

THE HEALTH PROFESSIONS COUNCIL

Chief Executive and Registrar: Mr Marc Seale

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MINUTES of the eleventh meeting of the Health Committee held at **11a.m. on Wednesday 9 February 2005** at Park House, 184 Kennington Park Road, London, SE11 4BU.

Dr J Old (Acting Chairman)
 Mr J Camp
 Dr C Kenny
 Ms R Levenson
 Dr A Van Der Gaag
 Professor D Waller

IN ATTENDANCE:

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

Item 1.04/56 INTRODUCTION AND WELCOME

- 1.1 Dr J Old welcomed all members to the meeting. He additionally welcomed on board the registrant medical practitioner for the Health Committee, Dr C Kenny to her first meeting. He noted that in the absence of Miss M Crawford he would be chairing the meeting.

Item 2.04/57 APOLOGIES FOR ABSENCE

- 2.1 Apologies for absence were received from the following Council members; Miss M Crawford, Professor T Hazell, Mrs C McGartland and Mrs J Stark.

Item 3.04/58 APPROVAL OF AGENDA

- 3.1 The Health Committee approved the agenda.

Item 4.04/59 MINUTES

- 4.1 It was agreed that the minutes of the tenth meeting of the Health Committee be confirmed as a true record and signed by the Deputy-Chairman.

Item 5.04/60 MATTERS ARISING

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5.1 Item 6.10 - Matters Arising - Shipman Report

- 5.1.1 The Health Committee noted that at Council's next meeting 2nd March 2005 a paper would be provided analysing the findings of the fifth report of the Shipman enquiry and the implications for HPC.

Item 6.04/61 DEPUTY-CHAIRMAN'S REPORT

- 6.1 The Health Committee noted that in the absence of the Chairman the Deputy-Chairman Dr J Old would provide a report. The Deputy-Chairman reported that he had attended the Council 'Away Day' in Scotland and had assisted the Chairman in devising the report on the Health Committee's work over the past year which all members had found extremely informative and useful.

Item 7.04/62 DIRECTOR OF FITNESS TO PRACTISE REPORT

- 7.1 The Health Committee received the Director of Fitness to Practise Report.
- 7.2 The Health Committee noted that there had been an increase in both the number of review hearings and interim orders being held.
- 7.3 The Health Committee noted that further panel training had been arranged for 20th and 21st April 2005. The process had also begun to identify/recruit/train and use partners as panel chairs.
- 7.4 The Health Committee noted that the Director of Fitness to Practise now met once every two months with the Council for Healthcare Regulatory Excellence (CHRE). Meetings had also taken place with Kingsley Napley Solicitors, the Association of Clinical Scientists, the Metropolitan Police and the NHS Counter Fraud Squad. The Director of Fitness to Practise reported that the meetings had proved to be very informative and an effective tool for building closer strategic links with external bodies. The Metropolitan Police for example be providing a notice about HPC on their intranet. It was anticipated that this would aid the timely submission of information regarding convictions of registrants so that action could be taken as appropriate by the HPC.
- 7.5 The Health Committee noted that the FTP team was currently working with the IT department to create an FTP tracking system and was also working on the following items:
- Brochures
Witness Support Programme
FTP Annual report
FTP budget
Protocol with NHS Counter Fraud Squad
- 7.6 The Health Committee noted that 218 fitness to practise hearings had been scheduled for 2006 which equated to a workload of at least 4

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hearings per week. The number of operating department practitioner (ODP) cases had increased since the opening of ODP part of the Register on the 18th October 2004 and it was anticipated that the total number of hearings would increase as more health professions joined the HPC Register. The Health Committee noted the higher incidence of cases being referred to the Conduct and Competence Committee in comparison to the Health Committee. This was generally indicative of the types of cases being received.

- 7.7 The Health Committee noted that part of its function as per Article 8(3)(a) of the Health Professions Council (Health Committee) (Procedure) Rules Order of Council 2003 was to: *‘.....meet to review the allegations heard by a Committee during the previous 12 months.’* The Director of Fitness to Practise therefore provided the Health Committee with some examples of the notices of decision orders which had been served in this time. The Health Committee agreed that the review of the fitness to practise processes that had been undertaken within the last 12 months had developed much clarity in the procedural running of the department. The Health Committee noted that this clarity was reflected in the subsequent revised standard letters produced for notices of decision and order. A request was made that for the purposes of aiding further transparency it should be made clear in letters concerning suspension specifically that registrants could be restored to the Register subject to conditions as this was not stated at present.
- 7.8 The Committee agreed that the practise note on sanctions would be made available to Dr C Kenny to assist her understanding of fitness to practise proceedings.

Action: KJ

- 7.9 The Health Committee thanked the Director of Fitness to Practise for her report and noted it as a useful document for demonstrating the work of the fitness to practise department.

Item 8.04/63 RESTORATION

- 8.1 The Health Committee received a paper from the Director of Fitness to Practise for discussion/approval.
- 8.2 The Health Committee noted that Article 33 (1) of the Health Professions Order 2001 (“the 2001 Order”) provides 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.’* The practice note set out the process that should be followed when an applicant applied for restoration to the register.

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- 8.3 It was noted that to date the Health Committee had not received an application of restoration to the Register. The Fitness to Practise Director reported that due to the 5 year period that had to have elapsed from when a person was struck off the register to when an application for restoration could be made it was not anticipated for such an application to be received for a further 7-8 years. This was also influenced by the fact that if a person had already made an application for restoration in the preceding 12 months a further application could not be made until a further 12 months had elapsed. The Health Committee noted that the practice note was beneficial in setting out the procedural elements if and when an application was made.
- 8.4 The Health Committee approved the paper on Restorations and recommended that Council do the same.

Item 9.04/64 DECISION MAKING CHECKLISTS

- 9.1 The Health Committee received a paper from the Director of Fitness to Practise for note.
- 9.2 The Director of Fitness to Practise reported that decision making check lists had now been devised to further assist panels in the decision making process. These documents were now available at hearings for reference if and when required. The following bullet point check lists were noted:
- 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.
- 9.3 The Health Committee agreed that these should be produced subject to the following amendments, under: *'Bullet Points for Panels – Full Hearings of the Conduct and Competence Committee/Health Committee - During the Hearing'* – the last bullet point be moved to the top of the list for clarity of procedure: *'Applications can be made to for the case to be heard in private session, if the panel grant this application, the panel have to return to open session to announce their finding and decision in the case.'*

Action: KJ

- 9.4 Under the same title it should be made clear that not only do 'The Council have to prove their case' they also have to present it. The checklist on bullet points for interim orders was also agreed to be amended for clarity. The Health Committee noted that it would be useful for the purposes of good and thorough preparation by panel

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members for the finalised checklists to be sent with each case load prior to the hearing itself.

Action: KJ

- 9.5 The Health Committee noted the decision making checklists as useful documents with the amendments as listed.

Item 10.04/65 REGISTERED MEDICAL PRACTITIONERS

- 10.1 The Health Committee received a paper from the Secretary to the Committees for note.
- 10.2 The Health 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 practitioners to the following practice committees:

Health Committee
Dr Christine Kenny

Investigating Committee
Dr Nigel Callaghan

Conduct and Competence Committee
Dr Gopal Sharma

- 10.3 The Health Committee noted that their appointments 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 11 July 2005 and would be reappointed for two years as of that date.

Item 11.04/66 ANY OTHER BUSINESS

- 11.1 The Health Committee noted one item of any other business.
- 11.2 The Health Committee noted that a presentation on mediation was given to Council on the 1st February 2005 by a Mr J Christacos from the Alternative Dispute Resolution Group (ADR). Following this the Executive made a recommendation that mediation was put on the agenda of the fitness to practise committees' forthcoming meetings. This would allow for a discussion to take place regarding the appropriateness of mediation within the fitness to practise proceedings as undertaken at the HPC. The Health Committee noted that in addition to this discussion under any other business, mediation would be put on the agenda of its next April 2005 meeting and a paper provided by the Executive.

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- 11.3 The Health Committee noted that provision was made for mediation in the HPO Order 2001 under the following Articles 26(6)(a) ‘..Where the Investigating Committee concludes that there is a case to answer under paragraph (2)(d)(i), it shall- (a) undertake mediation; or...’ and Article 29(4) ‘The Committee may- (a) refer the matter to Screeners for mediation or itself undertake mediation, or...’ The Health Committee noted that in order for mediation to be put into practise a case had to be well founded. Panels in fitness to practise proceedings had been documented as having considered mediation as an option but still not used to date. It was often difficult to assess where mediation could be used in the context of health regulation when the main concern was for protection of the public and therefore would negate the use of mediation in strict cases that concerned matters of conduct and competence and or health. The Director of Fitness to Practise reported that mediation would be employed on a need to have basis and should the requirement arise HPC would train mediators as panel members as provided by the company ADR. It was established that there was no retainer fee for this service payment was made on a case by case basis. As provision was made for mediation in the HPO (“the Order 2001”) the Health Committee noted that perhaps this should also be included in the HPC (Health Committee) (Procedure) Rules Order of Council 2003 so that panel members were clear on when and how mediation could be used. The Committee requested that at its next meeting specific examples of cases were provided demonstrating where it may be appropriate for mediation to be utilised so to assist understanding in the further discussions to take place.

Action: KJ**Item 12.04/67 DATE AND TIME OF NEXT MEETING**

- 12.1 The next meeting of the Health Committee would be at 11a.m. on Thursday 14 April 2005. Ms R Levenson and Dr A Van Der Gaag both gave their apologies.

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