

Unconfirmed
THE HEALTH PROFESSIONS COUNCIL

Chief Executive and Registrar: Mr Marc Seale

Park House
 184 Kennington Park Road
 London SE11 4BU
 Telephone: +44 (0)20 7840 9711
 Fax: +44 (0)20 7840 9807
 e-mail: *sophie.butcher@hpc-uk.org*

MINUTES of the thirteenth meeting of the Investigating Committee held at **11a.m. on Monday 18 April 2005** at Park House, 184 Kennington Park Road, London, SE11 4BU.

Mr N Willis (Chairman)
 Dr N Callaghan
 Ms Shaheen Chaudhry
 Ms Christine Farrell
 Mr P Frowen
 Mr C Lea
 Miss M MacKellar
 Mrs Jacki Pearce

IN ATTENDANCE:

Mr C Bendall, Secretary to Committees
 Ms S Butcher, Secretary to Committees
 Miss K Johnson, Director, Fitness to Practise
 Mr M Seale, Chief Executive and Registrar

Item 1.05/71 INTRODUCTION AND WELCOME

- 1.1 The Chairman welcomed all members to the thirteenth meeting of the Investigating Committee. The Committee noted that most of its members were currently in the re-election process to the Health Professions Council (HPC) whilst Miss MacKellar was congratulated for her unopposed nomination to Council as its Dietitian Registrant member.
- 1.2 The Chief Executive reported that the first meeting of the new Council would be primarily concerned with the election of the HPC President. Members would also be asked to submit their preference as to which committees they would like to be a part of and in agreement with the President confirmation provided of their committee membership at its next meeting 18 July 2005. Members' positions were valid for a period of two years and had the choice to co-opt if they so wished.

Item 2.05/72 APOLOGIES FOR ABSENCE

- 2.1 Apologies for absence were received from the following Investigating Committee members; Mr M Barham, Professor J Lucas and Mr W Munro.

Item 3.05/73 APPROVAL OF AGENDA

- 3.1 The Investigating Committee approved the agenda.

Item 4.05/74 MINUTES

- 4.1 It was agreed that the minutes of the twelfth meeting of Investigating Committee be confirmed as a true record and signed by the Chairman subject to the following corrections:
- 8.4 The Committee agreed that the word 'protect' be removed from this sentence so that it read: 'The Fitness to Practise Director reported that it was not always possible to set a timescale after which offences needed to be disclosed.'
- 8.5 The Committee agreed that the word 'for' be removed from this sentence so that it read: 'The Director of Fitness to Practise reported that the common law principle known as 'double jeopardy' was that, if a person was cleared of an offence.'

Item 5.05/75 MATTERS ARISING

- 5.1 Item 5.2 - Matters Arising – Brochures about FTP Processes
- 5.1.1 The Investigating Committee noted that the fitness to practise brochures had now been devised and were being reviewed by the Plain English Society so that the text was congruent with such standards.
- 5.2 Item 6.2 – Matters Arising – Chairman's Report
- 5.2.1 Ms Farrell requested clarification on minute 6.2 as to what fitness to practise themes had been identified and consolidated to date. Ms Farrell noted that this information would be made available in the fitness to practise annual report.
- 5.3 Item 7.3 – Matters Arising – Director of Fitness to Practise Report
- 5.3.1 The Investigating Committee noted that the high incidence of registration appeals was slowly decreasing. There were 212 outstanding appeals at the end of March however the fitness to practise team would be dealing with approximately 170 such appeals in the next two weeks leaving only 30 appeals unheard.
- 5.4 Item 7.5 – Matters Arising – Director of Fitness to Practise Report

5.4.1 Ms Farrell requested whether it may be beneficial to undertake an analysis annually establishing the criteria by which panels arrived at their decisions. The Director of Fitness to Practise reported that the Investigating Committee panels dealt with at least 172 hearings last year and had not had the sufficient resources to allow a thorough analysis of decision making trends to date. The Committee noted that cases could differ quite widely and anticipated a difficulty in establishing clear trends and indicators based on this variance. The Committee also noted that consistency in decision making processes was vastly improved by the checklists that had now been devised for panel members.

5.5 Item 8.1 – Matters Arising – Self-Referrals

5.5.1 The Investigating Committee noted that the paper on self-referrals had now been approved by the Education and Training Committee.

Item 6.05/76 CHAIRMAN’S REPORT

6.1 The Investigating Committee received an oral report from the Chairman.

6.2 The Chairman reported that he had reviewed the fifth Report on the Shipman Inquiry and then realised that the Director of Fitness to Practise had very successfully undertaken this work already as provided on the agenda.

6.3 The Chairman also reported that in accordance with the Health Professions Order 2001 “the Order” the Investigating Committee should have reviewed the training of its members. The Investigating Committee discussed the ways in which this could be achieved and noted that all new Council members would be required to undergo a two day induction planned for the 29th and 30th June 2005 with the Directors of the various departments within HPC to explain its work and function.

6.4 The Committee noted that as Council members would no longer be appointed as panel members it would be greatly advantageous for them to undergo fitness to practise training of some sort as a thorough background would assist new Investigating Committee members in the undertaking of their work. The Committee discussed whether it would be beneficial for new members to attend investigating committee panel hearings but was established that as these were held in private they would not be allowed to observe. The Committee therefore recommended that the Fitness to Practise Director provided a briefing on the role of an Investigating Committee member at its next meeting in September 2005. It also agreed that key documents such as the fitness to practice committees’ standing orders, the role of panels and panel chairmen and scheme of delegation be provided for their information.

Action: KJ/SB**Item 7.05/77 DIRECTOR OF FITNESS TO PRACTISE REPORT**

- 7.1 The Investigating Committee received the Director of Fitness to Practise Report.
- 7.2 The Director of Fitness to Practise reported that there had been 4 striking off orders, 3 suspension orders, 3 conditions of practise orders, 2 caution orders, 1 case had not been well founded and 3 cases were adjourned. One case had been referred to the Health Committee Panel by the Conduct and Competence Committee Panel and vice versa in March. The Investigating Committee noted that since its last meeting the fitness to practise department had been very busy. In 2004/05 a total of 172 allegations had been received and matches the exact number of cases dealt with by Investigating Panels. The Director of Fitness to Practise reported that there were currently 13 cases within the remit of the Health Committee and of this number 6 cases required a review hearing and dates for 6 hearings had been fixed.
- 7.3 The Investigating Committee noted that further panel training had been arranged for 20th and 21st April 2005 and 6th and 7th June 2005. The next legal assessor review day was planned for 24th June 2005 and panel chair training would take place on 16th June 2005. Interviews for panel chairs were scheduled on 20th – 22nd April 2005, the President for HPC, Norma Brook and Sir Michael Schofield Director of the NHS Appointments Commission would convene the panels.
- 7.4 The Investigating Committee noted that meetings had taken place with CHRE, Kinglsey Napley Solicitors, Bircham Dyson Bell and a whole host of additional relevant groups/bodies to help in the work of the fitness to practise department.
- 7.5 The team were working with the IT department to create an FTP tracking system, brochures, witness support pack, FTP Annual Report, Protocol with NHS Counter Fraud Squad, FTP Benchbook, Prosecutions Procedures and Health and Character Declarations (not references as stated in report).

Action: KJ

- 7.6 The Chairman noted the usefulness of the statistics provided regarding the number of allegations made and the type of sanction imposed by each fitness to practise committee panel. The Investigating Committee noted that its panels had heard 172 cases to date. The Director of Fitness to Practise noted the committee's recommendation that in addition to the figures provided in the total sections of the tables, that

these were broken down to percentages also but had been provided as such in the fitness to practise annual report.

Item 8.05/78 INVESTIGATING COMMITTEE REPORT FOR ANNUAL REPORT

- 8.1 The Investigating Committee received a paper from the Director of Fitness to Practise for discussion/approval.
- 8.2 The Committee discussed the report and made the following recommendations for amendments and corrections:
- a) The Committee were in agreement that it needed to be made clear that the Alternative Dispute Resolution Group (ADR) was not employed by the HPC on a permanent basis as implicated in the report. Rather the Council had standing arrangements with (ADR) for the appointment of mediators throughout the U.K. at the request of Practice Committee Panels. When mediation was ordered by a Panel the Director of Fitness to Practise would arrange for the ADR Group to allocate the matter to an appropriately qualified mediator.
 - b) The Committee discussed the requirement as laid out in the Rules, that the Investigating Committee must review the ongoing education, training, attendance and performance of its members for the previous 12 months and the next 12 months. The Committee noted that although the Chief Executive had not made it explicit that a review of committee members performance was required, it was nevertheless detailed in the standing orders that each member was a party too. The Committee noted that their performance as Health Profession Council members was equitably assessed via the performance and development reviews undertaken between the President of the HPC and themselves. On this basis the committee agreed that the word performance be removed.
 - c) The Committee agreed that in the third paragraph the first two words 'As per' be replaced with 'In accordance with' as members felt that this was a more appropriate phraseology. The Committee also agreed that for the purposes of clarity to specify in the last sentence of this paragraph who may be reappointed for two years, namely registered medical practitioners.
 - d) The Committee agreed that the last two sentences of paragraph two on page two be removed as it wasn't felt to add anything significant to the information already provided.
 - e) The Committee discussed the bulleted points on page two, and noted that at the start of each sentence following a bullet point, the first word should not be capitalised as was shown. Also for the purposes of

grammatical correctness following each sentence there should be a comma as opposed to a semi colon.

- f) The Committee agreed that where reference had been made to CPSM in the last paragraph of page two that this be corrected to show what the acronym actually stood for, The Council for Prescribing Supplementary to Medicine.
- g) The Committee discussed the mechanisms by which it effectively was engaged in the business of protecting the public. The Committee noted Article 44(1) which states that:

‘The Council shall publish at least once in each calendar year a statistical report which indicates the efficiency and effectiveness of the arrangements it has put in place to protect the public from persons whose fitness to practise is impaired, together with the Council’s observations on the report.’

The Committee therefore agreed that as a full evaluation and detailed analysis was to be provided in the fitness to practise annual report a closing paragraph in the committee report should be added indicating that this is where it would be found.

Item 9.05/79 AUTHORISED PERSONS

- 9.1 The Investigating Committee received a paper from the Director of Fitness to Practise for discussion/approval.
- 9.2 The Committee noted that Article 25(1) of the Health Professions Order 2001 provided for “authorised persons” to be appointed to conduct investigations on behalf of the practise committees.
- 9.3 Article 37(7) of that Order made similar provisions in relation to registration appeals and, by virtue Paragraph 8.7 of its Scheme of Delegation, the Council had delegated to the Director of Fitness to Practise:

“...appointing authorised persons for the purposes of Article 37(7) and, by virtue of that provision, Article 25(1) of the 2001 Order in relation to registration appeal proceedings.”

- 9.4 The Committee noted that in order to ensure that any delegation by the Practise Committees was consistent with that made by Council, the Committee was asked to pass the following resolution:

“That the Committee’s power to appoint authorised persons for the purpose of Article 25(1) of the Health Professions Order 2001 be delegated to the Director of Fitness to Practise.”

- 9.5 The Director of Fitness to Practise reported that the paper had been scrutinised by the legal advisor for the Health Professions Council (HPC) and was content with its structure.
- 9.6 The Investigating Committee approved the paper for Authorised Persons.

Item 10.05/80 REPORT ON THE 5TH REPORT OF THE SHIPMAN INQUIRY

- 10.1 The Investigating Committee received a paper from the Secretary to the Committee for discussion/approval.
- 10.2 The Chief Executive reported the latest developments that had evolved in response to the Shipman Inquiry, namely that two special committees had been set up by Lord Warner, Secretary of State for Health to specifically review the following issues:

The Chief Medical Officer for England, Sir Liam Donaldson
Donaldson Committee:

1. Continuous Professional Development (CPD) and revalidation of the General Medical Council (GMC).
2. Procedures to be used by healthcare regulators.

Mr Andrew Foster, Director of Workforce
Foster Committee:

1. Continuous Professional Development (CPD) and revalidation of all other healthcare professionals.
2. Fitness to practise procedures to be used by regulators of healthcare professionals
3. Number of regulators required

- 10.3 The Investigating Committee noted that the Chief Executive and President of HPC had been asked to participate in a personal capacity in the Foster review but not as representatives of the HPC. The Chief Executive of the Nursing and Midwifery Council (NMC) Sarah Thewlis and their President Mr Jonathan Asbridge had also been invited to contribute to the discussions of the advisory group. No other members from professional bodies had been asked to participate and to this end other regulatory bodies were currently petitioning Lord Warner for their voices to be heard. Two reference groups had also been set up to support these processes and were comprised of education and training bodies, professional organisations as well as consumer and healthcare quality interests.
- 10.4 The Investigating Committee noted that the two committees were anticipated to meet a total of six times. The recommendations made by Donaldson would be integral to those made by the Foster committee. All recommendations would then be personally presented by Mr Andrew Foster to the Secretary of State for Health in December 2005.

- 10.5 The Director of Fitness to Practise reported that there would be huge cost implications if all of the recommendations made by Dame Janet Smith in the fifth Report of the Shipman Inquiry were to be incorporated into current HPC procedures. The recommendation for the appointment of legally qualified chairmen was raised as a concern as the cost of this would inevitably be passed on to the registrant by the raising of their fees. The Investigating Committee also noted the recommendation that consideration should be given to the appointment of a body of full-time panellists who could sit on the fitness to practise panels of all the healthcare regulatory bodies. A case management strategy was also being implemented that now separated the role of the hearing officer from that of the case manager. The hearing officer post was currently being recruited for and would be responsible for scheduling and managing hearings, including contacting the partners who are to serve on that Panel.
- 10.6 The Investigating Committee discussed the implications of legislative change for the HPC if one of Dame Janet's recommendations were to be put in place. Namely, that the GMC Rules should be amended to provide for the reopening of closed allegations, with a "cut-off" period of five years but with the power, in exceptional circumstances and in the interests of patient protection, to reopen a case at any time. HPC's current legislation states this may be undertaken within a period of three years.
- 10.7 The Investigating Committee noted that it was reviewing matters of strategy because it was one of its tasks as laid out in the legislation that formed it. The Chief Executive reported that this was also clearly illustrated in the Annual Report produced by HPC which is laid before parliament. If this is not done, an external audit is activated and the President of the HPC would be invited to come and discuss its outcomes.

Item 11.05/81 MEDIATION

- 11.1 The Investigating Committee received a paper from the Director for Fitness to Practise to note.
- 11.2 The Investigating Committee noted that the Alternative Dispute Resolution Group (ADR) had given an informal presentation to Council on 1st February 2005 regarding their function in assisting with mediation processes. Council had appointed the company ADR to assist with mediation on a case by case basis if and when directed by the Fitness to Practise Director (via an appropriately qualified mediator).
- 11.3 The Director of Fitness to Practise reported that members had recommended for specific case examples to be provided that illustrated

where mediation could be used but was unable to supply such information as no such cases had suitably transpired. In accordance with Article 26(6) and 29(4) a case had to be well founded before mediation could be undertaken (but not a fraudulent or incorrect register entry allegation). In practise mediation was not used by HPC as it was not congruent with the nature of the cases that it dealt with i.e. fitness to practise cases that concerned a registrant's health, conduct and or competence.

- 11.4 The Chief Executive reported that errors had been made by the Privy Council in the drafting of the Health Professions Order 2001 ("the Order"). One of these included the inappropriate placing of mediation, in addition to which reference to panel and alternate members had been omitted. In the next 18 months the Chief Executive would be requesting that the Privy Council review these errors for correction. The Investigating Committee noted that this would be very beneficial.
- 11.5 The Investigating Committee considered the need to review the types of cases heard by the Investigating Committee Panels to see if any were appropriate for referral to mediation. The Director of Fitness to Practise reported that due to the high levels of cases dealt with by the Investigating panels and a lack of available resources the fitness to practise team had not been able to review previous cases to date. However cases were now being reviewed upon receipt and none had come to light. The Investigating Committee discussed the types of potential cases that might require the employment of mediation services and identified one particular scenario whereby this was likely to occur when a registrant makes a complaint about another registrants fitness to practise and the other makes a cross allegation.

Action: KJ

Item 12.05/82 CASE MANAGEMENT STRATEGY

- 12.1 The Investigating Committee received a paper from the Director of Fitness to Practise for information.
- 12.2 The Investigating Committee noted that in order for the Health Professions Council (HPC) to effectively manage its fitness to practice function in a manner which meets its primary obligation of protecting the public, it would need to implement a robust case management system/strategy. Part of this need had been driven by the implications of the 5th Report of the Shipman Inquiry. The role of the Hearing Officer and Case Manager was being separated so that caseloads could be more effectively managed. A Hearing Officer was therefore being recruited and 2 further Case Managers in 2005/06. The Case Managers would have a more proactive role in investigating cases. The Investigating Committee noted that Partner Chairs were currently being recruited. The first phases of interviews were scheduled for 20-

22 April 2005 and the interview panel was comprised of Norma Brook, HPC President and Sir Michael Schofield from the NHS Appointments Commission.

- 12.3 The Investigating Committee recommended the following corrections be made to the case management strategy document, on page 3 to remove 'and Primary Care Trusts' and 'NHS' so that it read 'strengthen relationships with employers of registrants and Local Authorities to ensure that information about workplace disciplinary cases is shared;'.

Action: KJ

Item 13.05/83 FITNESS TO PRACTISE ANNUAL REPORT

- 13.1 The Investigating Committee received a paper from the Director of Fitness to Practise for information.
- 13.2 The Director of Fitness to Practice apologised for the late submission of the Fitness to Practice Annual Report, however as it was a lengthy and detailed document it had taken some time to devise. With this in mind the Chief Executive recommended that the Committee took a fifteen minute break in which to review pertinent parts of the report for comment. The Committee was also asked to submit any other additional comments to the Director of Fitness to Practice via e-mail by Friday 22 April 2005 so that they may be incorporated accordingly.
- 13.3 The Committee noted that on page 9 of the report in the table demonstrating 'Allegations by Profession' the figures given were too long in the sub-section - 'Total % of registrants with allegation' and should be rounded off to the nearest decimal point for clarity. The Committee also recommended that the first part of the paragraph on that same page 'As was expected' be removed. On page 10 the Committee discussed the table showing where the registrants were located and recommended that the 'Other' section should be clarified to read what this sub-section was comprised of and therefore agreed that this should be changed to read 'International'. The Director of Fitness to Practice confirmed that the pie charts would all be produced in colour for ease of distinction. The Committee recommended that the last sentence underneath the table on page 10 be removed as they felt that it was self-explanatory 'The highest number of allegations are made about registrants who have a UK approved qualification.' The Committee agreed that the last sentence on page 13 underneath the table needed to be clarified 'Interim orders are sometimes imposed after a final disposal decision has been taken. The table above excludes this number.'
- 13.4 The Committee discussed page 16 regarding 'Action taken at final hearing' and the subsequent list provided. The Committee

recommended that this information would be made clearer in the form of a distribution graph showing the number of cases dealt with on a time continuum. This would illustrate and be easier to identify those cases that had taken longer to process and the reasoning behind this. The Committee noted that there were a number of instances in which tribunals were cancelled on the same day and would therefore influence the time in which cases were dealt whilst interim orders were also noted to be lengthy procedures from receipt to closure.

Item 14.05/84 ANY OTHER BUSINESS

- 14.1 Mr Frowen reported that the National Republic had reviewed its procedures and a number of individuals were identified as not suitable for the register. The Committee considered how the HPC registration process could pinpoint such persons in the U.K. Mr Frowen reported that he would attempt to acquire the list so that HPC could investigate these matters further.
- 14.2 The Chief Executive and committee members thanked Mr Willis for all of the hard work and support he had given as Chairman to the Investigating Committee. The Chairman in turn thanked the members for all of their support.

Item 15.05/85 DATE AND TIME OF NEXT MEETING

- 15.1 The next meeting of the Investigating Committee would be at 11a.m. on Thursday 8 September 2005.

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