CONFIDENTIAL

MINUTES of the meeting of the Shadow Conduct and Competence Committee of the Shadow Health Professions Council held at Park House, 184 Kennington Park Road, London SE11 4BU on 12th March 2002 at 9:45

PRESENT

Dr. A.Yule, Chairman

Prof. N Brook,	Prof. J. Lilleyman,
Mr. R Clegg,	Ms. J. Manning
Miss M. Crawford	Mrs. B Stuart,
Miss H. Davis	Miss E. Thornton

In Attendance: Mr T.C. Berrie, Secretary to the Committee
Mr. M. Seale, Registrar/Chief Executive Designate
Mr. G. Ross-Sampson

02/16 Apologies for Absence

An apology was received from Dr. G Beastall, Mr. K Ross, Mr. G Sutehall,

02/17 Minutes

It was **AGREED** that the Minutes of the meeting held on 14th February 2002 be confirmed as a correct record and signed by the Chairman.

02/18 Draft Rules (Reference Minute 02/10)

Further amendments had been made in response to suggestions from Mr. Ross and after discussion between Mr. Berrie and Dr. Yule. The draft was now ready for submission to the solicitors for their advice. A few further changes were made and, for consistency's sake, reference to time be always in days. It was **AGREED** that the draft be sent to Mr. J. Bracken of Dyson-Bell, the Council's Parliamentary Agents, for his advice and that he be invited to attend the next meeting to discuss the draft Rules and his comments with members.

It was **AGREED** that the Council be **RECOMMENDED** to include, amongst other things, the following items as suitably worded questions in the consultation.

- Should the inquisitorial approach be used for assessment of competence only or for inquiries into conduct and conviction cases too?
- Should the standard of proof in conduct and conviction be "beyond reasonable doubt" or "on the balance of probability, i.e. the criminal or civil law criterion?

02/19 Draft Statement of Good Character and Conduct (Reference Minute 02/11)

Further amendments had been made in response to suggestions from Mr. Ross and after discussion between Mr. Berrie and Dr. Yule. The draft was now ready for submission to the solicitors for their advice. A few further changes were made. It was **AGREED** that the draft be sent to Mr. J. Bracken of Dyson-Bell, the Council's Parliamentary Agents, for his advice and that he be invited to attend the next meeting to discuss the draft and his comments with members, and at the same time, a copy be sent to the two other practice Committees for their comments. Mr. Berrie agreed to ask Mr. Bracken's advice on the inclusion in the Statement of reference to competence, which was primarily the responsibility of the Education and Training Committee. He also agreed to write to all the professional associations asking if they had a code of ethics and if so to be sent a copy. As the Order gave the Council greater involvement in professional ethics itself, as opposed to questions of infamous conduct, it was considered that it would require greater involvement in the professional codes of ethics of the professional associations. One possibility, to be suggested to the professional associations and possibly to be enquired of during the consultation process, was that codes of ethics for individual professions be issued jointly with the individual associations, although it was acknowledged that this could not be done in the case of professions without professional associations.

02/20 Policy on levels of sanction and sentencing (Reference Minute 02/12)

As set out in his informal notes of a meeting between Mr. Berrie and representatives of staff of the conduct and performance section of the General Medical Council, there had been debate within the GMC for some time on producing a policy document on sanctions. There had been reluctance in some quarters in case such a document were used as a checklist. However, a document had now been produced, called "Indicative Sanctions Guidance for the Professional Conduct Committee", for conduct cases, a copy of which was tabled. Something similar was being contemplated for competence. It was **AGREED** that members look at the tabled document and send any comments to Mr. Berrie and that it be submitted to the next meeting for detailed consideration.

02/21 The role and the function of the Shadow Committee (Reference Minute 02/14)

21.1 **Report to the Shadow Council**

At its meeting on 14 February 2002 the Council had received a presentation and paper regarding the Council processes. The Council had agreed that the Shadow Committees should provide a report at the 12 March 2002 Council meeting on the date by which they will have approved the documentation of their process, rules and criteria ready for inclusion in documents to be prepared for public consultation. The Council had also received a presentation and paper regarding the project plan. The Council had greed that the Shadow Committees should review the draft project plan to ensure that all their respective tasks had been identified and that either the target dates were achievable or alternative ones were agreed and to report their recommendations to the SHPC meeting on 12 March 2002. The Committee was therefore asked to prepare a report on the Committee's progress to be given by the Chairman to the Council in the afternoon. It was **AGREED** that the Council be informed that the

documents the Committee was preparing on its behalf would be ready for inclusion in the consultation pack which would be issued on 1st July 2002.

The Committee considered a set of charts prepared by Mr. Ross-Sampson which had been included with the agenda and he outlined the process as set out thereon.

21.2 **Transitional Arrangements**

During the transitional period, as would be reported to Council that afternoon, in accordance with the solicitors' advice, the Council, during the transitional period, would need to establish a single ad-hoc "Investigating Committee" to carry out all preliminary investigations and a single ad-hoc "Disciplinary Committee" to carry out all hearings into allegations under the Professions Supplementary to Medicine Act procedures and processes. It was the solicitors' advice that these functions could not be carried out by the Investigating Committee or Conduct & Competence Committee established under the Order in Council. The Standing Orders for this ad-hoc Investigating Committee would be adapted from the Boards' Investigating Committees by the HPC. The Council and its ad-hoc Investigating and Disciplinary Committees would be required to use Sections 8 and 9 and the Second Schedule of the Professions Supplementary to Medicine Act, and the existing Rules, namely, the Professions Supplementary to Medicine Act (Disciplinary Committee) (Procedure) Rules Order of Council 1964 and the individual Statutory Instruments establishing each Board's Disciplinary Committee and Investigating Committee.

A growing number of cases were already being prepared which would require expeditious resolution after 1st April. A pool of suitable individuals would need to be produced as soon as possible to sit on the two ad-hoc Committees. As an initial measure, all existing Board members had been written to asking them to assist the Council in the transitional period, but others, both registrants and nonregistrants, would also be needed. Both Council and non-Council members could be used, with the proviso that an individual who had sat on the ad-hoc Investigating Committee to conduct a preliminary investigation into a case could not then sit on the ad-hoc Disciplinary Committee hearing of that same case. Members of the Shadow Conduct & Competence Committee could therefore become members of the ad-hoc Disciplinary Committee, thus assisting in phasing in the new system.

The ad-hoc Investigating Committee's function would be to carry out a preliminary investigation into whether, in relation to an allegation made against a registrant, there was a case to be answered. If it determined that there was a case to be answered, the allegation would be referred to the ad-hoc Disciplinary Committee. The latter, when sitting as a hearing, would determine whether the registrant was guilty of infamous conduct in a professional respect and, if so, whether they should be struck off the register. This was a full judicial process using court procedures, and each Committee at its respective stage did not require ratification of its decision by the Board or CPSM. This would apply also to the ad-hoc Committees. It was **AGREED** that the Council be informed that all members of the Committee present were willing to take part in the Disciplinary Committee hearings during the transitional period, and that the Council be so informed.

02/22 Other Business: Meeting between Mr. Berrie and representatives of staff of the conduct and performance section of the General Medical Council

Mr. Berrie had met representatives of the General Medical Council (GMC) on 6th March to seek their advice on the operation of their practice committees and procedures.

22.1 **Competence and Performance**

The GMC had been investigating allegations of incompetence since the late 1990's. The GMC staff who were met concurred that the process was quite different from that used for conviction and misconduct cases. They believed it to be an effective process and significant addition to its powers, although, having worked the system for a few years now, they wished to make some modifications. The process was, in their view, very thorough, resulting in a 300 – 400 page report in each case and the staff met stressed the importance of its thoroughness and transparency, but the GMC wished to streamline and speed it up. It also wished to make the process more flexible. The advice was not to specify too much in the Rules. However, the process was, they believed, fair to all sides. The basic method was inquisitorial and therapeutic but also aimed to protect the public. It made a distinction between "competence" and "performance". The latter was used to give an indication of the former, which was qualitative as well as quantitative. The test of competence was particularly important. It was a clinical and practical test, assessing both knowledge and skills in a clinical context, at a centre with which the practitioner was not connected. The staff met had stressed that the test should be carried out early on in the process. The categories used during assessment of a practitioner were "acceptable", "unacceptable", "cause for concern".

