

Fitness to Practise Committee

Public minutes of the seventh meeting of the Fitness to Practise Committee held as follows:

Date: Thursday 13 October 2011

Time: 10:30 am

Venue: The Council Chamber, Health Professions Council, Park House, 184 Kennington Park Road, London SE11 4BU

Members: Pradeep Agrawal
Jennifer Beaumont
Malcolm Cross
John Donaghy
Julia Drown
Penny Renwick
Keith Ross (Chair)
Annie Turner

In attendance:

Alison Croad, Policy Officer
Jonathan Dillon, Hearings Manager
Kelly Johnson, Director of Fitness to Practise
Zoe Maguire, Investigations Manager
Brian James, Head of Adjudication
Steve Rayner, Secretary to the Committee
Marc Seale, Chief Executive

Part 1 – Public Agenda

Item 1 Nomination of Chair of the Committee (FTP 35/11)

- 1.1 In accordance with the standing orders, the Committee was asked to nominate a Chair to preside at the meeting, and for meetings of the Committee for the following two years.
- 1.2 Keith Ross was nominated as the Chair of the Committee.

ACTION: Secretariat to submit the Committee's recommendation to the Council.

Item 2 Apologies for absence

- 2.1 Apologies were received from Morag MacKellar and Deep Sagar.

Item 3 Approval of agenda

- 3.1 The Committee approved the agenda.

Item 4 Declaration of members' interests

- 4.1 The Chair declared an interest in items 8, 16 and 17, all regarding the HPC's interaction with the Council for Healthcare Regulatory Excellence (CHRE). At the time of the meeting, the Chair's wife was a member of the CHRE. The Committee did not consider that this precluded the Chair from discussions.

Item 5 Minutes of the meeting of 26 May 2011 (FTP 36/11)

- 5.1 The minutes were accepted as a correct record and signed by the Chair.

Item 6 Matters arising (FTP 37/11)

- 6.1 The Committee received a paper to note from the Executive summarising actions taken against matters arising from previous meetings.
- 6.2 The Committee noted the actions.

Item 7 Director of Fitness to Practise report (FTP 38/11)

- 7.1 The Committee received a paper for discussion from the Executive providing a summary of the work of the Fitness to Practise Department (the Department) from April to the end of August 2011. The paper also included key statistical data on the fitness to practise (FTP) process.
- 7.2 The Committee discussed key activities for the Department, during which discussion, the following points were raised:

Registration appeals

- 7.2.1 The Committee noted that the Executive was planning a review of the operating guidance provided to the team on registration appeals.

Longitudinal monitoring

- 7.2.2 The Committee noted that the Investigating Committee was entitled to take account of other allegations (that had arisen in the previous three years) when considering a Fitness to Practise case.
- 7.2.3 The Department did not currently analyse data on decisions involving Registrants who had been subject to multiple allegations over a number of years.

ACTION: Director of Fitness to Practise to include data on decisions involving Registrants who had been subject to multiple allegations over a number for years in the next report into Investigating Committee decisions.

Quality of complaints

- 7.2.4 The Committee agreed that a more general review into the quality of Complaints from employers would be useful.

ACTION: Director of Fitness to Practise to consider a review into the quality of complaints when developing future work plans.

Item 8 2010-2011 CHRE performance review (FTP 39/11)

- 8.1 The Committee received a paper for discussion/approval from the Executive introducing the text of the 2010-11 review by the CHRE into the performance of the nine healthcare regulators. The paper provided analysis and recommendations regarding the fitness to practise aspects of the report.
- 8.2 A report including analysis of the full report would be submitted to the Council at its meeting of 13 October 2011.
- 8.3 The Committee discussed the report, during which discussion the following points were raised:

Alcohol and drug offences

- 8.3.1 The Committee noted the Nursing and Midwifery Council (NMC) decision to require GPC references and medical checks from prospective and renewing registrants with convictions and cautions from alcohol and drug offences.

- 8.3.2 The Committee noted that the HPC did not have the power to compel registrants to undertake such assessments.
- 8.3.3 The Committee noted that the recent review by the Policy and Standards Department had concluded that there was not enough evidence that this approach increased public protection.
- 8.3.4 The Committee noted that the introduction of such assessments was not consistent with the recent Council decision to remove the health reference as a requirement to admit or readmit to the Register
- 8.3.5 The Committee noted that, as the CHRE, NMC and GMC had identified this issue as a risk, it was appropriate for the HPC to investigate an evidence base that this practise mitigated a risk.
- 8.3.6 The Committee agreed that any future report and subsequent discussion on this issue should have a more general focus; that of the HPC's approach to the treatment of registrants with convictions.

