.1 The Committee received a paper for discussion/approval from the Executive providing analysis of the rationale for the use of mediation and mechanisms for resolving disputes outside of the FTP process.
- 9.2 The review had been commissioned as part of the FTP workplan (agreed by the committee on 25 February 2010) as a result of Council discussions on

the potential role alternate dispute mechanisms might have in the regulatory process.

- 9.3 The Committee had considered a literature review of existing models of mediation by Charlie Irvine, from the University of Strathclyde, at its meeting on 21 October 2010. At that meeting the Committee agreed that a further exploration of the issue was appropriate in order to inform HPC's approach in this area.
- 9.4 In order to inform discussion, the Executive had provided, as appendices to the report; legal advice regarding potential mechanisms; a qualitative analysis of FTP cases; a rationale for the use of mediation; examples of other relevant areas of mediation; a draft work plan for further work; a research brief; and a draft practice note regarding mediation.

Legal advice

- 9.5 The Committee noted the advice that; in order to make a decision on mediation, the Committee must be satisfied that mediation would be used as an end point to resolve disputes. Mediation should not be used as a preliminary hearing.
- 9.6 Relevant situations for mediation may include cases which had been dismissed by an investigating committee on the grounds that there was not fitness to practise case to answer, but where a dispute still remained between the registrant and complainant.

Pilot

- 9.7 The diversion of allegations from the fitness to practise process was currently outside the HPC's statutory functions, and would require an amendment to the Health Professions Order 2001 under section 60 of the Health Act 1999. HPC would be required to provide a clear evidence base for such a change.
- 9.8 The Committee agreed that a pilot would be an appropriate mechanism to determine whether such a change would increase public protection.
- 9.9 The Committee noted that the development of appropriate criteria for selecting mediation cases would be critical. The Executive would provide further clarity on plans for a pilot to a future meeting to enable the Committee to make an informed decision on criteria.
- 9.10 The Committee noted that an analysis of the cases in which a mediation approach may be appropriate would be provided as part of the report on mediation proposed for June.

Rationale for mediation

- 9.11 There did appear to be cases within HPC's caseload where mediation may be appropriate. HPC should ensure that: it was satisfied that complainants actually wanted this approach; and that mediation would not create problems that did not exist already.
- 9.12 Mediation may better meet the expectations of complainants who feel excluded by the fitness to practise process. There is also the potential that it could help registrants improve their performance, enabling learning and therefore preventing further risk to the public.
- 9.13 Mediation may help to mitigate the impact FTP proceedings often have on the career, mental health and financial stability of the registrant and sometimes on the complainant.
- 9.14 The Committee approved the paper, and agreed:
- (i) that the Executive should proceed with the work set out in the work plan attached to the paper FTP 05/11;
 - (ii) that work should be planned according to the timescales set out in the work plan attached to paper FTP 05/11, but should remain subject to any changes in the overall FTP workplan; and
 - (iii) that further research should be commissioned as per the research brief attached at appendix six of paper FTP 05/11.

Item 10 Audit of final FTP decisions (FTP 06/11)

- 10.1 The Committee received a paper for discussion/approval from the Executive providing the results of an audit of final fitness to practise panel decisions made between 1 September and 31 December 2010. The paper also included recommendations for further work.
- 10.2 The audit was developed in accordance with a Council decision, of 10 December 2009, that the Executive should develop mechanisms to quality assure FTP decisions. This decision was part of HPC's response to the CHRE's audit of the conduct function of the General Social Care Council.
- 10.3 This was the second review. A review of decisions made between April and August had been considered by the Committee at its meeting of 21 October 2010.
- 10.4 The report would be made available to HPC partners as part of the next Partner update.
- 10.5 The Committee noted that the review was an important assurance that processes were being followed.
- 10.6 The Committee approved the review, and agreed the following proposals:
- (i) that panels should continue to use the new decision template;

- (ii) that Panel Chairs and Legal Assessors should be provided with a further briefing on how cases were transferred from the British Psychological Society and Hearing Aid Council so time in hearings can be used more effectively and is not wasted in dealing with this issue;
- (iii) that the Lead Hearings Officer should continue to review decisions before they are distributed to ensure accuracy in grammar and spelling;
- (iv) that the Indicative Sanctions Policy is developed further to determine whether further guidance on imposing caution orders is necessary;
- (v) that application of the Indicative Sanctions Policy should continue to be a focus at panel refresher training sessions;
- (vi) that a paper reviewing not well founded decisions made in 2010-11 is considered by the Committee at its meeting in June 2011;
- (vii) that the Executive will take further steps to ensure that previous conditions of practice orders are included in templates where necessary; and
- (viii) that audits of final hearing decisions continue to be carried out twice yearly. The next audit dates to be carried out as follows:
 - April to August 2011
 - January to March 2012
 - September to December 2012.

Item 11 Practice note: Equal treatment (FTP 07/11)

11.1 The Committee received a paper for discussion/approval from the Executive. The paper regarded a practice note which provided guidance to Panels on the fair treatment of people appearing before Panels.

11.2 The practice note had been amended following the Committees discussion at item 24 of its meeting of 21 October 2010 regarding vulnerable witnesses, and in the light of changes to diversity duties following the Equality Act 2010.

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

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

Item 12 Practice note: disposal of cases via consent (FTP 08/11)

12.1 The Committee received a paper for discussion/approval from the Executive. The paper regarded a practice note which provided guidance to Panels on the circumstances under which it was appropriate for cases to be resolved without the need for a hearing.

12.2 The practice note, and appended example consent order template, had been amended following an internal review by the Executive. The minor changes were intended to improve clarity.

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

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

Item 13 Practice notes: burden of proof (FTP 09/11)

13.1 The Committee received a paper for discussion/approval from the Executive. The paper regarded changes to four practice notes:

- Case to Answer;
- Case Management and Directions;
- Finding Fitness to Practise is “Impaired”; and
- Drafting Fitness to Practise Decisions.

13.2 The practice notes had been reviewed and amended in the light of changes to case law as it relates to finding fitness to practise impaired. The changes had been raised at a recent review day organised by HPC for legal assessors.

13.3 The Committee recommended that the Council approve the practice notes:

- Case to Answer;
- Case Management and Directions;
- Finding Fitness to Practise is “Impaired”; and
- Drafting Fitness to Practise Decisions.

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

Item 14 Practice note: Postponement and adjournment of hearings (FTP 10/11)

14.1 The Committee received a paper for discussion/approval from the Executive. The paper regarded a practice note which provided guidance to Panels on circumstances under which Panels could be postponed or adjourned.

14.2 The Practice note had been reviewed and amended to further clarify the responsibilities of Panels under Articles 30 and 31 of the Health Professions Order 2001, and to reflect the hearings process.

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

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

Item 15 Transfer of regulatory functions from the GSCC to HPC (FTP 11/11)

15.1 The Committee received a verbal update from the Chief Executive, Acting Director of Education and Director of Policy and Standards regarding the regulation of social workers in England project.

15.2 At the Council meeting on 14 October 2010, the Council agreed that there would be a standing item on every Council and Committee agenda, whereby the Executive would update the meeting on the progress of the project. As the project was developing rapidly, a verbal report on progress would be made to each meeting.

15.3 The update included the following issues, which the committee were invited to discuss:-

The Social Work Reform Board;

15.3.1 The Board intended to make a recommendation that Social Workers should undertake a year of supervised and assessed practise before they qualify. The Government would make a decision on this recommendation based on cost, and the final regulatory framework.

Legislative timetable;

15.3.2 A white paper had been published on the morning of the meeting titled: Enabling Excellence: Autonomy and Accountability for Health and Social Care Staff. The white paper confirmed that the Government planned to abolish the OHPA and the GSCC and transfer responsibility for regulating social workers in England to the HPC by April 2012.

15.3.3 A full briefing on the white paper would be provided to the Council at its next meeting.

Transition project;

15.3.4 HPC employees had been briefed on the arrangements for transfer of the register. This included a briefing on the human resource implications of the transfer.

15.3.5 The FTP department continued to meet with their counterparts at GSCC. A series of meetings was being planned with GSCC to enable

the Education and Fitness to Practise Departments to gain an understanding of each-others processes and outcomes.

The Committee noted the following papers:

Item 16 Case management system update (FTP 12/11)

Item 17 Committee meeting dates 2012 (FTP 13/11)

Item 18 Any other business

18.1 There were no additional items for consideration this day.

Item 19 Date and time of next meeting:

19.1 10.30am on Thursday 26 May 2011.

Item 20 Resolution

The Committee agreed to adopt the following resolution:-

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

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

| Item | Reason for Exclusion |
|-------------|-----------------------------|
| 21 | ii, iv |
| 22 | vii |

Item 21 Transfer of regulatory functions from the GSCC to HPC (FTP 14/10)

21.1 The Committee received a verbal update from the Chief Executive relating to the transfer of the regulatory functions from the General Social Care Council to HPC.

Item 22 Cross Examination in cases of a sexual nature (FTP15/10)

22.1 The Committee received a paper for discussion/approval regarding practice notes which provided guidance on the examination of witnesses and HPC's policy in that area.

22.2 The Committee agreed to the recommendations therein.

Chair:

Date:

UNCONFIRMED