Most complaints in relation to competence were made by "persons acting in a public capacity". The panels for competence/performance cases were composed of two medical practitioners in the specialist area of the practitioner complained against, and one lay member. The lay member was truly "lay" in that they were not connected either with the medical or health professions, nor were they educationalists. They were individuals who were chosen because they could demonstrate that they could make judgments and were used to making decisions. They tended to use people like former heads of companies, expolicemen, magistrates etc. They got them from advertisements in the national press.

The practitioner complained about, having been informed of the nature of the complaint, was invited to set out with full evidence why it should not proceed any further. This he/she did before the panel if he/she so wished, and informally. It was not a formal hearing. In some cases, the practitioner had effectively demonstrated at this early stage, to the panel's satisfaction, that the complaint should go no further. If at this stage the panel agreed that he/she had not so proved, and he/she disagreed, he/she could appeal. If the panel decided that it should proceed, the formal process of assessment then began.

They had commented that in competence (and health), cases usually fell into two categories: those where it was immediately obvious that an individual's performance

and competence was so appalling that immediate action had to be taken to stop him/her practising, and the majority of cases where the individual was borderline and remedial action required was relatively small and easily achieved. In some instances, practitioners who were put through the assessment process, upon receiving the panel's report and its statement of requirements, conceded that it was correct and gave an undertaking to carry out the necessary remedial action without the need for formal orders being made. The panel would review his/her case after a set period. The option to use the formal order-making powers remained should this not be effective. Orders normally used were suspension or conditional registration.

They had conceded that there was an overlap with other bodies, including the CHI and employers' internal processes. A "memorandum of understanding" had been produced with organizations such as CHI regarding respective responsibilities and undertakings to refer cases where necessary to each other. It was also recognized that, whilst a panel could lay down any requirements it deemed necessary vis-à-vis retraining, getting the funding and placements for this to be carried out was often problematical. This was an area which required much further consideration.

For competence (and health) cases, the Council made extensive use of specialist advisors, including the equivalent of the "medical" and "registrant" assessors specified in the HPC Order. Because the panel meetings were relatively informal, unlike the formal hearings of conduct/conviction cases, these advisors actually sat with the panels when they met.

For those who had found to be incompetent in, what in CPSM/HPC terms would be called "postregistration specialisms", but not in core competencies, they were permitted to continue to be registered on condition they did not practise in that specialism until they had demonstrated that they were competent in it.

22.2 **Panels in General**

Until recently, conduct and conviction cases had been held by the relevant Committee itself, but the volume of work had meant that they had increasingly to be heard by panels acting on their behalf. The current debate was whether such panels should be chaired by a legally qualified individual or not. Panel members were given one day's training upon appointment. One day extra was given for panel Chairmen. An annual conference/workshop was held for all panel members.

22.3 **Use of Screeners**

The use of screeners during the process was an option given by the Order. The formal decision as to when and where to use them would need to be made by the Council. However, the practice Committees were likely to have a view on their use, particularly at the beginning of the process. It was **AGREED** that this be discussed at the next meeting.

22.4 **The Committee during the transitional period**

Mr. Berrie reported the solicitors' advice that during the transitional period 2002-2003, the Committee could not function as a full statutory committee because part of its constitution, the Rules, had not yet been consulted upon and approved. It had been agreed that during this period, it be referred to as the "Conduct and Competence Working Party". It was noted that, once the practice committees were formally established in April 2003, overlap of membership was prohibited and that that would affect certain members of this Working Party. It was **AGREED** that the Council be **RECOMMENDED** to impose the same restriction for the practice working parties during the transitional period and to consider co-opting suitable individuals who were not Council members to membership of the practice working parties.

02/23 Date of Next Meeting

Members were reminded that the next meeting would be held on 14th May 2002 at 9:45.

CHAIRMAN
14th May 2002