Quality assurance

- 8.3.7 The Committee noted that feedback was not currently collected from registrants involved in Fitness to Practise cases. A feasibility study was due to be carried out into the collection of feedback from all participants in FTP hearings in 2012.
- 8.4 The Committee agreed with the recommendations in the report FTP39/10, that:
- (a) the Executive should proceed with further enhancements to the quality assurance process as required;
 - (b) the Executive should ensure the learning from the GPhC section of the report is taken into account during the transfer of the Register from the GSCC; and
 - (c) that the Executive should continue to take steps to ensure that the structure and resources of the FTP directorate remains fit for purpose.
- 8.5 In respect of the questions at paragraph 13.2 of the report FTP39/10, the Committee agreed:
- (a) That the Executive should undertake further work on how it treats registrants with conviction, to include:
 - (i) seeking advice from regulators on their rationale for taking the decision to request medical checks of prospective and renewing registrants with convictions and cautions from alcohol and drug offences;
 - (ii) requesting any available evidence that the policy mitigates a risk to the public.

- (ii) seeking advice from other appropriate sources as to whether requesting a registrant to undertake a medical assessment when they are convicted or cautioned for a drug or drink related offence is an appropriate step for the HPC; and
- (b) that no change to HPC's policy in not sharing the registrants response at Investigating Committee Panel stage to the complainant was currently required

ACTION: Director of Fitness to Practise to deliver actions as outlined in Paragraphs 8.3 and 8.4

Item 9 Alternative mechanisms to resolve disputes (FTP 40/11)

- 9.1 The Committee received a paper for discussion/approval from the Executive introducing the conclusions of a qualitative study, carried out by Ipsos MORI, exploring the views of key audiences on the potential use of mediation within the HPC's regulatory regime.
- 9.2 The study was part of ongoing work into the expectations of complainants, complaints mechanisms and FTP work on reviewing decision making. It had been commissioned by the Committee as part of a workplan dealing with these subjects at its meeting of 25 February 2011.
- 9.3 The Study included Ipsos MORI's findings, analysis and recommendations for the further development of the FTP process.
- 9.4 The Committee noted that; of the 315 hearings that concluded in 2010-11 191 concerned cases where the initial notification was from an employer. 79% of those cases were well founded compared to an overall well founded rate of 73%.
- 9.5 The Committee agreed that the Executive should carry out the following work in response to the review:
 - (a) investigation of the viability of a 'two-tier advisory service', to provide assistance during the FTP process, as part of the work plan for 2012-13; and
 - (b) further work on the provision of opportunities for more direct contact (eg face to face meetings) should be considered as part of the work plan for 2012-13; and
 - (c) ensuring that improving communication with all those involved in the FTP process remains central to the Departmental work plan.

ACTION: Director of Fitness to Practise to deliver actions as outlined in Paragraph 9.5.

Item 10 The Standard of Acceptance for Allegations (FTP 41/11)

- 10.1 The Committee received a paper for discussion/approval from the Executive regarding the guidance published by the HPC to provide regarding the threshold allegations must normally meet before the HPC will investigate.
- 10.2 Guidance on the standard of acceptance for allegations had previously been published as a practice note, but had been formalised as a policy statement to add further clarity to the process, and to give it the equivalent status to the Indicative Sanctions Policy
- 10.3 The Committee agreed that the paragraph regarding matters to be resolved locally on Page 7 of the report should be reworded to provide greater clarity on the circumstances under which local resolution would be more appropriate.
- 10.4 The Committee noted that it would be helpful to have an opening paragraph explaining the fundamental basis of the HPC's approach; i.e. that it was the HPC's policy that allegations would meet a defined threshold before they would be investigated.
- 10.5 The Committee recommended that the Council approve the policy statement, subject to minor editing amendments.

ACTION: Director of Fitness to Practise to submit the revised policy to the next meeting of the Council.

Item 11 Practice Note: Case to Answer (FTP 42/11)

- 11.1 The Committee received a paper for discussion/approval from the Executive. The paper regarded a practice note which provided guidance to Panels on the tests applied by Practice Committee Panels when determining whether there is a 'case to answer' in fitness to practise cases.
- 11.2 The practice note had been amended following a review of 'not well founded' decisions.
- 11.3 The Committee recommended that the Council approve the practice note.

ACTION: Director of Fitness to Practise to submit the practice note to the next meeting of the Council.

Item 12 Audit of final fitness to practise decisions (FTP 43/11)

- 12.1 The Committee received a paper for discussion/approval from the Executive. The paper provided analysis of final fitness to practise decisions between 1 January and 31 August 2011.

- 12.2 The audit had been developed as a mechanism by which the HPC could monitor, and be satisfied of, the quality of decisions made by FTP panels. It had been developed as part of the HPC's response to a CHRE review into the conduct function of the General Social Care Council (GSCC).
- 12.3 The Committee noted that, when a Panel was shown not to have followed due process, there was an opportunity for this to be addressed through the performance and development process for Panel members.
- 12.4 The Committee noted that a more immediate outcome for dealing with circumstances whereby a Panel had not followed due process would be investigated as part of the wider review into FTP hearing feedback mechanisms.
- 12.5 The Committee agreed that the Executive should carry out the following work in response to the review:
- (a) continue to monitor changes that are required to Practice Notes;
 - (b) continue to ensure that appropriate training is provided to the team, to panel members and to legal assessors; and
 - (c) continue to take steps to ensure decisions are of high quality.

ACTION: Director of Fitness to Practise to deliver actions as outlined in Paragraph 12.5.

Item 13 'Not well founded' case review (FTP 44/11)

- 13.1 The Committee received a paper for discussion/approval from the Executive providing an analysis of cases where a Panel had determined that allegations against a registrant were not well found.
- 13.2 This review was a regular update, undertaken to monitor decisions taken by Panels. It also provided outcomes which could be used to improve understanding of the FTP process, and to assist Panels in decision making.
- 13.3 The Committee noted the key conclusion of the report; that the percentage of cases which had resulted in a 'not well founded' decision had fallen significantly.
- 13.4 The Committee noted that the next version of the report would have enough data to include trends and analysis.
- 13.5 The Committee approved the paper FTP 44/11, including recommendations for continuing work to ensure that, wherever possible, only appropriate allegations reach the final stage.

Item 14 Adjourned/part heard/cancelled final hearings (FTP 45/11)

- 14.1 The Committee received a paper for discussion/approval from the Executive providing an audit of hearings which took place between April 2010 and July 2011 but which did not conclude as expected.
- 14.2 The regular review had been requested by the Committee at its meeting of 21 October 2010, and provided an analysis of the hearings, along with information on what steps that had been taken to increase the amount of cases which concluded within the days allocated.
- 14.3 The Committee noted that the executive were analysing cases to identify exceptions from Practice notes which were then fed back in to training.
- 14.4 The Executive were also developing a decision template tool – to help guide panels through decisions and help manage time during hearings.
- 14.5 The Committee approved the report, and agreed that the Executive continue to monitor and report against final hearings that are adjourned, part heard and cancelled.

Item 15 Transfer of regulatory functions from the GSCC to HPC (FTP 46/11)

- 15.1 The Committee received a verbal update from the Chief Executive regarding the regulation of social workers in England project.
- 15.2 At the Council meeting on 14 October 2010, the Council agreed that there would be a standing item on every Council and Committee agenda, whereby the Executive would update the meeting on the progress of the project. As the project was developing rapidly, a verbal report on progress would be made to each meeting.
- 15.3 The Health and Social Care Act had begun the Committee stage in the House of Lords. It was still subject to amendments, but none were anticipated to the section of the legislation involving the HPC.
- 15.4 The Case Management System project had entered the test phase. The system was on target to be ready for the transfer of file from the GSCC.
- 15.5 HPC has leased offices at 33 Stannary Street, and would shortly be reconfiguring the departments in anticipation of the additional employees.
- 15.6 The first test had taken place of the actual transfer of the register.
- 15.7 The Department was continuing meetings with the GSCC to ensure that processes are as aligned as possible, and that FTP files are in a format that allows them to be used by the HPC upon receipt.

15.8 The Committee noted that the HPC used a mechanism for prioritisation of cases when taking on a new profession. This would include an initial risk assessment of every file. Files with a high risk (for example those likely to lead to interim orders) would be the first to be prepared and fed in to the Case Management system. The HPC was looking at additional legal resources to help triage the cases.

15.9 Partner recruitment was underway for Social Worker visitors. Appointments were subject to the passage of legislation.

The Committee noted the following papers:

Item 16 CHRE FTP Audit update (FTP 47/11)

Item 17 CHRE learning points (FTP 48/11)

Item 18 Case Management System update (FTP 49/11)

Item 19 Any other business

19.1 There were no additional items for consideration this day.

Item 20 Date and time of next meeting:

20.1 10.30am on Wednesday 22 February 2012.

Chair:

Date: