

THE HEALTH PROFESSIONS COUNCIL

Chief Executive and Registrar: Mr Marc Seale

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MINUTES of the thirteenth meeting of the Conduct and Competence Committee held at **11:00am on Tuesday 15 February 2005** at the Park House, 184 Kennington Park Road, London, SE11 4BU.

Dr S Yule (Chairman)
 Professor Norma Brook
 Mr R Clegg
 Ms H Davis
 Ms C Farrell
 Mrs C Lloyd
 Mr K Ross
 Miss P Sabine
 Mrs. B. Stuart
 Mr G Sutehall

IN ATTENDANCE:

Ms S Butcher, Secretary to Committees
 Miss K Johnson, Director, Fitness to Practise
 Miss S Donaldson, Team Administrator

Item 1.04/38 INTRODUCTION AND WELCOME

- 1.1 The Chairman welcomed the new team administrator for Secretariat, Miss S Donaldson to the meeting.

Item 2.04/39 APOLOGIES FOR ABSENCE

- 2.1 Apologies for absence were received from the following Committee members; Ms Mary Clark-Glass, Ms J Manning and Dr Gopal Sharma.

Item 3.04/40 APPROVAL OF AGENDA

- 3.1 Mr G Sutehall reported that item 11 on the agenda 'Review of Cases' did not correspond to a Review of the Standards of Conduct, Performance and Ethics (SCPE). The Conduct and Competence Committee noted that part of its role as per Article 27 (in consultation with other Practise Committees), was to produce a report, advising Council on the SCPE. The Fitness to Practise Director reported that the review process was already underway in readiness for the fitness to

practise annual report. The Conduct and Competence Committee noted this and approved the agenda on that basis.

Item 4.04/41 MINUTES

- 4.1 It was agreed that the minutes of the twelfth meeting of the Conduct and Competence Committee be confirmed as a true record and signed by the Chairman.

Item 5.04/42 MATTERS ARISING

- 5.1 Item 5.7.1 – Matters Arising –Information for Panel Chairs
- 5.1.1 The Conduct and Competence Committee noted that at item 5.7.1 it had been reported that a crib sheet would be devised by the Executive in addition to the guidance which had been issued for panel chairs. It was agreed that for the purposes of consistency the title changed to check list as this was the name of the subsequent document that had been produced.
- 5.2 Item 5.9.3 - Matters Arising- Standards of Conduct, Performance and Ethics (SCPE)
- 5.2.1 The Conduct and Competence Committee noted that the review of the Standards of Conduct, Performance and Ethics (SCPE) was an ongoing task. This would be on the agenda of its next meeting on Tuesday 19th April 2005.
- 5.3 Item 7.3 – Matters Arising – Director of Fitness to Practise Report
- 5.3.1 The Conduct and Competence Committee noted that at item 7.3 further information had been requested on the 10 ODP's that had not been transferred across to the Register. The Director of Fitness to Practise reported that she would clarify this in her report.
- 5.4 Item 9.7 – Matters Arising – Strategic Review
- 5.4.1 The Director of Fitness to Practise reported that where HPC's legal advisors had been referred to in item 9.7 as 'Kingsley and Apley' should instead read 'Kingsley Napley' and requested for their title to be corrected accordingly.
- 5.5 Item 5.9.3 - Matters Arising- Standards of Conduct, Performance and Ethics (SCPE)
- 5.5.1 The Conduct and Competence Committee noted that the review of the Standards of Conduct, Performance and Ethics (SCPE) was an ongoing task. This would be on the agenda of its next meeting on Tuesday 19th April 2005.

Item 6.04/43 CHAIRMAN'S REPORT

- 6.1 The Conduct and Competence Committee received an oral report from the Chairman.

- 6.2 The Chairman reported that the Conduct and Competence panels had been very busy with a high number of cases being heard. The Committee discussed the fact that legal costs would inevitably continue to rise as more professions joined the Register. The Committee noted the merits and disadvantages of employing a solicitor on site versus incurring the costs of solicitor's fees on a daily basis. The Director of Fitness to Practise reported that a case management strategy was currently being devised. For example, requests for further information which was previously administered by lawyers, was now dealt with internally by the fitness to practise team. Fitness to practise processes had become more succinct and with tasks appropriately delegated costs were therefore reflective of what both parties should be doing. The Committee noted that further in house training would be sought on Article 39, Protection of Title and the Appeals procedures; this was anticipated to further bolster the support mechanisms already in place.
- 6.3 The Committee noted that occasionally hearings did not run to their full anticipated length and panel members who had booked time off work for a hearing which had been cut short were still claiming expenses. The Director of Fitness to Practice reported that a policy was needed to clarify the circumstances in which claims for loss of earnings was appropriate and that this would be highlighted as an item for consideration by the Finance and Resources Committee.

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- 6.4 The Committee noted that mediation would be on the next Conduct and Competence agenda for April 2005.
- 6.5 The Chairman reported that the Shipman Report was on Council's agenda of its next meeting on 2nd March 2005.
- 6.6 The Committee further noted that the outcome of the CHRE case had been published but that the Chairman was unable to comment to date.

Item7. 04/44 DIRECTOR OF FITNESS TO PRACTISE REPORT

- 7.1 The Conduct and Competence Committee received a paper from the Director of Fitness to Practise.
- 7.2 The Director of Fitness to Practise reported that there had been a number of review hearings and suspensions which had added to the overall caseload. All three fitness to practise committees were busy whilst conduct and competence cases were being set well into June 2005. The Committee noted that one case had been cross-referred from a conduct and competence panel to a health panel and was the first instance of such an occurrence. Interim orders had taken place at least twice a month. Registration appeal cases had increased to 278.

- 7.3 The Committee noted that the fitness to practise department were busy establishing further partner training dates and hoped to have these set well into June. Such training was required in anticipation to the forthcoming Council elections when current partners may no longer be carrying out this function and new members come on board.
- 7.4 The Director of Fitness to Practise reported that following the legal assessor review day a number of key processes had now been put into place to further aid the smooth running of decision making procedures as undertaken by panel members. The following information had been devised:
1. Standardised introduction for panel chairmen.
 2. Legal assessors now required first sight of a panels' final decision.
 3. Decision making checklists for panel members and panel chairs.
- 7.5 The Committee noted that the Director of Fitness to Practise now met twice a month with the Council for Healthcare Regulatory Excellence (CHRE) to discuss matters of mutual concern. Meetings had also taken place with the following groups:
- Kingsley Napley Solicitors
Association of Clinical Scientists
NHS Counter Fraud Squad
Metropolitan Police
- 7.6 The Committee noted that the meeting with the Metropolitan Police had proved to be very helpful as they would shortly provide a notice about the HPC on their website.
- 7.7 The Committee noted that an FTP tracking system was currently being put together in collaboration with the IT department which had the functionality of randomly picking partners for panel hearings. The Committee noted that the fitness to practise team were operationally very busy and was estimated that at least 218 hearings would take place in 2006. The Director of Fitness to Practise was looking at recruiting an additional Case Manager in 2006 to help cope with the growing case load.
- 7.8 The Fitness to Practise Director clarified the procedure that had been followed when the AODP disciplinary cases were transferred to HPC on the 18th October 2004. The Committee noted that such persons were not eligible for registration until they had had their cases reviewed. After the review process was completed a case would be allocated to the most appropriate committee – Conduct and Competence and or Health. The 5 cases that concerned individuals who were not ODP's were in fact Operating Department Assistants. Those 5 cases had been dealt with by the AODP at their initial stages before being transferred across to the HPC. The Investigating Committee noted that registration with the

HPC was a necessary pre-requisite before employment as an operating department practitioner within the NHS could be sought.

- 7.9 The Committee noted the statistics provided which broke down allegation details as dealt with by the fitness to practise committees since April 2003 – December 2004. The non-registrant and registrant queries regarding allegations were also noted. The Director of Fitness to Practise reported that 15 allegations had been received in January.
- 7.10 The Committee requested further information on the outcome of hearings when an interim order hadn't been imposed. The Director of Fitness to Practise agreed to provide this information at its next meeting. The Committee noted that interim order procedures were normally acted out very quickly and was unusual for them to last a whole day.

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- 7.11 The Committee discussed the consistency in reports as produced by legal assessors. The Committee noted that feedback was received by the fitness to practise team on the legal assessor reports and improvements were integrated where applicable. For example further information was now encouraged for inclusion in the notices of decision and order. The Committee noted that there were 12 legal assessors and all received a quarterly HPC Newsletter which served to keep them updated on HPC fitness to practise matters. In addition to this a review of FTP processes were undertaken every 6 months to ensure consistency was maintained.
- 7.12 The Director of Fitness to Practise reported that the abbreviated title for Medical Scientists as provided in the FTP Director's Report would be corrected from 'ML' to 'BS'.

Action: KJ

Item 8.04/45 RESTORATIONS

- 8.1 The Conduct and Competence Committee received a paper from the Fitness to Practise Director for discussion/approval.
- 8.2 The Conduct and Competence Committee noted that Article 33(1) of the Health Professions Order 2001 ("the 2001 Order") provided that *'Where a person who has been struck off the register by virtue of an order made by a Practice Committee or the Court wishes to be restored to the Register, he shall make an application for restoration to the Register.'*
- 8.3 The Conduct and Competence Committee noted that the practice note set out the procedure to be followed when an applicant applied for

restoration. The Conduct and Competence Committee approved the practice note and recommended that Council did the same subject to the following amendments:

- (i) Clarification of the third paragraph was required with reference to the fact that this applied from the date that the initial application was made: *'If a person has already made an application for restoration in the preceding 12 months, a further application cannot be made until a further 12 months had elapsed.'*
- (ii) Put a space between Article '32of'
- (iii) Fourth paragraph of page 2 remove the word 'into'.
- (iv) Clarification was requested of second paragraph from last on page 2 specifically where it states: *'The panel may also specify that any application for any conditions cannot be made within the first two years of the conditions being applied.'*

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Item 9.04/46 REGISTERED MEDICAL PRACTITIONERS

- 9.1 The Conduct and Competence Committee received a paper from the Secretary to Committees to note.
- 9.2 The Conduct and Competence Committee noted that as per Article 19(1) of the Health Professions Order 2001 (the Order) *'the members of each Practice Committee shall include registered professionals and other members, of whom at least one shall be a registered medical practitioner.'* The Health Professions Council had now formally appointed three registered medical professionals to the following practice committees:

Health Committee

Dr Christine Kenny

Investigating Committee

Dr Nigel Callaghan

Conduct and Competence Committee

Dr Gopal Sharma

- 9.3 The Conduct and Competence Committee noted that their appointment took effect from Tuesday 1st February 2005, until Friday 8th July 2005, when the term of current Council and Committees comes to an end. A new Council will take office on Monday 11th July and they may be reappointed for two years of that date.

Item 10.04/47 COMMITTEE MEMBERSHIP

- 10.1 The Conduct and Competence Committee received a paper for from the Secretary to Committees to note.
- 10.2 The Conduct and Competence Committee noted that as per Article 19(2) of the Health Professions Order 2001 (the Order) that *'the number of registered professionals on a Practice Committee may, but need not exceed the number of other members on the Committee and shall not in any case exceed that number by more than one.'*
- 10.3 The Conduct and Competence Committee noted that as currently constituted the Investigating and Conduct and Competence Committees did not meet the membership requirements set out in the Order as the number of registered professionals exceeded the number of other members by three. Therefore two of the registered professionals were asked to resign voluntarily from the Committee. The Council agreed at their meeting on the 7th December 2004 that the Executive work with the President to agree a revised membership for both Committees which conformed to the requirement of the Order, taking into account as far as possible the opinions of the Committee Chairmen and current members.
- 10.4 The following committee member voluntarily put their name forward to step down from the Conduct and Competence Committee which was ratified by Council on Tuesday 18th January 2005.
- Dr Graham Beastall
- 10.5 The Conduct and Competence Committee noted that no other members had put their names forward for voluntary resignation by the deadline date. The President therefore had to randomly select the second member. Dr Rob Jones was randomly selected to step down from the Conduct and Competence Committee and was ratified by Council on Tuesday 18th January 2005.
- 10.6 The Conduct and Competence Committee noted that following the opening of the Operating Department Practitioner (ODP) Register on 18th October 2004 the Privy Council appointed a registrant and alternate ODP member and a lay member to Council. The lay member who was appointed to Council, Mrs Mary Clark-Glass had also been appointed to the Conduct and Competence Committee.
- 10.7 The Chairman thanked Dr G Beastall and Dr R Jones on behalf of the Conduct and Competence Committee for all of the time and hard work given.

Item 11.04/48 DECISION MAKING CHECKLISTS

- 11.1 The Conduct and Competence Committee received a paper from the Director of Fitness to Practise for information.
- 11.2 The Conduct and Competence Committee noted that checklists had now been devised to aid panels in their decision making processes and were available at panel hearings. The checklists were as follows:
- Bullet Points for Panel chairs at full hearings
 - Bullet Points for Panels at full hearings of the Conduct and Competence Committee/Health Committee :
 - (i) During the hearing
 - (ii) Is the case well founded
 - (iii) Sanction.
 - Bullet Points Interim Orders.
- 11.3 The Director of Fitness to Practise reported that checklists for appeals had also been devised. The Committee noted that any feedback from panel chairs would be welcomed regarding the checklists and could be incorporated where appropriate. Such feedback was requested to be sent via e-mail to the Director of Fitness to Practise.

Item 12.04/49 REVIEW OF CASES

- 12.1 The Conduct and Competence Committee received a paper from the Director of Fitness to Practise for information.
- 12.2 The Conduct and Competence Committee noted that at its last meeting on 16th November 2004, it had asked the Executive to produce a report on the themes relating to the Standards of Conduct, Performance and Ethics that had been addressed by the Health Professions Council. Rule 8(3)(a) of the Health Professions Council (Practice Committees) (Constitution) Rules Order of Council 2003 stated that ‘At least once in every year, a Practice Committee shall meet to review the allegations heard by the Committee during to the previous year. The Conduct and Competence Committee noted that this information would be incorporated into the Fitness to Practise Annual Report. The notices of decision and order which had been made by panels of the Conduct and Competence Committee were noted as the background information to this.
- 12.3 The Committee noted the usefulness of the report but requested that it maybe more beneficial in future to structure the report by continuous themes such as types of offences (i.e. fraud) as opposed to a chronological format. The Committee noted that this could be reviewed by the types of sanctions imposed, particularly those registrants that get struck off.

- 12.4 The Committee noted that very few cases highlighted a specific breach to the Standards of Conduct, Performance and Ethics, with this in mind the Committee noted that it maybe more beneficial to review what was missing from the Standards. All cases in the report were those that had been dealt with via the new processes and procedures that had been implemented in the FTP department from April 2003 – April 2004. The Committee noted that standard letters had been changed to encourage registrants to attend their hearings as there had been a high incidence of non-attendance. The Committee discussed the various conditions of practise which could be imposed and noted that it would be beneficial for the purposes of consistency to devise pro-forma with stock phraseology.
- 12.5 The Committee discussed the fact that the decision and orders had become lengthy documents and questioned the necessity of this. The Director of Fitness to Practise reported that the more detailed the information provided the more robust the subsequent decision and orders and were therefore not open to scrutiny.

Item 13/04/50 ANY OTHER BUSINESS

- 13.1 There was no other business.

Item 14.04/51 DATE AND TIME OF NEXT MEETING

- 14.1 The next meeting of Conduct and Competence Committee would be on Tuesday 19th April 2005 but was agreed that it would be more beneficial to all members travel arrangements if the meeting started at 10:30am as opposed to 11:00am.

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