

THE HEALTH PROFESSIONS COUNCIL

Chief Executive and Registrar: Mr Marc Seale

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MINUTES of the fifteenth meeting of the Conduct and Competence Committee held at **11:00am on Monday 19th September 2005** at the Park House, 184 Kennington Park Road, London, SE11 4BU.

Mr K Ross (Chairman)
 Mrs M Clark-Glass
 Ms H Davis
 Professor C Lloyd
 Mr P McFadden
 Ms H Patey
 Mr D Proctor
 Miss P Sabine
 Dr G Sharma

IN ATTENDANCE:

Ms S Butcher, Secretary to Committees
 Miss K Johnson, Director, Fitness to Practise
 Mr M Seale, Chief Executive
 Mr S Thompson, Case Officer

Item 1.05/67 INTRODUCTION AND WELCOME

- 1.1 The Secretary to the Committee welcomed everyone to their first meeting of the Conduct and Competence Committee after the HPC elections. The Committee noted the recommendation that the election of the Chairman and Deputy-Chairman be their first matter of business and approved this amendment to the agenda.

Item 2.08/68 ELECTION OF THE CHAIRMAN AND DEPUTY-CHAIRMAN

- 2.1 The Secretary to the Committee requested nominations for the position of Chairman. Ms Davis nominated Mr Ross as Chairman of the Conduct and Competence Committee and Professor Lloyd seconded this. Mr Ross accepted the nomination and as there were no other nominations he was elected Chairman unopposed.

Date
2005-09-19

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DD: None

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Public
RD: None

- 2.2 The Secretary to the Committee requested nominations for the position of Deputy-Chairman. Professor Lloyd nominated Ms Davis as Deputy-Chairman of the Conduct and Competence Committee and Mr Ross seconded this. Ms Davis accepted the nomination and as there were no other nominations she was elected Deputy-Chairman unopposed.
- 2.3 The Committee noted that the nominations made for Chairman and Deputy-Chairman would be put to Council for ratification at its meeting on 5th October 2005.

Action: SB

Item 3.05/69 APOLOGIES FOR ABSENCE

- 3.1 No apologies for absence were received.

Item 4.05/70 APPROVAL OF AGENDA

- 4.1 The Conduct and Competence Committee approved the agenda.

Item 5.05/71 MINUTES

- 5.1 It was agreed that the minutes of the fourteenth meeting of the Conduct and Competence Committee be confirmed as a true record and signed by the Chairman subject to the following amendment:
- 5.2 10.1 delete the word 'for'.
- 5.3 The Committee noted that the minute at 14.1 was correct at that point in time when Professor Lloyd was detailed as not standing in the HPC elections. The Committee noted that when no nominations had been secured for the alternate occupational therapist position on Council Professor Lloyd had decided to stand again.

Item 6.05/72 MATTERS ARISING

- 6.1 Item 10.5 – Matters Arising – Report on the 5th Report of the Shipman Inquiry
- 6.1.1 The Chief Executive reported that the Foster and Donaldson Review groups had been formed in response to the Shipman Inquiry. The Foster Review was concerned with the impact of the Shipman Inquiry on the workings of the General Medical Council (GMC) whilst the Donaldson Review looked at its wider policy implications for the nine healthcare regulators. The Committee noted that the Chief Executive currently sat on the Foster Review Group but not as a representative of the HPC, members from the General Dental Council (GDC) and General Optical Council

(GOC) also attended. Two reference groups had also been established to provide support to both these processes.

- 6.1.2 The Committee noted that any draft papers released by the Foster and Donaldson Review Groups would be made available at the next Conduct and Competence Committee meeting in November 2005. The Committee agreed that following the recommendations made by both groups to the Secretary of State in December, the main point of business at its January meeting should be to review these findings and undertake a thorough analysis of the potential impact to the HPC fitness to practise processes. In addition a bulleted list would be provided so to highlight those things that the HPC were perhaps not incorporating into their processes which Dame Janet Smith had recommended.

Action : KJ

- 6.1.3 The Committee agreed that it would be highly beneficial if the three fitness to practise committee Chairmen met whilst at the Council Away Day in Northern Ireland so to flag up any potential issues that would transpire from a review of the fitness to practise functions. The Committee noted that a Chairman and Deputy-Chairman were not elected at the recent Investigating Committee meeting as it was inquorate but that the election would be included on the agenda of the next meeting of the Committee. The temporarily nominated Chairman of that meeting, Mrs Morag MacKellar could however be asked to enter into these discussions.

Action: SB

- 6.1.4 The Chairman recommended that the Chief Executive formally wrote to the Department of Health for an amendment to the Order so that a sanction of retraining or education could be applied. The Committee noted that this was necessary as whilst a panel may advise a registrant to seek retraining there was no assurance that this would be carried out.

Action: MJS

6.2 12.2 – Matters Arising – Case Management Strategy

- 6.2.1 The Committee noted that 13 panel chairmen had now been recruited and as of the 7th July 2005 had been utilised successfully in a number of hearings. A five day hearing was currently being chaired by one of the new recruits. The Committee noted that although the use of Council members on panels was no longer permitted for fitness to practise hearings, it was a mandatory requirement of the Health Professions Order that a Council member did sit on all registration appeal panels.

Item 7.05/73 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 For the benefit of the new committee members the Director of Fitness to Practise provided an overview of her departments work and staffing structure that was not detailed in the report.
- 7.3 The Committee noted that there had been a number of adjourned hearings and that the fitness to practise department was obliged to review all hearings where extensions of sanctions had been extended or revoked.
- 7.4 The Committee noted that a massive increase had occurred in the number of allegations received by the HPC.
- 7.5 The Committee noted that the Council for Healthcare Regulatory Excellence (CHRE) had referred one HPC case to the High Court, all Council members had been notified of this by the Director of Fitness to Practise via e-mail. The Committee noted that the case had been referred on the grounds that the caution order applied was unduly lenient. It was anticipated that a report would be available for Council's review by December 2005 / January 2006. The Committee also noted that three appeals had been made by registrants.
- 7.6 The Committee noted that the Director of Fitness to Practise had attended a number of meetings. A meeting had been held with Kingsley Napley (HPC solicitors) to review the legal procedures currently in place. She had also met with the Bichard Regulators Group. The Committee noted that a protocol had been established between the HPC and the NHS Counter Fraud and Security Management Service. The protocol was signed by Mr Seale, Chief Executive on the 13th July 2005 and was designed to ensure the effective exchange of information between both organisations. The Committee noted that the Council for Healthcare Regulatory Excellence (CHRE) held a fitness to practise forum every two months to discuss matters of mutual concern. In addition the guidance issued for the application of Section 29 powers was reviewed so to ensure the consistent application of decision making processes. Directors/representatives of the fitness to practise departments from all of the nine healthcare regulators attended this forum and the next meeting was scheduled for Friday 16th September 2005. The Committee agreed that it would be useful if the Section 29 guidance document was provided for their information at the next meeting.

Action: KJDate
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- 7.7 The Committee noted that the IT department were currently in the process of developing an FTP tracking system. It was anticipated that this would be operational in the next couple of months. The Director of Fitness to Practise reported that she would be meeting with the Healthcare Commission regarding the establishment of an operational procedure for dealing with lay complainants within best practise guidelines. An FTP Benchbook was also being designed into which all practice notes would be retained in an easily accessible format.
- 7.8 The Director of Fitness to Practise reported that she had presented two interim orders and would be overseeing four fitness to practice cases in the next few months. The Committee noted that there were a number of cases where a review of the sanction imposed had taken place. It further noted that in a number of instances the sanction imposed had been further extended. .
- 7.9 The Committee noted that the fitness to practise workload was increasing exponentially but that the department had increased in size in direct response to this. The department's five year plan was also being updated in response to this growth. Since April 2005 the percentage of cases referred from the panels of the Investigating Committee had stayed at 45%. The average duration of cases was noted to be 1 day whilst the 17 day case currently being heard was noted to be an exception to this rule. The Committee agreed that it would be useful if the length of case hearings could be monitored and the statistics provided for their review. The Committee noted that this was something to be undertaken in the long term and was not required for the next meeting.

Action: KJ

- 7.10 The Committee reviewed the statistics provided and noted that there had been an increase in the number of complaints received from the public, it was anticipated that this was in response to the HPC communications campaign carried out on yell.com which urged the public to check that their health professional was bone fide.
- 7.11 The Committee noted that it would be useful if a commentary was provided in conjunction with the statistical report (no more than a sheet of A4) highlighting key points or areas which might indicate a need for further work.

Action: KJ

- 7.12 The Committee noted that there was a hearing scheduled nearly every day in October and that the fitness to practise panels would be busy hearing these hearings.

- 7.13 The Committee noted that there was a high incidence of cases amongst the Operating Department Practitioner (ODP) and Paramedic professions. The Committee noted that part of the explanation for the higher incidence of cases found amongst the ODP profession could be explained in part by their relatively new entry onto the register. The Committee noted that part of its remit was to review the number of allegations received and would therefore incorporate this work into the annual report to be produced in the New Year.

Item 8.05/74 HEALTH PROFESSIONS COUNCIL (PRACTICE COMMITTEE) (CONSTITUTION) RULES ORDER OF COUNCIL 2003

- 8.1 The Conduct and Competence Committee received a paper from the Director of Fitness to Practise to note.
- 8.2 The Director of Fitness to Practise recommended that all three sets of rules for the committees were read in cross-reference with each other (items 8, 9 and 10 of these minutes.) This was because amendments had been made as detailed in the HPC Practice Committees and Registration Amendment Rules Order of Council 2005.
- 8.3 The Committee noted that there were no standing orders for the fitness to practise committees but that their equivalent was provided via the HPC Practice Committees Constitution Rules Order of Council. These detailed the membership requirement of the fitness to practise committees, Chairman and Deputy-Chairman processes, the tenure, vacancy procedures, and the standards for members and established the quorum required at each meeting in order for decisions to be made. Any changes made to the Rules had to be approved by Parliament and not by Council. The Committee noted that the Conduct and Competence Committee and Health Rules were very similar whilst the Investigating Committee Rules were different in their context. The Conduct and Competence Committee noted one amendment that had been made to 8 (1) where the practice committees were now only required to meet twice a year and not four times. The Committee noted that there had been occasions in the past when fitness to practise meetings were inquorate therefore this amendment to the Rules was helpful in the reduction of the mandatory number of meetings required to be held. The Committee noted that it was still standard procedure to meet four times a year. The Committee noted that any amendment to Rules had to be consulted upon and approved by Parliament which was incorporated into the Practice Committees and Registration Amendment Rules Order of Council 2005.

Item 9.05/75 HEALTH PROFESSIONS COUNCIL (CONDUCT AND COMPETENCE COMMITTEE) (PROCEDURE) RULES ORDER OF COUNCIL 2003

- 9.1 The Conduct and Competence Committee received a paper from the Director of Fitness to Practise to note.
- 9.2 The Committee noted that in the document reference was made to ‘the committee’. For the purposes of clarity this referred to a fitness to practise panel and not a fitness to practise committee as constituted for the purpose of meeting to discuss fitness to practise issues and approve practice notes.
- 9.3 The Committee noted that these rules detailed the procedures by which the fitness to practise team and panels should undertake their work. The Committee noted how documents should be served. The requirement for a solicitor to represent the Council at a hearing was changed so that Presenting Officers could now perform these functions. The procedure rules also detailed in what instances a case could be referred to the Conduct and Competence Committee, how to serve allegations and when preliminary meetings could be called if considered appropriate by the committee chairman. Additionally, the Committee noted how to conduct hearings in the absence of the health professional, the procedure for the disposal of cases and when and how to review orders and applications for restoration to the register.

Item 10.05/76 HEALTH PROFESSIONS COUNCIL (PRACTICE COMMITTEES AND REGISTRATION) (AMENDMENT) RULES ORDER OF COUNCIL 2005

- 10.1 The Conduct and Competence Committee received a paper from the Director of Fitness to Practise to note.
- 10.2 The Committee noted the further amendments that had been made to the practice committee Rules. In Rule 4 of the Investigating Committee Rules and Rule 2 of the Conduct and Competence Committee Rules and the Health Committee Rules the committees could now consider and determine together two or more allegations against the same health professional or allegations against two or more health professionals, where it would be just to do so. Provision had also been made for vulnerable witnesses in proceedings before all of the fitness to practise committees.

Item 11.05/77 COUNCIL MEMBERS' INFORMATION

- 11.1 The Conduct and Competence Committee received a paper from the Secretary to the Committee to note.
- 11.2 The Secretary to the Committee reported that the Council members' information document had been included for reference as it detailed pertinent points of relevance such as how to raise an item at a meeting, procedural details for committee paper, confidential papers and items for discussion, in what circumstances external meetings were held and travel arrangement protocol. The Committee noted that the document was devised as a supplementary piece of information to the Council members' code of conduct. This document provided more general guidance on how to help Council members carry out their role effectively.
- 11.3 The Conduct and Competence Committee noted the document.

