

Fitness to Practise Committee, 10 October 2013

Professional Standards Authority Audit of the Health and Care Professions Council's initial stages of fitness to practise process

Executive summary and recommendations

### **Introduction**

On 23 September 2013, the Professional Standards Authority (PSA) published their audit report on the initial stages of our fitness to practise process. This followed their audit of 100 closed cases that was undertaken in June and July 2013.

Overall the PSA found that *"...the HCPC continues to operate effective systems and processes in all areas of its initial stages FTP process. This is noteworthy given the recent challenges faced by the HCPC, including the transfer of the regulation of social workers in England on 01 August 2012 and the expansion of its scope."*

As well as identifying a number of examples of good practice in our handling of cases (specifically in active case management and the progression of cases and in the use of checklists as tools to assist caseworkers), the PSA also identified some areas for improvement. Prior to the audit we had already implemented a number of developments that address those areas. Those developments include the enhancement of our initial auditing process, providing additional training to case managers and Investigating Committee Panel members and revising our guidance, documents and processes.

We have also further developed our work plan in response to the audit to ensure we continue to develop our FTP processes. Attached as an appendix to this paper is a list of activity that is being undertaken which addresses the issues raised by the PSA.

### **Decision**

The Committee is asked to discuss this paper.

### **Background information**

The Committee considered a paper reviewing the audits undertaken of the Nursing and Midwifery Council (NMC) and the General Pharmaceutical Council (GPhC) in May 2013.

### **Resource implications**

None – many of the recommendations made by the PSA were already in the work plan for 2013-14.

**Financial implications**

None.

**Appendices**

Appendix One - Audit of the Health and Care Professions Council's initial stages of the fitness to practise process

Appendix Two – Activity Plan

**Date of paper**

26 September 2013

# Audit of the Health and Care Professions Council's initial stages of fitness to practise process

September 2013

## About the Professional Standards Authority

The Professional Standards Authority for Health and Social Care<sup>1</sup> promotes the health, safety and wellbeing of patients, service users and the public by raising standards of regulation and voluntary registration of people working in health and care. We are an independent body, accountable to the UK Parliament.

We oversee the work of nine statutory bodies that regulate health professionals in the UK and social workers in England. We review the regulators' performance and audit and scrutinise their decisions about whether people on their registers are fit to practise.

We also set standards for organisations holding voluntary registers for people in unregulated health and care occupations and accredit those organisations that meet our standards.

To encourage improvement we share good practice and knowledge, conduct research and introduce new ideas including our concept of right-touch regulation<sup>2</sup>. We monitor policy developments in the UK and internationally and provide advice to governments and others on matters relating to people working in health and care. We also undertake some international commissions to extend our understanding of regulation and to promote safety in the mobility of the health and care workforce.

We are committed to being independent, impartial, fair, accessible and consistent. More information about our work and the approach we take is available at [www.professionalstandards.org.uk](http://www.professionalstandards.org.uk).

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<sup>1</sup> The Professional Standards Authority for Health and Social Care was previously known as the Council for Healthcare Regulatory Excellence

<sup>2</sup> Professional Standards Authority. 2010. Right-touch regulation. Available at <http://www.professionalstandards.org.uk/policy-and-research/right-touch-regulation>

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# 1. Overall assessment

## Introduction

- 1.1 At the initial stages of the fitness to practise (FTP) process, the health and care professional regulators decide whether complaints should be referred for a hearing in front of an FTP panel or whether the complaints should be closed.
- 1.2 In June 2013, we audited 100 cases that the Health and Care Professions Council (HCPC) closed at the initial stages of its FTP investigation process during the period 1 November 2012 to 30 April 2013.
- 1.3 Our overriding aim in conducting audits is to seek assurance that the health and care professional regulators we oversee are protecting patients, service users and the public and maintaining confidence in the reputation of the professions and the system of regulation. During our audit, we assessed whether the HCPC had achieved these aims in the particular cases we reviewed. We considered whether weaknesses in the handling of any of these cases might also suggest that the public might not be protected, or confidence not maintained in the system of regulation, if this approach was adopted in future cases.
- 1.4 We operate a risk based approach to carrying out audits and we audit each regulator at least once every three years. In our last audit report of the initial stages of the HCPC's FTP processes (published in February 2010<sup>3</sup>) we found that the HCPC 'deals with fitness practise cases efficiently and effectively' and that 'the vast majority of decisions taken on cases were reasonable and protected the public'.
- 1.5 We did however recommend that the HCPC reviews its practice relating to the identification of registrants who may have underlying drink or drug dependency problems that may impair their fitness to practise. We have previously recommended that, as far as possible, the regulators should adopt the practice of routine medical examinations of registrants who have received convictions or cautions for drink or drug related offences. We made this recommendation because we were aware that early adoption of such a practice by some regulators had meant that they were able to take prompt action to protect the public from registrants who had underlying dependency problems that impaired their fitness to practise. As we have noted in our 2012/13 Performance Review report<sup>4</sup>, after commissioning research in this area and consulting with its Fitness to Practise Committee, the HCPC decided not to implement our recommendation in this regard.

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<sup>3</sup> Fitness to practise audit report: Audit of health professional regulatory bodies' initial decisions [February 2010] <https://www.professionalstandards.org.uk/regulators/overseeing-regulators/early-fitness-to-practise-decisions/early-fitness-to-practise-decisions-detail?id=9e378a04-7f2e-4132-ab68-d1a31c23f777>

<sup>4</sup> Performance review report 2012/13: <http://www.professionalstandards.org.uk/docs/scrutiny-quality/performance-review-report-2012-13.pdf?sfvrsn=0>

- 1.6 In August 2012, the HCPC became responsible for the regulation of social workers in England, which led to an increase in the volume of complaints and expansion of the HCPC's remit. As well as dealing with new FTP cases concerning social workers in England, the HCPC was also given responsibility for managing cases which had not been concluded by the General Social Care Council (GSCC) at the point of transfer to the HCPC (the HCPC refers to these cases as 'GSCC legacy cases'). In our audit, we reviewed 40 cases where the registrant was a social worker and this included 15 cases where investigations were opened by the GSCC but were subsequently transferred to the HCPC on 1 August 2012.
- 1.7 In this audit, we looked for evidence that the HCPC had maintained its standards of casework, including in relation to the HCPC's extended remit to cover the regulation of social workers in England.
- 1.8 We set out a summary of our findings and conclusions in relation to the audit we conducted in 2013 below.

### Summary of findings

- 1.9 The 100 cases which we reviewed in our audit showed that the HCPC has maintained its effective casework system. This is noteworthy given the recent challenges faced by HCPC, including the transfer of the regulation of social workers in England on 1 August 2012 and the resultant increase in the volume of complaints received.
- 1.10 We identified a number of examples of good practice in the HCPC's handling of cases, specifically in the following two areas: active case management and progression of cases, including the use of checklists as tools to assist caseworkers in ensuring that all necessary actions on the case had been completed. However, we found weaknesses or areas for improvement in 53 of the cases that we audited<sup>5</sup>, including 25 cases where we had concerns about the HCPC's decision making and six cases where we considered there were potential implications for public protection and/or maintaining public confidence in the profession or its system of regulation.
- 1.11 Whilst our findings in these six cases were of some concern, overall our conclusion is that the general casework system operated by the HCPC demonstrates that public protection is maintained. The HCPC has set out details of actions that it has identified will address the areas of concern we have highlighted. Some of these were planned and commenced before our audit and we will follow up on the implementation of this in our next performance review and also consider the impact of these activities in our next audit of the HCPC's handling of its initial stages FTP process.
- 1.12 The weaknesses or areas for improvement we identified include:

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<sup>5</sup> This number excludes those cases where the only issue identified related to the completion of risk assessments in line with the HCPC's operational guidance. However, we have included these cases in our detailed findings below.

- The absence of risk assessments at all required stages in the investigation in line with the HCPC's operational procedure in 31 cases<sup>6</sup>
- Failing to gather sufficient information, which resulted in decision makers taking decisions without the benefit of all potentially relevant evidence in 15 cases
- Credibility of decisions that would have been strengthened by additional reasoning being recorded and/or communicated to the parties in 25 cases
- Weaknesses in customer care, including not updating the parties on progress in eight cases, not managing the parties' expectations effectively in eight cases, not addressing the complainant's communication difficulties or offering assistance with dealing with the complaint in one case and failings and/or delays in corresponding with the parties in 10 cases.
- Inadequate record keeping in seven cases
- Periods of inactivity of between six weeks and three months where no action was taken on the case or any reasons recorded for the delay in three cases and a delay in making a referral for an interim order in one case.

1.13 We recommend that the HCPC reviews our findings in these cases and considers whether improvements can be made to its processes and procedures to minimise the risk of any of the issues highlighted above reoccurring in the future.

1.14 We have set out our full assessment of the HCPC's handling of the initial stages of its FTP process, including the good practice we identified, in our detailed findings below.

### **Method of auditing**

1.15 In March 2010, we led a meeting with representatives from all the nine health and care professional regulators to agree a 'casework framework' describing the key elements common to the initial stages of an effective fitness to practise process that is focussed on protecting the public. A copy of the final casework framework agreed can be found at Annex 1 of this report.

1.16 When auditing a regulator, we assess their handling of cases against this casework framework. Our detailed findings are set out below using the headings referred to in the casework framework. We also take into account information gathered during previous audits, information we are provided with in our annual performance review of the regulators, concerns we receive about the performance of the regulator, and any other relevant information that is brought to our attention.

1.17 In this audit, we reviewed a sample of 100 cases which had been closed without being referred for a hearing in front of an FTP panel. We drew our sample from

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<sup>6</sup> See footnote 5 above.



the 905 cases that the HCPC closed at the initial stages of its FTP process in the six month period from 1 November 2012 to 30 April 2013.

- 1.18 We selected 50 cases at random, representing cases closed at each of the closure points within the HCPC's initial FTP process. We also selected a further 50 cases at random from categories of cases that we considered were more likely to be 'higher risk' (that is to say that, in our view, there was a higher risk to public protection if proper procedures were not followed in these cases).

### **Overview of the HCPC's FTP Framework**

- 1.19 The Health and Social Work Professions Order 2001 and the Health Professions Council (Investigating Committee) (Procedure) Rules 2003 set out the legislative framework governing how the HCPC handles allegations that a registrant's fitness to practise is impaired.
- 1.20 Under that framework, it is the role of the HCPC's Investigating Committee Panel (ICP) to decide whether there is a 'case to answer' in respect of any complaint about a HCPC registrant's fitness to practise. The ICP applies the 'realistic prospect' test, which requires it to consider whether, based upon the evidence before it, there is a 'realistic prospect' that the HCPC will be able to establish at a hearing that the registrant's fitness to practise is impaired as a result of the complaint.
- 1.21 If the ICP decides not to refer a complaint for a hearing in front of an FTP Panel it can close the case with no further action. It may need to request further information before it can reach a decision.
- 1.22 Before the ICP considers any complaint, HCPC staff will assess it and undertake any necessary investigative work, in order to ensure that when the ICP considers the case it has the benefit of all the relevant written evidence. This will include asking the registrant concerned for their observations on the allegations drafted by HCPC staff. The first step is to assess whether or not the complaint meets the HCPC's 'Standard of Acceptance' – this is the threshold which complaints must normally meet before they will be investigated by the HCPC.
- 1.23 A complaint will meet the Standard of Acceptance if:
- It is made in the appropriate form
  - It provides credible evidence which suggests that the registrant's fitness to practise is impaired.
- 1.24 A complaint is 'made in the appropriate form' if it is in writing, it identifies the HCPC registrant concerned (at least to an extent that allows the HCPC to identify that individual) and sets out the nature of the concern and the relevant events in sufficient detail for the registrant to be able to respond to it. If necessary, the HCPC will assist a complainant to put their complaint in writing.
- 1.25 HCPC staff can only close a complaint if it does not meet the 'Standard of Acceptance'.

- 1.26 GSCC legacy cases were dealt with slightly differently by the HCPC following their transfer on 1 August 2012. On receipt, the HCPC (with the benefit of legal advice where necessary) assessed and reviewed each case by reference to its 'just disposal criteria'<sup>7</sup>. The 'just disposal criteria' were established in order to ensure that the HCPC acted transparently, fairly, consistently and proportionately in dealing with the cases transferred from the GSCC. The initial case assessment included a risk assessment and consideration of whether an application for an interim order was required (or if there was an existing interim order in place, whether it required urgent review) as well as consideration of whether the case met the HCPC's Standard of Acceptance. Following this initial assessment, the GSCC legacy cases followed the HCPC's usual investigation process.

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<sup>7</sup> The 'just disposal' criteria require the following matters to be taken into account: the time elapsed since the allegation was first made to the GSCC, whether there has been any delay in handling the case and how the delay arose; whether the time elapsed or any delay would be detrimental to the evidence or availability and reliability of witnesses; the extent to which the registrant may have been prejudiced by any delay not caused by the Registrant; the nature and seriousness of the allegation and, in particular, the nature and degree of any potential risk to the public; whether the case raises any important points of principle or professional practise or wider public interest; the nature, quality and reliability of the available evidence, the overall viability of the case and the prospects of the allegation being proved; the current health and working status of the registrant; and overall, whether there is a realistic prospect of establishing that the registrant's fitness to practise is currently impaired.

## 2. Detailed findings

- 2.1 Overall, we are pleased to report that the HCPC continues to operate effective systems and processes in all areas of its initial stages FTP process as set out in our casework framework (see Annex 1).
- 2.2 During our audit, we saw various examples of good practice in the HCPC's case handling, most notably in the following two areas:
- Timeliness<sup>8</sup> and pro-active case management, including chasing third parties for further information where necessary; and
  - Use of checklists as tools to assist caseworkers in ensuring that all necessary actions on the case had been completed.
- 2.3 Our audit also showed that well-reasoned decisions were made in 75 of the 100 cases that we audited.
- 2.4 Further details about our findings from the audit, including the areas for improvement we identified, are provided below.

### Receipt of initial information

- 2.5 The casework framework sets out key aspects of this part of the FTP process, including: providing clear information to complainants; responding promptly to correspondence; and ensuring there are no unnecessary barriers to complaints being made.
- 2.6 We are pleased to report that our audit did not identify any concerns in this area.

### Risk assessment

- 2.7 Conducting a robust risk assessment on receipt of a new complaint and updating that risk assessment in light of new information is an important part of public protection within a risk-based regulatory approach. Unless the regulator has conducted a proper evaluation of risk, it is difficult to make sound judgements about whether any regulatory action is necessary, and in particular to decide whether an application should be made for an interim order restricting the registrant's ability to practise while the complaint is being investigated. Robust and early risk assessment can also prompt the regulator to make a disclosure to an interested third party (e.g. another regulator) in order to safeguard the public.
- 2.8 The HCPC's operational guidance provides that risk assessments should be carried out at the following stages in the investigation of a complaint:
- On allocation to a Case Manager

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<sup>8</sup> We did however identify 4 cases where there were issues around timeliness and monitoring of progress (see paragraphs 2.30 and 2.31)

- On receipt of significant further information
- When the registrant is asked to comment on the complaint, before it is considered by the ICP.

2.9 Of the 100 cases we audited, we identified 31 cases in which we had concerns around risk assessments and compliance with the HCPC's operational guidance. More specifically, we found:

- 27 cases (including cases closed by HCPC staff and following an ICP decision) where risk assessments had not been completed at all required stages in the process. In the majority of these cases, we were satisfied that a further risk assessment would not have resulted in a referral for an interim order. However, in one of these cases, we were concerned that the HCPC had not conducted a further risk assessment on receipt of new information that the registrant (a paramedic) might not be suitable for lone working. As the new information indicated a potential risk to patients, we considered that it was particularly important for the HCPC to conduct a further risk assessment in light of it. We note that the registrant was absent from work at the relevant time, which mitigated the risk to some extent. In a further two cases, we noted that the initial risk assessment carried out included references to the potential need for an interim order and possible public protection issues. However, no further risk assessments were carried out in these cases on receipt of new information
- In another case, we were concerned about the HCPC's approach to obtaining the information it needed – the HCPC did not have details of the exact nature of the concerns about the registrant (only that they had been suspended from duties by their employer) and the employer delayed in responding to the HCPC's requests for further information. We note that it was not until seven months after the HCPC took over responsibility for investigating the case from the GSCC that the required information was obtained and the HCPC was able to establish that an interim order was not necessary in the particular circumstances. The HCPC has informed us that monthly case review meetings take place between Case Managers and their Case Team Managers to discuss approaches and strategies in progressing individual cases. The content of these meetings is not documented on each case file, but a list of cases is discussed and actions recorded. While we accept that these meetings take place, we saw no evidence that the Case Manager escalated the employer's failure to respond to a more senior colleague in an effort to obtain the information and so that a meaningful risk assessment could be carried out
- In three cases, we considered that inadequate reasons had been recorded for deciding not to apply for interim orders, although we were satisfied that interim orders were not warranted in the circumstances.

2.10 We note that the HCPC had identified in early 2013, as part of its internal governance arrangements, that risk assessments were not being consistently

completed at all required points in the process. The HCPC undertook an exercise to review all open cases to ensure that an up to date risk assessment was present. This review did not include closed cases and therefore did not include cases covered by our audit. The HCPC is continuing to undertake activities to ensure more consistent compliance with its risk assessment processes. We will follow up on this in our next audit of the HCPC's initial stages FTP process.

### Gathering information and evidence

2.11 Gathering the right information and evidence is essential in enabling the regulator to ensure that appropriate decisions are made and that any necessary action is taken promptly.

2.12 This audit identified 15 cases where we considered the HCPC did not gather sufficient information, resulting in decision makers reaching decisions in the absence of potentially helpful information/evidence. We have set out some examples below:

- In the first case, we were concerned that some of the allegations made by the complainant (which were admitted by the registrant) raised issues around professional boundaries. However, these issues did not appear to have been identified or investigated before the HCPC closed the case
- In the second case, we were concerned that the HCPC closed the case even though the actions taken by the employer (demotion and imposition of an 18 month final written warning) did not appear to have specifically addressed the gaps in the registrant's training/skills/knowledge. We considered that the HCPC ought to have established whether the demotion meant that the registrant was no longer involved in the type of work in question, as well as whether action had been taken to address the gap in the registrant's skills, before closing the case
- In the third case, we noted that the HCPC had not followed up information about a previous history of safeguarding and investigations in relation to the registrant, despite the HCPC's legal advisors' recommendation to do so. Furthermore, the HCPC did not obtain the documents from the Court of Protection application/hearing, but simply relied on confirmation of the outcome from the referrer. The referrer in this case was the local authority and so we do not criticise the HCPC for relying on the information provided by this particular referrer
- The fourth case concerned a self-referral from the registrant that she had been suspended from work following a police investigation into indecent images accessed from her home address. The HCPC was informed that the police had decided not to take any further action against the registrant. We were concerned that the letter from the registrant's solicitor confirming the outcome of the police investigation was missing from the bundle and that no information was sought from the police, despite this

being recommended in legal advice received prior to the HCPC taking over the case

- We also identified four cases (three of which involved a caution or conviction for an alcohol or drug related offence) which raised concerns that the registrants' fitness to practise might be impaired as a result of ill-health, but where the potential impairment of the registrant had not been investigated by the HCPC. We acknowledge that the HCPC has complied with its policy in these cases, which does not require health assessments to be routinely conducted where registrants have been convicted of such offences. In our view, however, it would have been prudent for the HCPC to require the registrants involved in these four cases to have either undergone health assessments or to have consented to the HCPC contacting their GPs/employers to establish whether or not there was any evidence of ill-health that might impair their fitness to practise
- In three of these 15 cases, we had concerns as to whether the HCPC's decisions adequately protected the public and/or the wider public interest. See paragraph 2.34 below for further details.

2.13 We note that the HCPC conducts internal audits of its ICP decisions, and that such audits include an assessment as to whether further information could or should have been obtained. We understand that a paper reviewing the HCPC's audit findings was provided to the Fitness to Practise Committee in May 2013 and that refresher training for Case Managers in complaints handling and investigation has been included in the HCPC's 2013/14 training plan.

### **Evaluation and giving reasons for decisions**

2.14 A regulator's decisions must be able to stand up to scrutiny. Ensuring that detailed reasons are given for decisions, which clearly demonstrate that all relevant allegations/issues have been addressed and that decisions are communicated to the parties effectively is essential to maintaining public confidence in the regulatory process. The provision of well-reasoned decisions also acts as a check to ensure that the decisions themselves are robust.

2.15 We reviewed the quality of decision making in all the cases that we audited. This included considering the HCPC's process for evaluation and decision making, whether we agreed that the decisions were appropriate and whether sufficient reasons were given for the decisions made.

2.16 Our audit identified 25 cases in which we agreed with the overall decision taken, but considered that the decisions would have been strengthened by additional reasons being recorded on the case file and/or communicated to the parties. More specifically, this included:

- 10 cases (including cases that were closed by HCPC staff and following an ICP decision) where we considered that the HCPC's decisions would

have been strengthened by the inclusion of more detailed reasons either to the complainant or being recorded on the case file

- Two cases where we considered that the closure letters sent to the parties by the HCPC were unclear and created some confusion around whether the HCPC's 'Standard of Acceptance'<sup>9</sup> had been met
- Three cases where the HCPC's investigation did not address all of the potential issues. Two of these cases raised concerns about dishonesty which, had they been investigated and found proved at an FTP panel hearing, could have resulted in severe FTP sanctions being imposed
- One case which raised concerns about the ICP's consideration of the wider public interest and its failure to apply the principles of relevant case law in its decision making. In this case, the registrant was convicted of drink-driving and possession of a loaded firearm in a public place and received a suspended custodial sentence. The ICP concluded there was no case to answer because the registrant had shown remorse, the conviction had no bearing on their work and there was a supportive reference from the registrant's employer. The ICP concluded that while the conviction could be proved, that was insufficient to establish a realistic prospect of proving that the registrant's FTP was impaired. We considered that the ICP ought to have applied the general principle established in the case of *Fleischmann*<sup>10</sup> i.e. that if a registrant has been convicted of a serious criminal offence, the regulator should not permit them to resume practice until they have completed their sentence. The HCPC accepts that the ICP ought to have referenced the case law in its decision
- One case where we were concerned to note that the HCPC had sent the registrant the ICP decision relating to another registrant's case. The registrant was provided with a copy of the correct decision three days after notifying the HCPC of the error. We also understand that the HCPC took appropriate steps to rectify the matter. It notified the Information Commissioner's Office, wrote to the registrant (who was the subject of the ICP decision which was incorrectly sent) and introduced an additional quality check on a sample of cases to provide assurance that personal data was being recorded and used in accordance with HCPC information security policies
- One case in which the HCPC's closure letter to the registrant wrongly stated that the case had been referred for a hearing in front of an FTP Panel. This error was not picked up for two weeks when the registrant received a further letter from the HCPC apologising for the error and informing him that the ICP had in fact decided there was no case to answer

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<sup>9</sup> See paragraphs 1.22-1.25 for further details.

<sup>10</sup> CRHP v GDC and Fleischman [2005] EWHC 87 Admin

- In four of these 25 cases, we had concerns as to whether the HCPC's decisions adequately protected the public and/or the wider public interest. See paragraph 2.34 below for further details.

2.17 In response to our feedback, the HCPC has informed us about a number of activities that it decided to undertake in advance of our audit, and which it considers will address our concerns in this area. These include:

- Further training to be provided to HCPC staff and ICP members on the role of the ICP, the application of the 'realistic prospect' test and the importance of writing clear and well-reasoned decisions
- Revisions to the HCPC's guidance, documents and processes. In carrying out these revisions, the HCPC will take into account our audit feedback as well as its reviews of ICP decisions, its reviews of cases that result in 'not well founded' outcomes at FTP hearings, and its reviews of complaints received about its decisions
- Checking/approval by Case Team Managers of all closure letters sent to complainants and registrants in cases that are closed by HCPC staff rather than by the ICP. A sample of case closure letters are also audited by Investigations Managers on a monthly basis in order to provide a quality check on the adequacy of the reasons provided to all parties
- Allegation drafting workshops are being held for Case Managers on a six monthly basis. Training is also being provided to ICP members to emphasise the ICP's responsibility as 'gate keeper' of the quality of allegations. The new ICP training package which has been used since April 2013 also includes practical allegation drafting activities.

2.18 The HCPC plans to evaluate the effectiveness of these measures through their existing and enhanced audit processes and it is also undertaking a review of the ICP decision making process. We will follow up on the implementation of this in our next performance review. We will also follow up on the impact of these activities in our next audit of the HCPC's initial stages FTP process.

### **Customer care**

2.19 Good customer service is essential to maintaining confidence in the regulator.

2.20 During our audit, we identified the following concerns in this area:

- Eight cases where parties were not updated on the progress of the investigation and where the HCPC did not meet its service target of providing monthly updates to the parties. The HCPC has informed us that it intends to emphasise the importance of regular contact with the parties at refresher workshops for Case Managers



- Eight cases where we considered that the parties' expectations could have been managed more effectively. In particular, we saw cases where: the wording of standard letters indicated that the case would be considered by the ICP and did not reflect the possibility of the case being closed at an earlier stage in the process; the Case Manager indicated the likely closure of a case to the registrant at a point when the decision makers/legal advisors were still reviewing the matter; inaccurate information was given to a complainant about the application of procedural rules and the HCPC did not explain the HCPC's remit and limitations where the registrant's employer was essentially seeking advice on employment matters
- Two cases where we had concerns about the wording of letters to the parties. In the first case, our concerns related to wording that appeared insensitive to the complainant and which was particularly concerning as the case involved serious allegations of sexual/physical abuse. In the second case, we were concerned that the HCPC's letter asked the complainant to identify how they considered the conduct of the registrants specifically impaired their fitness to practise, failing which the HCPC would be unable to investigate the matter further. We considered that this wording was inappropriate and did not comply with the HCPC's guidance, which acknowledges that complainants may not be familiar with the technicalities of the fitness to practise process
- One case where the HCPC did not address the complainant's communication difficulties or offer assistance with dealing with the complaint. We understand that the HCPC has processes in place for assisting complainants who require help in formulating written complaints, by speaking to them by telephone or in person
- Three cases where the HCPC did not acknowledge receipt of information from the parties during the investigation
- Five cases where there was a delay or a failure to notify registrants of the complaints made against them at the point at which the HCPC decided to make enquiries with their employer, in line with the HCPC's process (in one of these cases there was also a failure to provide general information about the FTP process)
- One case where there was a delay in notifying the parties of the ICP decision. The HCPC has a service target which provides for registrants to be notified of the ICP decision within five working days. In this case, it was almost two weeks after the ICP hearing when the HCPC informed the registrant and the complainant of the decision, and no reasons were recorded for the delay
- One case where no closure letter was sent to the complainant (the registrant's employer). The HCPC acknowledge that there does not

appear to be a letter on file, but have confirmed that the correct process was followed (it was simply not recorded on the file).

2.21 The HCPC has informed us that it has already implemented a number of measures, which it considers will address our concerns in this area. These include:

- Reviewing all standard letters, as part of the work it is undertaking on improving the FTP experience for its stakeholders. This workstream focuses on how the interactions of those involved in the process can be improved and be made as positive as possible, even if the outcome is not what they hoped for
- The FTP department undertook Stakeholder Communication training in February and April 2013, in order to improve the experience of those that come into contact with the department
- We are pleased to note that following the creation of the Assurance and Development Team in April 2012, the HCPC is in the process of expanding its Compliance Team and expects to carry out an increased level of audits going forward. The HCPC's quality assurance process currently consists of monthly file audits on a sample of cases across the FTP department as well as further file audits on closure if a 'no case to answer' decision is made by the ICP.

2.22 The HCPC has told us that it plans to assess the impact of these activities through its internal audit programme. We will follow this up in our next performance review and also consider the impact of these activities in our next audit of the HCPC's initial stages FTP process.

### **Guidance**

2.23 It is good practice to have staff guidance, documents and tools setting out the regulator's established policies and procedures, in order to ensure consistency and efficiency in case management.

2.24 We are pleased to report that our audit did not identify any concerns in this area.

### **Record keeping**

2.25 We consider good record keeping to be essential for effective case handling and good quality decision making.

2.26 We were satisfied with the HCPC's standard of record keeping in the majority of the cases we audited. We did however identify the following concerns:

- In four cases, relevant documents had not been saved on all "linked" cases (cases are "linked" if they concern a single complaint or if they concern the same registrant). It is important that documents are saved on

all linked cases so that each case contains a complete record, enabling decisions about that case to be made on the basis of all the relevant information. The HCPC has informed us that the relevant documents would have been accessible to the Case Managers dealing with these cases as staff are given access to the entire case management system. Nevertheless, we understand that this issue was the subject of refresher training in August 2013 for users of the electronic case management system

- In three cases, there were references to telephone conversations, but no documented record of the discussions on the case management system. The HCPC has informed us that it has recently introduced a new process for taking and recording telephone messages

### Timeliness and monitoring of progress

- 2.27 The timely progression of cases is one of the essential elements of a good FTP process. It is essential to manage workflow evenly, because delays in one part of the process that cause backlogs can stress the system unless relieved quickly.
- 2.28 Overall, we concluded that the HCPC has effective systems in place for monitoring case progression, including regular review meetings between staff which are intended to ensure active case progression.
- 2.29 In this audit, we noted numerous examples of cases where there was clear evidence of active case management. We were also pleased to note that in the GSCC legacy cases we audited, initial assessments had been carried out promptly by the HCPC once the cases were transferred from the previous regulator.
- 2.30 We did however identify three cases where there were periods of inactivity of between six weeks and three months and where no reasons for those delays were recorded.
- 2.31 We also noted one case where there was a period of inactivity, which led to a delay in considering the need to apply for an interim order. We considered that the HCPC had sufficient information to decide whether to apply for an interim order earlier in the life of the case. We were also concerned that the HCPC did not seek to obtain any information about the registrant's employment status. We note that this is not part of the HCPC's documented process, but considered that such information would have been important in assessing the risk posed by the registrant. The HCPC has highlighted that this case was investigated during the peak of the transfer period, after the HCPC became responsible for the regulation of social workers in England.
- 2.32 We have noted above (see paragraph 2.2) that we considered that timeliness and pro-active case management, including chasing third parties for further information where necessary was an area of overall good practice.

## Protecting the public

- 2.33 Each stage of the regulatory process should be focused on protecting the public and maintaining public confidence in the profession and the regulatory system.
- 2.34 In this audit, we found six cases where we had concerns about the HCPC's decisions and the implications of those decisions for public protection and/or the maintenance of public confidence in the relevant profession and the regulatory process. We have set out these cases below:
- The first case (which was closed by HCPC staff without being considered by the ICP) arose from a self-referral from the registrant who informed the HCPC that restrictions had been placed on his practice by his employer following a clinical incident involving the death of a patient. The restrictions required the registrant not to work alone while the employer investigated the matter. While the employer indicated that some actions had been completed, the employer had not concluded the capability process. We were therefore concerned that the HCPC had not requested further details regarding what steps had been taken by the employer to resolve the matter or the registrant's remedial action. The HCPC did not request documents submitted for the disciplinary investigation which we considered might have been relevant (such as the registrant's assessments, reflective piece and the minutes of the employer's capability hearing). We were concerned that the HCPC, on the advice of its legal advisors, closed the case without the benefit of reviewing this information and before a scheduled peer review of the registrant's practice had been completed. In response to our concerns, the HCPC noted that the employer's investigation resulted in additional training, supervision and reflective practice for the registrant, following which the employer was satisfied that there were no outstanding concerns. We acknowledge that the HCPC acted on the advice of its legal advisors to the effect that a finding of impairment of FTP was unlikely in this case. However, in our view, the HCPC should have reviewed the additional information highlighted above in order to assess the extent of any risk the registrant posed to patients/service users before reaching a decision to close the case
  - The second case (which was closed by HCPC staff without consideration by the ICP) arose after the HCPC received a complaint from the registrant's potential employer. The potential employer raised concerns about the registrant's clinical knowledge, following an interview the registrant attended for a Band 5 physiotherapist role. We considered that, in these circumstances, it would have been good practice for the HCPC to make enquiries with the registrant's former employers to establish whether there were any wider FTP concerns about the registrant before taking any decision to close the case. We were also concerned that insufficient reasons were recorded for the HCPC's decision to close the case

- In the third case, the allegations were serious and suggested that the registrant may present a risk to service users (it is not clear whether the registrant worked/works with children). Our concern was that the HCPC did not undertake sufficient investigation. In response to our feedback, the HCPC acknowledged that further information could have been gathered in this case, but commented that it would have been difficult to prove the case at a hearing as the service user was refusing to co-operate with the FTP process. We remain of the view that the other avenues for obtaining information should have been exhausted before reaching a decision to close the case
- The fourth case concerned a complaint from a counter fraud specialist at a local Borough Council about the registrant. The complainant had informed the GSCC that the Borough Council were investigating the registrant for offences committed under the Fraud Act 2006, housing fraud, unlawful subletting of a council property for financial gain and possible money laundering offences under the Proceeds of Crime Act. While the local Borough Council stated that it was unable to prove any of the offences, we were concerned that the HCPC did not obtain and carry out its own assessment of the evidence in the Council's possession relating to the alleged fraud. We were also concerned that the HCPC did not follow up other allegations of dishonesty made by the Council (relating to the registrant's CV and registration renewal form) and abusive/racist language used by the registrant towards Council staff, which had been reported to the police. We considered that the HCPC should have taken steps to request further information from the Council and/or the police to assure itself that the decision to close the case was appropriate and in the public interest
- The fifth case (a case which was closed by HCPC staff without any consideration by the ICP) involved a complaint made by the registrant's former employer, after the registrant had been dismissed. One of the reasons for the dismissal was the long-term sickness absence of the registrant and a failure to follow sickness and absence reporting policies. We noted that the employer provided the HCPC with a copy of its case file. However, this did not include some key information (such as sick notes and Occupational Health reports) which meant that the HCPC had insufficient information about the potential impairment of the registrant's FTP because of ill-health. In our view, the HCPC should have sought further information about the registrant's current health before closing the case, in order to establish the extent of any risk to patients/service users
- The final case (a case which was closed by HCPC staff without consideration by the ICP) concerned a complaint from the registrant's employer about a paramedic who had been removed from clinical duties due to concerns about his clinical practice, and who had been subject to the employer's capability process (which was not yet complete). We were concerned that this case had been closed prematurely at a point when the matter had not been finally resolved by the employer and in

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circumstances where the HCPC could have gathered further information about the standard of the registrant's clinical practice.

## 3. Conclusions and Recommendations

- 3.1 Overall, we are pleased to report that the HCPC continues to operate effective systems and processes in all areas of its initial stages FTP process, as set out in our casework framework (see Annex 1). This is noteworthy given the recent challenges faced by HCPC, including the transfer of the regulation of social workers in England on 1 August 2012 and the expansion of its scope.
- 3.2 We recommend that the HCPC reviews the findings contained in this audit report. In particular, we recommend that attention is given to the following areas:
- The completion of risk assessments in line with the HCPC's operational procedure
  - Ensuring that sufficient information is gathered so that decision makers are provided with all potentially relevant evidence at the decision making stage
  - Recording and/or communicating to the parties clear and comprehensive reasons for decisions taken
  - Ensuring that a reasonable level of customer service is provided, including by keeping the parties updated on progress and managing their expectations about the HCPC's role/remit and the FTP process.
- 3.3 We hope that the HCPC continues to build upon the good practice we have identified and seeks to address the areas of concern highlighted in this audit.

## 4. Annex 1: Fitness to practise casework framework

- 4.1 The purpose of this document is to provide the Authority with a standard framework as an aid in reviewing the quality of regulators' casework and related processes. The framework will be adapted and reviewed on an on-going basis.

### Stage specific principles

Stage	Essential elements
Receipt of information	<ul style="list-style-type: none"> <li>• There are no unnecessary tasks or hurdles for complainants/informants</li> <li>• Complaints/concerns are not screened out for unjustifiable procedural reasons</li> <li>• Provide clear information</li> <li>• Give a timely response, including acknowledgements</li> <li>• Seek clarification where necessary.</li> </ul>
Risk assessment	<p><u>Documents/tools</u></p> <ul style="list-style-type: none"> <li>• Guidance for caseworkers/decision makers</li> <li>• Clear indication of the nature of decisions that can be made by caseworkers and managers, including clear guidance and criteria describing categories of cases that can be closed by caseworkers, if this applies</li> <li>• Tools available for identifying interim orders/risk.</li> </ul> <p><u>Actions</u></p> <ul style="list-style-type: none"> <li>• Make appropriate and timely referral to Interim Orders Committee or equivalent</li> <li>• Make appropriate prioritisation</li> <li>• Consider any other previous information on registrant as far as powers permit</li> <li>• Record decisions and reasons for actions or for no action</li> <li>• Clear record of who decided to take action/no action.</li> </ul>



Stage	Essential elements
Gathering information/evidence	<p data-bbox="662 331 906 365"><u>Documents/tools</u></p> <ul data-bbox="662 369 1327 443" style="list-style-type: none"> <li data-bbox="662 369 1327 403">• Guidance for caseworkers/decision makers</li> <li data-bbox="662 407 1161 443">• Tools for investigation planning.</li> </ul> <p data-bbox="662 481 772 515"><u>Actions</u></p> <ul data-bbox="662 519 1404 817" style="list-style-type: none"> <li data-bbox="662 519 1273 553">• Plan investigation/prioritise time frames</li> <li data-bbox="662 557 1358 631">• Gather sufficient, proportionate information to judge public interest</li> <li data-bbox="662 636 1327 710">• Give staff and decision makers access to appropriate expert advice where necessary</li> <li data-bbox="662 714 1404 817">• Liaise with parties (registrant/complainant/key witnesses/employers/other stakeholders) to gather/share/validate information as appropriate.</li> </ul>
Evaluation/decision	<p data-bbox="662 873 906 907"><u>Documents/tools</u></p> <ul data-bbox="662 911 1342 983" style="list-style-type: none"> <li data-bbox="662 911 1342 983">• Guidance for decision makers, appropriately applied.</li> </ul> <p data-bbox="662 1021 772 1055"><u>Actions</u></p> <ul data-bbox="662 1059 1412 1433" style="list-style-type: none"> <li data-bbox="662 1059 1374 1133">• Apply appropriate test to information, including when evaluating third party decisions and reports</li> <li data-bbox="662 1137 1347 1171">• Consider need for further information/advice.</li> <li data-bbox="662 1176 1206 1209">• Record and give sufficient reasons</li> <li data-bbox="662 1214 1334 1247">• Address all allegations and identified issues</li> <li data-bbox="662 1252 1038 1285">• Use clear plain English</li> <li data-bbox="662 1290 1324 1364">• Communicate decision to parties and other stakeholders as appropriate</li> <li data-bbox="662 1368 1321 1433">• Take any appropriate follow-up action (e.g. warnings/advice/link to registration record).</li> </ul>

## Overarching principles

Stage	Essential elements
Protecting the public	<ul style="list-style-type: none"> <li>• Every stage should be focused on protecting the public and maintaining confidence in the profession and system of regulation.</li> </ul>
Customer care	<ul style="list-style-type: none"> <li>• Explain what the regulator can do and how, and what it means for each person</li> <li>• Create realistic expectations.</li> <li>• Treat all parties with courtesy and respect</li> <li>• Assist complainants who have language, literacy and health difficulties.</li> <li>• Inform parties of progress at appropriate stages.</li> </ul>
Risk assessment	<ul style="list-style-type: none"> <li>• Systems, timeframes and guidance exist to ensure ongoing risk assessment during life of case</li> <li>• Take appropriate action in response to risk.</li> </ul>
Guidance	<ul style="list-style-type: none"> <li>• Comprehensive and appropriate guidance and tools exist for caseworkers and decision makers, to cover the whole process</li> <li>• Evidence of use by decision makers resulting in appropriate judgements.</li> </ul>
Record keeping	<ul style="list-style-type: none"> <li>• All information on a case is accessible in a single place.</li> <li>• There is a comprehensive, clear and coherent case record</li> <li>• There are links to the registration process to prevent inappropriate registration action</li> <li>• Previous history on registrant is easily accessible.</li> </ul>
Timeliness and monitoring of progress	<ul style="list-style-type: none"> <li>• Timely completion of casework at all stages</li> <li>• Systems for, and evidence of, active case management, including systems to track case progress and to address any delays or backlogs.</li> </ul>

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## Professional Standards Authority Audit Feedback Activity Plan

Issue	Activity
Completion of Risk Assessments	<ul style="list-style-type: none"> <li>- Evaluate whether there has been a delay in a case where the risk assessment status has changed</li> <li>- QA of risk assessments to be undertaken by the Quality Compliance Team</li> <li>- Workshop for Case Managers on risk assessments</li> </ul>
Gathering Information and evidence	<ul style="list-style-type: none"> <li>- Training scheduled on critical analysis of evidence</li> <li>- Requesting further information covered in FTP work shop held in June – this will be an on-going feature of audit</li> <li>- Case Team Manager’s to identify case studies which illustrate where FI could have been gathered to use in future training</li> </ul>
Providing Reasons	<ul style="list-style-type: none"> <li>- The case closure checklist has been updated to ensure that case closure letters to registrants and complainants are approved by a case team manager before dispatch</li> <li>- Review of complaints about complaints to include identifying any learning points about decisions. This is incorporated into the work stream on improving the fitness to practise experience</li> <li>- Case Team Manager workshop on approval of case closure decisions – this will include peer review of case closure decision letters</li> <li>- Enhanced audit of case closure letters to be undertake by the Quality Compliance Team</li> <li>- Review of Risk Profiling and Interim Order operational guidance to ensure it remains fit for purpose</li> <li>- Workshops with Case Managers to identify what further training is required</li> <li>- There is a work plan in progress reviewing the quality of ICP reasons</li> </ul>
Customer Care	<ul style="list-style-type: none"> <li>- Remind Case Managers of the need to provide monthly updates to parties to the case</li> <li>- Enhancements to pre-existing audit processes</li> </ul>

	<ul style="list-style-type: none"><li>- A range of activity in this area is also included in the improving experience work stream of the FTP work plan</li><li>- Review of wording of standard letters</li><li>- Review training on letter writing</li><li>- Further development of checklists/crib sheets for team</li></ul>
Record Keeping	<ul style="list-style-type: none"><li>- To be provided through refresher training</li><li>- Implementation of a new process for taking telephone message</li></ul>