Fitness to Practise Committee, 14 February 2013

Audit of final fitness to practise decisions 1 April – 31 October 2012

Executive summary and recommendations

Introduction

The attached paper is a report of the audit of final fitness to practise hearing decisions covering the period 1 April to 31 October 2012. The purpose of the audit is to review the quality of decisions reached by fitness to practise committee panels.

Decision

The Committee is invited:

- to discuss the results of the audit; and
- to agree the actions proposed by the Fitness to Practise Department on page 22.

Background information

- Fitness to Practise Committee paper, Audit of final fitness to practise decisions, September 2011 – March 2012, www.hcpc-uk.org/assets/documents/10003A8320120524FTP05-auditoffinaldecisions.pdf

Resource implications

None at this time

Financial implications

None at this time

Appendices

Audit form for final/review hearing decisions

Date of paper

4 February 2013

Audit of final fitness to practise decisions 1 April – 31 October 2012

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1. Introduction

1.1 About the audit

1.1.1 At its meeting in December 2009, the Council agreed with the recommendation resulting from of the review by the Executive of the CHRE's review into the conduct function of the General Social Care Council, namely that the Executive should consider mechanisms by which the HCPC could be satisfied with the quality of decisions reached by practice committee panels. Following that decision, the Fitness to Practise Committee considered and approved a mechanism to carry out the review of fitness to practise decisions. The format for the audit is based on the practice note 'Drafting Fitness to Practice Decisions', which provides guidance to panels on the content that should be included in written decisions. Four audits of final fitness to practise panel decisions using this format have been carried out by the Policy and Standards Department between April 2010 and March 2012.

1.1.2 The fifth audit—documented in this paper—was carried out between 1 April and 30 September 2012, and applies the same process as the previous audits. The audit assesses Fitness to Practise panel adherence to the applicable law and to HCPC policy in particular areas. The focus of the audit is on monitoring whether panels have followed correct process and procedure including whether sufficient reasons have been given for their decisions. The audit flags any areas where further policy development or consideration is required, but does not go as far as to 'second guess' the judgements reached by the panel—such as concluding that the sanction applied was disproportionate or insufficient. The audit also does not question whether particular decisions are right or wrong, as this would jeopardise the independence of panels which operate at arm's length from the Council and the Executive.

1.1.3 The learning points from the audit will be fed back into operational policy development and into training and appraisal processes. The next audit of final fitness to practise decisions will be carried out between 1 November 2012 and 30 June 2013.

1.2 About this document

1.2.1 This document summarises the audit results. The document starts by explaining the audit process, how the data from each decision has been handled and analysed, and provides the statistics for each question of the audit. Section three provides a summary of emerging themes identified the responses. Section four discusses the emerging policy issues identified during the audit, and also notes some notable areas of change or improvement since the previous audit was carried out. Section five contains the Fitness to Practise Department's response to the learning points from the audit and makes some recommendations for future action.

2. Analysing the decisions

2.1 Method of recording and analysis

2.1.1 The audit period covered decisions made between 1 April and 31 October 2012. The analysis includes final hearings, restoration hearings, cases of fraudulent entry to the register, full discontinuance hearings, and Article 30 review cases—reviews of conditions of practice orders and suspensions. Interim order cases and cases which were adjourned and did not reach a final decision during the audit period were not included, as the audit has been designed to only audit final hearings rather than cases where decisions are still pending.

2.1.2 The Policy and Standards Department has been responsible for carrying out the audit. The audit process and analysis were carried out by one of the department's policy officers. The auditor's understanding of the HCPC fitness to practise procedures is based on the relevant practice notes and policy summaries.

2.1.3 As each decision was emailed to the Policy and Standards Department from the Fitness to Practise panels, the relevant details were captured by the auditor in Access using the approved audit questions. At the end of the audit period, the statistics for each question were collated and analysed to identify emerging trends and potential areas for further policy development. For the Committee's information, the full set of audit questions are appended to this paper.