Item 12.05/78 THE ROLE OF FITNESS TO PRACTISE PANELS

- 12.1 The Conduct and Competence Committee received a paper from the Director of Fitness to Practise to note.
- 12.2 The Committee noted that it was not the purpose of the fitness to practise committees to consider allegations but that this work was undertaken by panels comprised of partners. A clear division was required between the strategic policy making roles of Council and its Committees and the partners who implemented the policy set by the Council. A panel was constituted of a Chairman, one lay member, one registrant member and one registered medical practitioner if deemed necessary.
- 12.3 The Committee noted that there were four key areas considered by the fitness to practise panels; allegations, interim orders, review of orders and restoration. The Committee discussed the increased length of hearings and noted that this was due to the substantial rise in competence cases.
- 12.4 The Committee noted that they were responsible for the approval of sanction notes as exercised by its panels and that they were last reviewed in April 2005. The Director of Fitness to Practise would make the sanction notes available to the all members of the committee via e-mail and hard copy. The sanction notes would also be put on the Council members' section of the website when it was fully operational.

Action: KJ/SB

- 12.5 The Committee noted that the HPC had an unusually high number of partners, 350 currently which were required due to the number of

professions that HPC regulated. The General Chiropractic Council (GCC) by comparison only had 9 partners. The Committee were satisfied that quality assurance had been put in place for the successful management of its partners via the establishment of a partner appraisal system and complaints procedure. The Committee agreed however that a performance review system should be put in place.

Action: KJ/LM

Item 13.05/79 SCHEME OF DELEGATION

- 13.1 The Conduct and Competence Committee received a paper from the Director of Fitness to Practise to note.
- 13.2 The Committee noted that the Scheme of Delegation had been devised to ensure that Council and its Committees set policy and strategy and the Executive implemented that policy and strategy and was responsible for all operational matters. The Scheme of Delegation had been approved by Council in July 2004. The Committee noted that none of the fitness to practise committees had any delegated functions; the scheme was intended as an internal measure to clearly define the work as carried out by the Executive and Council. The Committee noted that the Council withheld the power to delegate anything except the power for making Rules which was the concern of the Privy Council. The provisions of the Conduct and Competence Committee were set out in the Order itself whilst the provisions of the non-statutory committees were detailed in their Standing Orders. The Committee noted that the Education and Training Committee was a statutory Committee and had a separate Scheme of Delegation.
- 13.3 The Committee noted that under the Scheme of Delegation the responsibility of defending cases referred to the Courts by the Council for Healthcare Regulatory Excellence (CHRE) had been delegated to the Chief Executive. CHRE looked at decisions made by panels of the Conduct and Competence Committee to determine whether the decisions made was unduly lenient. The Committee noted the matters that were delegated to the Director of Fitness to Practise.
- 13.4 The Committee noted that since the Health Professions Council's inception its work had been concerned with the establishment of Rules, processes and legislation which had now been fixed. The next phase concerned the committees providing the steer on how to develop these processes. The Committee noted that it would be useful if a summary was provided of the critical areas for review as anticipated by the Executive over the next five years. The Committee noted that the outcome of the Donaldson and Foster Review Groups findings would have significant

implications for paving the way forward in the work to be undertaken and changes to operational and policy areas that may be required as a result.

Action: MJS/KJ

Item 14.05/80 ANY OTHER BUSINESS

- 14.1 The Chairman noted that there were two items of any other business that Professor Lloyd wished to raise with the committee. The Chairman approved this.
- 14.2 The Committee noted that the website terminologies used in reference to fitness to practise hearings/committees were not standardised and required amendment. The Director of Fitness to Practise clarified that the title for the lists of hearings should be 'Fitness to Practise Hearing' and would ensure that this was updated accordingly. The Committee noted that the HPC website had been updated recently and the non-standardised terminologies had probably been imported from historical records.

Action: KJ

- 14.3 The Committee noted that at a recent listening event a registrant stated that they had written a letter of complaint to the HPC about another registrant's fitness to practise but received a letter indicating that there were insufficient details provided in order for the allegation to be taken further. The Committee noted that the complaints procedure had been updated on the website last week and was constantly reviewed to ensure clarity in the guidance that was issued. The Committee noted that standard letters were sent out in response to allegations made. The Committee noted that a paper would be provided at the next meeting illustrating the guidance provided for people making allegations.

Action: KJ

Item 15.05/81 DATE AND TIME OF NEXT MEETING

- 15.1 The next meeting of the Conduct and Competence Committee would be on Wednesday 16th November 2005.

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