2.2 Quantitative analysis and results

2.2.1 A total of 215 decisions from 213 hearings were analysed as part of the audit, of which 127 were final hearing cases, and 88 were Article 30 reviews. The majority of cases (207) were considered by conduct and competence panels, with a smaller number considered by health panels (8). The total number of hearings is slightly less than the number of decisions audited, as there was one hearing that related to three registrants, which made three separate decisions on sanction.

2.2.2 This section provides indicative statistics for the answers to the audit questions. Where necessary, contextual explanation has been provided

following the results of some questions to clarify the way the audit question was interpreted by the auditor and the reason for particular results. The aggregated statistics below do not include individual case details.

2.3 Procedural issues

2.3.1 If the registrant was not there and unrepresented, did the panel consider the issue of proceeding in absence?

Yes	No	Not recorded	Not applicable (registrant present)
90 (42%)	2 (1%)	0 (0%)	123 (57%)

During the audit period, there were 92 hearings where the registrant did not attend or was not represented.

Of those hearings where the registrant was not present, there were two cases where the panel did not consider the issue of proceeding in absence of the registrant, or that decision was not recorded. Both these cases were consent order hearings.

2.3.2 Did any other procedural issues arise?

Yes	No
80 (37%)	135 (63%)

Other procedural issues noted by the auditor included amendments to, or withdrawals of allegations; applications for hearings to be heard in private; submissions of ‘no case to answer’, and joinder of separate allegations. For further discussion of emerging issues from this question, please refer to section three.

2.3.3 Was Legal Assessor advice disregarded?

Yes	No
0 (0%)	215 (100%)

During the audit all the cases considered during the audit period panels had due regard to the advice of the relevant legal assessor.

2.3.4 Was the three-stage test applied?

Yes	No - not applicable (review hearings/discontinuance orders/consent orders)
122 (57%)	93 (43%)

For this question, the auditor interpreted the question to mean cases where the three-stage test was explicitly applied. In interpreting the results of the audit in relation to whether the three-stage test was applied consistently, the Committee should be aware that there are a number of decisions where the three-stage test does not need to be applied. These cases include review hearings, where the findings of facts, misconduct or lack of competence, and then impairment have already been established. In consent order cases, the facts are already accepted as proven, and the three-stage test is not necessary, although in practice some cases where this decision was made did reflect that it had been applied.

The table below breaks down the number of cases where the three-stage test was not applied by the type of decision hearing. The results show that there were no cases considered during the audit period that did not apply the three-stage test when it should have been applied.

Type of decision hearing	Number of cases (from 93)
Review hearings	87
Consent orders	3
Other	3

The 'other' category refers to a case where alternative orders were made outside the range of the usual sanctions, and the three-stage test was not required. These cases were:

- Two cases where the allegations were discontinued in full, so a full hearing of the evidence was not heard; and
- One case where the decision had been remitted to the HCPC by the High Court for a reconsideration of the sanction imposed. In this case, the three stage test had already been applied in an earlier hearing, and the hearing was only to reconsider the sanction imposed on the registrant.

2.3.5 Evidence by way of mitigation considered?

Yes	No
152 (70%)	63 (30%)

Evidence by way of mitigation was not considered in 63 (30%) of cases. Mitigation may have been submitted in some of the other cases, but was not necessarily mentioned by panels in their decisions. Cases where mitigating evidence was not considered included the seven consent order cases where the allegations had been accepted by the registrant, and the two cases where the allegations were discontinued in full. In the other cases the registrant in question had not engaged with the fitness to practise process and/or had not provided any mitigating evidence for the panel to consider.

2.4 Drafting

2.4.1 Is the decision written in clear and unambiguous terms (does it avoid jargon, technical, or esoteric language)?

Yes	No
213 (99%)	3 (1%)

The auditor interpreted this question to mean that the language used in the decision was appropriate to the context. In some decisions, there were only a few instances of unclear wording or terms, so the auditor decided not to include those in this category. This issue is discussed in more detail in section three of this paper.

2.4.2 Is it written in short sentences?

Yes	No
215 (100%)	0 (0%)

As for the previous audit question, the auditor interpreted the phrase to mean that the sentence length was appropriate for the subject. All decisions during the audit period generally showed appropriate sentence lengths for the subject being discussed – in some decisions, while the sentences were not necessarily short, the concepts and reasoning required a more complex sentence structure which was generally appropriate in that context.

2.4.3 Is it written for the target audience?

Yes	No
214 (99.5%)	1 (0.5%)

The auditor interpreted the phrase ‘target audience’ to mean members of the public and profession. Part of the interpretation of this question is linked to the previous two questions in consideration of the general tone of the decision, the words used, the length of sentences, and

whether it would be able to be understood by a person who did not have specialist knowledge. Generally, the decisions from the audit period were also pitched appropriately to the target audience, with one exception. This decision is discussed in section three.

2.4.4 Was the factual background of the case included in the decision?

Yes	No
204 (95%)	11 (5%)

A small number of decisions (eleven) did not include the factual background of the case, comprising nine review hearings, and two voluntary consent order hearing where facts had been previously established.

There was one notable difference in this audit—of the review hearing decisions, there were five decisions that were cases transferred from the General Social Care Council (GSCC)—all of these decisions contained less factual information about the nature of the previous findings against the registrants concerned, than usually provided in HCPC hearings. The auditor assumed this was due to the different style of making and recording decisions at the GSCC. Excluding the cases transferred from the GSCC, the percentage of cases that did not include the factual background of a case remain at three percent, the same rate as the audit period immediately prior to this one.

Overall, compared with the results of the earliest audits where up to 12 per cent of decisions did not include the factual background of the case, significantly more review and consent order decisions now include a summary of the facts of the allegations.

2.4.5 If a review hearing, does the decision make reference to previous facts?

Yes	No	Not a review hearing
87 (41.5%)	1 (0.5%)	127 (59%)

Only one review hearing did not make reference to previous facts, and this was a decision that imposed a consent order. Consent order decisions do not always include a full summary of the agreed facts.

2.4.6 Is it a stand alone decision?

Yes	No
213 (99%)	2 (1%)

Almost all the decisions made in during the audit period could be considered as ‘stand alone’ decisions. This means the decision ‘stands alone’ as a document of a hearing and decision-making process, and does not need additional explanatory material to be understood, to explain the outcomes or sanction imposed. There were two decisions that could not be considered to be stand alone decisions in this audit:

- One review hearing where amended conditions of practice were imposed, but not set out in full in the decision;
- One decision that was poorly drafted, which did not set out full reasoning for the decision made, and did not explicitly set out what the eventual decision of the hearing was. This case is discussed in more detail in section three.

2.4.7 Are there adequate reasons for the decision?

Yes	No
214 (99.5%)	1 (0.5%)

In interpreting this question, the auditor did not go behind the decision, but instead assessed whether the reasoning process shown in the decision was adequate given the ultimate conclusion the panel reached. Most decisions showed adequate reasoning for a particular decision. However, there was one decision that could not be considered to have shown adequate reasoning:

- One decision that was poorly drafted, which did not set out full reasoning for the decision made, and did not explicitly set out what the eventual decision of the hearing was. This case is discussed in more detail in section three.

2.4.8 Conclusions on submissions (adjourned, facts, admissibility)?

Yes	No
215 (100%)	0 (0%)

All decisions made during the audit period made adequate conclusions on the information presented during the hearing.

2.4.9 Does it clearly set out the finding of facts (including disputed and undisputed facts and if disputed, why the decision was made)?

Yes	No
212 (98%)	3 (2%)

Not all cases need to set out a finding of facts – for instance, the convention for consent orders is that the facts have been admitted in total by the registrant in question, and are not always included in the decision. Most decisions in this audit did set out the findings of facts, with the exception of three decisions which were:

- two consent order decisions; and
- one decision that was poorly drafted, which did not set out full reasoning for the decisions made. This case is discussed in more detail in section three.

2.4.10 What standards were referred to?

105 (49%) decisions made reference to some form of standards, with the remaining 110 decisions (51%) not referring directly to any standards. The following table sets out which standards were referred to in those decisions which referenced them – some decisions (18) referred to more than one set of standards, so the total number of references is greater than the number of decisions that mentioned specific standards.

Standards referred to	Number of decisions where standards were referred to
Standards of conduct, performance, and ethics	88
Standards of proficiency	27
Standards of another organisation (professional body etc)	6

Other standards or regulations referred to by panels were:

- the British Psychological Society Code of Ethics;
- the Code of Trade Practice 2008;
- the General Social Care Council Code of Conduct;
- the Society of Radiographers standards for practice; and
- the Ionising Radiation (Medical Exposure) Regulations 2000.

2.5 Order

2.5.1 What was the panel's decision?

Sanction	Number of orders made (from 215)*
Striking off	38 (18%)
Suspension	71 (33%)
Conditions	14 (6.5%)
Caution	32 (15%)
Mediation	0 (0%)
Not well founded	30 (14%)
No further action	20 (9%)
Consent order	7 (3%)
Discontinuance in full	2 (1%)
Other	1 (0.5%)

* The total number of orders is larger than the total number of hearings, as there was one hearing where three separate sanction orders were made. There were also three hearings where decisions were made which also included partial discontinuance orders. These orders have not been counted separately for the purposes of the statistics above.

The 'other' category refers to cases where alternative orders were made outside the range of the usual sanctions. These orders were:

- Removal in a case of fraudulent entry to the Register.

2.5.2 How long was the sanction imposed for?

The length of sanction question only applies to three types of sanction – suspension, conditions, and caution orders. This section sets out the lengths of sanctions orders set during the audit period, relevant to each type of sanction order made.

Because the length of sanction that can be imposed varies between the different types of sanctions, the relevant provisions from the indicative sanctions order regarding length of sanction are included below for the Committee's information, along with the results for that sanction.

Suspension

The indicative sanctions policy states that *"a suspension order must be for a specified period not exceeding one year. […] Suspension for short periods of time (i.e less than a year) is a punitive step which panels generally should not use…however, short term suspension may be appropriate where a lesser sanction would be unlikely to provide*

adequate public protection, undermine public confidence, or be unlikely to have a suitable deterrent effect upon the registrant in question and the profession at large."

Length of suspension	**Number of orders (total 71)**
6 weeks	1
3 months	1
4 months	1
5 months	1
6 months	8
11 months	1
12 months/1 year	58

The small number of cases where the panel imposed a shorter period of suspension seems to be generally consistent with the guidance in the indicative sanctions policy. The shorter periods of suspension were generally applied by panels in cases where there was a specific reason for doing so. These cases were:

- A six week suspension order which was not in line with sanction policy, but in this instance the registrant concerned had not been given enough notice of the hearing. The panel decided that six weeks suspension was proportionate in the circumstances, to allow time for another hearing to be scheduled and appropriately notified to the registrant;
- A three month suspension order to allow time for the registrant to engage with the regulatory process;
- A four month suspension order to give the registrant the opportunity to attend the next scheduled hearing;
- A five month suspension order to allow time for the Fitness to Practise Department to enquire after the registrant's health, which the panel considered may have been the reason why the registrant was unable to attend;
- The six month suspension orders were imposed to allow time for the registrants in question to engage with the regulatory process, either prior to the option of a striking off order being considered, or to allow them time to provide additional evidence; and
- An eleven month suspension order which was the amalgamation of two separate suspension orders, with the length of suspension applied to run from the date of when the preceding suspension order came into effect.

Conditions

The indicative sanctions policy states that *"a conditions of practice order must be a specified period not exceeding three years. [...] In some cases it may be appropriate to impose a single condition for a relatively short period of time to address a specific concern."*

Length of conditions order	Number of orders (total 14)
16 weeks	1
6 months	1
10 months	1
12 months/1 year	9
2 years	1
3 years	1

Generally the length of conditions orders imposed seemed to be consistent with the guidance in the indicative sanctions policy. The longer conditions of practice orders were imposed for registrants with a greater need for support to reach full competence, with shorter sanctions imposed for registrants where panels were of the view that there were a few issues that could be readily addressed in a shorter time. There were four decisions where the auditor was concerned that the sanctions policy had not necessarily been applied appropriately in relation to conditions of practice orders. These decisions are discussed further in section three.

Cases that imposed sanctions that were unusual were:

- One case where the panel imposed a 16 week order to allow the registrant to complete a planned period of supervised practice which would be helpful for future review of the conditions imposed on their practice.

Caution

The indicative sanctions policy states that *"a caution order must be for a specified period of between one year and five years...In order to ensure that a fair and consistent approach is adopted, panels are asked to regard a period of three years as the 'benchmark' for a caution order and only increase or decrease that period if the particular facts of the case make it appropriate to do so."*

Length of caution order	Number of orders (total 32)
12 months/1 year	5
18 months	1
2 years	5
3 years	11
4 years	5
5 years	5

As with the other sanction orders, panels seemed to be generally consistent in their application of the guidance in the indicative sanctions policy with regard to the length of sanction, with the majority of caution orders falling between two to four years in length. There was one decision where the auditor was concerned that the sanctions policy had not necessarily been applied appropriately in relation to caution orders. This decision is discussed further in section three.

2.5.3 Does the order accord with sanction policy?

Yes	No	Not applicable
157 (73%)	5 (2%)	53 (25%)

The results show that of the relevant decisions that applied sanction orders, 98 per cent of decisions applied sanction policy appropriately.

Only orders that applied a sanction are included in this category, including consent orders and removal orders. This question does not include decisions that were not well founded/no case to answer, or where the case was discontinued or the panel decided that no further action was necessary. For further discussion of the cases that did not accord with sanction policy, please refer to section three.

2.5.4 Does it state the operative date of the order?

Yes	No	Not applicable
183 (85%)	0 (0%)	32 (15%)

All relevant cases where a sanction order was imposed stated the operative date of the order. In this category are included all sanction orders, plus orders of ‘no further action’ where in cases of a review of a sanction order the panel decided that the registrant had met all the (usually conditions) set.

2.5.6 Does it state the end date of the order?

Yes	No	Not applicable
117 (55%)	0 (0%)	98 (45%)

All relevant cases where a sanction order that could expire was imposed stated the end date of the order. Only sanction orders that would expire are included in this category – suspensions, conditions of practice, and caution orders. Other sanction orders available—consent orders and orders to strike off—do not have end dates, and in cases that were not well founded, discontinued, or where there was no further action, there was no sanction order.

2.5.7 Conditions orders

Conditions were imposed in 14 cases. The following tables analyse the conditions set and whether they accord with the guidance in the indicative sanctions policy.

If conditions are imposed:

Are they realistic (is the registrant able to comply)?

Yes	No
12 (86%)	2 (14%)

In most of the decisions made, the conditions were realistic and able to be complied with – however, in some cases, the conditions were only realistic if the registrant was able to fulfil certain other aspects – such as being able to find a suitable position of employment that allowed them to fulfil the conditions set. In two cases, the auditor felt that the conditions were not sufficiently realistic to allow the registrant to comply with them:

- One hearing where the registrant had not engaged with the fitness to practise process, so the panel did not have a meaningful measurement to apply of whether the conditions are realistic, or whether the registrant could comply with them; and
- Another hearing where the registrant had not complied with two previous conditions of practise orders, and could provide no evidence that he would comply with another order. This registrant was also given a caution order at a different hearing for not declaring his conditions of practise to a prospective employer.

These issues are discussed further in section three.

Are they verifiable (are dates on which information is due specific and clear)?

Yes	No
14 (100%)	0 (0%)

Are they imposed on anyone other than the registrant?

Yes	No
1 (7%)	13 (93%)

Generally the orders imposed were guidance in the indicative sanctions policy in that they were realistic in the conditions set, and that those conditions were verifiable.

The third question in relation to conditions was more difficult to assess, as while the majority of conditions set imposed some form of supervisory requirement on the registrant, although not by any named person. The auditor interpreted the third part of this question to refer to decisions where persons other than the registrant were required directly by the panel to carry out an action to enable the registrant to meet conditions. Where the registrant was responsible for organising other people to carry out certain actions to meet the conditions set, then the auditor understood that to mean that those conditions were only imposed on the registrant.

3. Emerging themes

This section discusses the emerging themes from specific audit questions, and where necessary provides more detailed results to reveal trends and potential areas for further consideration.

3.1 Procedural issues

3.1.1 The audit showed that generally the procedural advice provided for fitness to practise panels is followed. The following issues were identified as part of the audit process.

3.1.2 As noted in the previous section, there were a wide range of other procedural issues considered by panels during the period of the audit, with procedural issues considered in 37 per cent of the cases considered. The following table sets out the number of instances of different types of procedural issues. In some cases, a number of different procedural issues were considered, so the total number of issues raised does not tally with the number of hearings (80) where procedural issues were considered.

Procedural issues	**Number of instances**
Request for hearing to be held in private	29
Amendments/corrections/withdrawal of allegations	33
Application for discontinuance order, or partial discontinuance of some allegations	5
Application of no case to answer	2
Consideration of two or more separate allegations in the same hearing (joinder)	4
Application for joinder	1
Application for adjournment of hearing by registrant	5
Other	16

3.1.3 Most procedural issues were relatively straightforward such as applications for hearings to be heard in private, minor amendments to allegations, or joinder of separate allegations. There were a few other cases where more unusual procedural issues occurred as summarised below.

The ‘other’ category includes:

- Two applications to transfer hearings from the consideration of a conduct and competence committee panel to a health panel;

- one case where the HCPC applied to withdraw evidence it had supplied in relation to some allegations;
- consideration of a review of conditions imposed by a panel of the General Social Care Council;
- a case remitted to the HCPC for further consideration from the High Court;
- applications from either HCPC or a registrant to submit further evidence at the start of the hearing;
- two instances where consideration needed to be given to the admissibility of evidence that had been missed out of the bundles supplied to some hearing participants;
- consideration of potential prejudice because incorrect information had been included in a notice of a hearing;
- consideration of whether it was fair to hold a hearing as it had been scheduled one day too early to be held according to the Rules;
- one case where the HCPC had not given the registrant enough notice of the hearing;
- decision to hold a rescheduled review hearing on a date when the original suspension order would have expired
- consideration of whether evidence was admissible;
- appropriate cross-examination of a witness;
- agreement by a panel to treat a witness as a vulnerable witness; and
- one consideration of an issue of potential conflict of interest by a panel member.

3.2 Application of sanction policy

3.2.1 Generally, the auditor was satisfied that the sanction policy had been applied consistently, with relevant policy applied in 98 per cent of cases where a sanction was imposed. However there were five cases where the auditor was concerned that certain aspects of relevant sanction policy had not been applied. The cases where the auditor had concerns are set out below.

3.2.2 Caution orders

The indicative sanctions policy for caution orders states that: "*A caution order may be the appropriate sanction for slightly more serious cases, where the lapse is of an isolated or minor nature, there is a low risk of recurrence, the registrant has shown insight and taken remedial action. A caution order is unlikely to be appropriate in cases where the registrant lacks insight and, in that event, conditions of practice or suspension should be considered."*

There were two cases that applied caution orders in the audit where the auditor was concerned that the relevant sanction policy had not been applied appropriately. These were:

- A five year caution order given to a registrant who had not been able to comply with two previous conditions of practice orders, and who had sought to deceive a prospective employer by not declaring the conditions imposed on their practice. In this instance, given that the registrant was already subject to another sanction and had displayed dishonesty in complying the conditions of that sanction, this order did not appear to be consistent with the guidance provided in the indicative sanctions policy for caution orders; and
- A two year caution order imposed on a registrant who had not engaged with the regulatory process, and had not necessarily shown insight into their actions.

3.2.3 Conditions of practice orders

Relevant parts of the indicative sanctions policy for conditions of practice orders state: *"In imposing conditions of practice, Panels must recognise that, to a large extent, the registrant will be trusted to comply with them. Consequently, before doing so, Panels need to be confident that the registrant will adhere to those conditions of practice.*

The imposition of conditions requires a commitment on the part of the registrant to resolve matters and therefore conditions of practice are unlikely to suitable in situations where problems cannot be overcome, such as serious overall failings, lack of insight, denial or matters involving dishonesty and the abuse of service users.

Above all, conditions must be realistic and there is a limit to how far they may extend. For example, a combination of conditions which require a registrant not to carry out home visits, out of hours working, unsupervised care, or care outside of a particular setting may, in reality, amount to a suspension and thus be far too wide."

There were two cases that applied conditions of practice orders in the audit where the auditor was concerned that the relevant sanction policy had not been applied appropriately. These were:

- A case where a conditions of practice order was imposed, but the registrant had not been able to comply with two previous conditions of practice orders, and could provide no evidence that they would be able to comply with another order. This registrant was also given a five year caution order at a different hearing for not declaring their conditions of practice to a prospective employer (see the first caution order example cited above). In this instance, given that the registrant had shown that they were prepared to be dishonest in relation to their conditions, it is questionable whether this combination of sanctions was appropriate, nor is it realistic to expect the registrant to be able to comply with a conditions order when they have already been unable to comply with two previous orders when their working situation had not changed.

- A decision which applied a conditions of practice order, but where the registrant had not engaged with the fitness to practise process, so the panel did not have a meaningful measurement to apply of whether the conditions are realistic, or whether the registrant could comply with them.

3.2.4 Not well founded

While not applying sanction policy, as no sanction was applied, there was one decision in the audit that was found to be not well founded, but was of particular concern to the auditor. The case related to an apparently concerning lack of competence by a registrant; the registrant was not present or represented, and had not provided any evidence in response to the allegations.

While the guidance in the practice note on finding fitness to practise is impaired was applied, the panel's decision on the facts did not appear to be well reasoned in the way it was explained in the decision. On the basis of the evidence provided at the hearing, the panel decided that the case was not well founded as it could not be certain that the allegation of a lack of competence was proven. While accepting that the registrant had demonstrated a concerning lack of competence on one occasion, the panel felt they would need access to additional evidence of a 'fair sample of work' from previous employers to judge whether there was a broad lack of competence.

However, the panel then concluded its decision by stating that it was important that the competency issues were brought to the attention of the HCPC, that it was concerning that the registrant was unable to show that their knowledge was consistent with their CV, that there were concerns about the registrant's ability to use the English language, and the registrant's pattern of employment was also concerning. This concluding paragraph made it appear that the panel agreed that there was a lack of competence on the part of the registrant, in contrast with their decision.

3.3 Drafting

3.3.1 Quality of drafting

On the whole, the quality of drafting of decisions across the audit period was appropriate, and of a high quality. There was only one decision in the audit which was of a low standard. This decision was poorly drafted, was missing important information about the decision made, and did not reflect the reasoning of the panel adequately.

3.3.2 Language

Most decisions generally used simple language appropriate to the context – in some decisions, the nature of the allegation and the concepts involved were technical and complex. In those decisions the auditor judged that it was appropriate for the issues to be discussed using the appropriate technical terms which were generally explained

as necessary. While there were only two cases where the auditor felt that the language was consistently sufficiently unclear that it did not meet the 'clear and unambiguous' test, there were a few other decisions where there was some occasional use of overtly legal terminology or inadequately explained acronyms. In 14 decisions the auditor felt that the language chosen was particularly jargon-heavy or included terminology that was unnecessarily complex.

3.3.3 Proof-reading and editing

Another area of note in the previous audit periods was the standard of proof reading and editing before decisions are released in their final version. The decisions sent for audit are the final decision made by the panel, but in the first four audits, 22-28 per cent of decisions analysed contained identifiable spelling, grammar, and/or formatting mistakes, with some gradual improvement shown in the more recent audits. While the general standard of drafting has improved since the first audit period, 46 decisions (21 per cent) in this audit still included some minor grammar, spelling, or typographical errors. A few decisions appeared to be unfinished and included editorial marks and some missing details.

4. Emerging policy issues

Emerging policy issues identified in the audit are about the process applied by fitness to practise panels.

4.1 Procedural issues

4.1.1 While a range of procedural issues would be expected to be considered across the number of cases included in this audit, there were a number of procedural issues in this audit that were due to an act or omission on the part of the HCPC. There appeared to be an increase in administrative errors by the HCPC, which had not been evident in previous audits. While the overall number of errors is small, this was a notable trend in this audit. Errors noted included:

- two instances where consideration needed to be given to the admissibility of evidence that had been missed out of the bundles supplied to some hearing participants;
- consideration of potential prejudice because incorrect information had been included in a notice of a hearing;
- consideration of whether it was fair to hold a hearing as it had been scheduled one day too early to be held according to the Rules; and
- a case where the HCPC had not given the registrant enough notice of the hearing.

5. Learning points and recommendations

5.1 The Fitness to Practise Department made the following comments in relation to the report:

- It is disappointing that in two out of the ninety cases where the registrant was not present and not represented that there was no reference in the decision to the consideration to proceed. We would expect this to feature in all decisions. We will repeat the importance of this in panel member training, and also in our quarterly newsletter. Furthermore, we will ensure hearings officers point out any such omissions to panel chairs at the hearing.
- We note that there were a number of preliminary issues that required resolution at the start of a hearing. We are using our powers to hold preliminary hearings to amend allegations, or to get directions on hearing evidence or structure. Additionally, we have implemented a process where Investigating Committee panels are supported by the lead hearings officer to review and challenge allegations when they review the evidence in front of them. This means that fewer allegations should require change at the final hearing. We are about to review this process. Finally, we have instructed our investigators to apply—where possible—prior to the hearing to amend allegations if their investigation requires it. We review the number of allegations that are changed at hearings as part of our service level agreement.
- In 30 per cent (63 cases) of the audit sample, no mitigating evidence was referred to in the decision. Some registrants do not engage with the process, so there may be nothing to include here, or it may be that the panel did not mention it. We are continuing to review panel training and the practical examples and exercises that we use with the groups. These examples come from our own cases, or the feedback we received from the Professional Standards Authority for Health and Social Care (PSA).
- We review any cases that are not well found. We ask our investigators to review whether any alternative methods of disposal such as consent or discontinuance could be used instead of a hearing. We expect that the construction of panel decisions on these cases should be of the same standard as the other sanctions, and should set out the decisions on facts, grounds and the rationale for the not well found status. We will continue to include this analysis and examples in the panel member training and quarterly newsletter.
- Grammar and spelling checks are a core part of the hearing officer role. We have introduced a checking system before publishing, co-ordinated by the adjudication manager. Hearings officers have as part of their objectives the accurate and timely publication of decisions. We will continue to review this throughout the year as part of our quality checks.

6. Appendix

Audit Form
Final/Review Hearing Decisions

Case details	
Case name	
Case reference	FTP
Panel type	Conduct and Competence/ Health/Investigating/Review
Hearing date	
Legal Assessor	
Panel Chair	

1. Procedural issues

If the registrant was not there and unrepresented, did panel consider issue of proceeding in absence?	Yes/No/Registrant or representative attended
Did any other procedural issues arise?	Yes/No/Comments
Was Legal Assessor advice disregarded?	Yes/No/Comments
Was the three stage test applied?	Yes/No/Comments
Evidence by way of mitigation considered	

2. Drafting

Is decision written in clear and unambiguous terms (does it avoid jargon, technical, esoteric language)?	Yes/No/Comments
Is it written in short sentences?	Yes/No/Comments
Is it written of target audience?	Yes/No/Comments
Was the factual background of the case included in the decision?	Yes/No/Comments
If review hearing, does decision make reference to previous facts?	Yes/No/Comments/Not review hearing
Is it a stand alone decision?	Yes/No/Comments
Are there adequate reasons for the decision?	Yes/No/Comments

Conclusions on submissions (adjourned, facts, admissibility)	Yes/No/Comments
Does it clearly set out the finding of facts (including disputed and undisputed facts and if disputed, why decision was made)	Yes/No/Comments

3. Order

What was the panel's decision?	Not well founded/ no further action/ mediation/ caution/ conditions/ suspension/ striking off
How long was the sanction imposed for?	
Does the order accord with sanction policy?	Yes/No/Comments
Does it state the operative date of the order?	Yes/No/Comments
Does it state the end date of the order?	Yes/No/Comments
If conditions imposed:	
- are they realistic (is the registrant able to comply)?	Yes/No/Comments
- are they verifiable (are dates on which information is due specific and clear)?	Yes/No/Comments
- are they imposed on anyone other than the registrant?	Yes/No/Comments

4. Policy issues

Are there any emerging policy issues?

Audited by:

Date: