

Council

Minutes of the 71st meeting of the Health Professions Council held as follows:-

Date: Thursday 20 October 2011

Time: 10.30am

Venue: Quay Hotel, Deganwy Quay, Deganwy, North Wales, LL31 9DJ

Present: Anna van der Gaag (Chair)
Jennifer Beaumont
Mary Clark-Glass
Malcolm Cross
John Donaghy
Sheila Drayton
Julia Drown
John Harper
Richard Kennett
Jeff Lucas
Penelope Renwick
Keith Ross
Deep Sagar
Eileen Thornton
Annie Turner
Joy Tweed

In attendance:

Gary Butler, Director of Finance (Items 1-22)
Guy Gaskins, Director of IT (Items 1-22)
Abigail Gorringe, Director of Education (Items 1-22)
Michael Guthrie, Director of Policy and Standards (Items 1-22)
Louise Hart, Secretary to Council
Teresa Haskins, Director of HR (Items 1-22)
Kelly Johnson, Director of Fitness to Practise (Items 1-22)
Jacqueline Ladds, Director of Communications (Items 1-22)
Steve Rayner, Secretary to Committees (Items 1-22)
Greg Ross-Sampson, Director of Operations
Marc Seale, Chief Executive and Registrar (Items 1-22)

Item 1.11/173 Chair's welcome and introduction

- 1.1 The Chair welcomed all members to the meeting.

Item 2.11/174 Apologies for absence

- 2.1 Apologies for absence were received from Pradeep Agrawal, Morag MacKellar, Arun Midha and Diane Waller.

Item 3.11/175 Approval of agenda

- 3.1 The Council approved the agenda subject to the inclusion of an additional appendix under item 8: "Alternative Mechanisms to resolve disputes."

Item 4.11/176 Declaration of Members' Interests

- 4.1 Keith Ross declared an interest under items 9 and 10 as his wife is a Council member of CHRE.

Item 5.11/177 Minutes of the Council meeting of 22 September 2011 (report ref:-HPC 117/11)

- 5.1 The Council considered the minutes of the 70th meeting of the Health Professions Council as circulated.
- 5.2 It was agreed that the minutes of the 70th meeting of the Health Professions Council be confirmed as a correct record and signed by the Chair.

Item 6.11/178 Matters arising (report ref:-HPC 118/11)

- 6.1 The Council noted the action list as agreed at the last meeting.

Strategy and Policy

Item 7.11/179 Voluntary registration of students – impact assessment and consultation (report ref:-HPC 119/11)

- 7.1 The Council received a paper for discussion/approval from the Executive.
- 7.2 The Council noted that the HPC could only set up a voluntary register after it had published an assessment of the likely impact of doing so and held a public consultation. At its meetings in March 2011 and May

2011, the Council had agreed to undertake a preliminary impact assessment looking at the voluntary registration of students and to consult on that impact assessment.

7.3 The Council noted that the current paper included a draft of the consultation document and a draft of the 'first stage' impact assessment (which would be published on the HPC website alongside the consultation document).

7.4 During the course of the discussion, the following points were made:-

With reference to the consultation document:-

- That question two under paragraph 1.22 on page five, reference should be made to "actual harm" rather than just "risk of harm;"
- Questions nine and ten on page six need to be reviewed to ensure they were balanced i.e. similar questions asked under each;
- That throughout the consultation document, alternative approaches to student registration were detailed. For example, under paragraph 3.11, it details how risk could be mitigated through effective supervision as an alternative to student registration. Concern was expressed that an alternative also needed to be included under paragraph 3.13;
- The suggestion was made that question two on page 13 should be broadened and refer to "students of professions known to you" as opposed to "students in your profession;"
- A further suggestion was made that questions nine and ten on page six should be reversed in order;
- With regards to questions 11 on page six, a suggestion was made that this should be split into a question on costs, and a question on benefits. It was also suggested that further work should be done to ensure the questions allowed respondents to indicate the cost levels that they would be willing to tolerate in registering students;
- With regards to question 10 on page 15, concern was expressed that when the consultee states that social workers students in England should not be registered by the HPC, they are then asked to suggest an alternative process. However, there was not an alternative. In response, the Council noted that the type of alternatives that could be suggested were in relation to guidance to students or the professional body having a role in some way;

- The Council noted in its discussion the importance of ensuring that the policy objectives of this exercise were clearly articulated in the introduction to the consultation document. It was also noted that it was important that the questions gathered the necessary information, avoiding any potential perception that they were leading in any way.

With reference to the impact assessment document:-

- In relation to paragraphs 2.2 and 3.4, clarification was required in relation to what the Health and Social Care Bill states in terms of which registers will transfer from the GSCC to the HPC.

7.5 The Council approved the 'first stage impact assessment' and consultation document for publication subject to consideration of the amendments suggested during the course of discussion and minor editing amendments.

Item 8.11/180 Alternative Mechanisms to resolve disputes (report ref:- HPC 120/11)

8.1 The Council received a paper for discussion/approval from the Executive.

8.2 The Council noted that, in October 2011, IPSOS Mori's research commissioned by HPC had been published. The paper set out how the Executive proposed to progress with that work.

8.3 The Council noted that the Executive intended to take forward recommendations 1 and 2 from the research by establishing a voluntary mediation project to determine the use and value of such a process to complainants and registrants, with a focus on its contribution to public protection.

8.4 The Council noted that any pilot project would have:

- a staged approach according to the phases of the fitness to practise process;
- clear eligibility criteria as to the types of cases that should be considered;
- a voluntary nature;
- a six month trial, or 6 cases (whichever comes sooner) for each phase of the process;
- pre and post evaluation measures to assess the impact of the mediation process for the parties using established evaluation tools including the costs of the scheme;
- a six month follow up on the success or otherwise of the process for both parties;

- a clear communication plan in place around the pilot and its purpose; and
- a clear dissemination strategy at the conclusion of the study.

8.5 During the course of the discussion, the following points were made:-

- That the reference to “complainant” under paragraph 5.1 on page five (Informed consent from all parties.....) needed to be widened since the complainant may not necessarily be the person directly involved in the action which led to a complaint;
- Concern was expressed that a large amount of resource should not be put into the pilot and a detailed cost analysis carried out as part of the pilot;
- The Council noted that a pilot would assist the Council in making an informed decision as to whether to progress with this alternative method for resolving disputes;
- That whilst costs should be taken into consideration in determining whether to progress with a pilot, it was also important to consider those registrants going through the current FtP process and how they may benefit from a different approach;
- Concern was expressed that any alternative scheme should not detract from the core business of HPC;
- That it was important to quality assure any new processes introduced.

8.6 The Council agreed that the Executive should conduct a voluntary mediation project to determine the use and value of such a process to complainants and registrants, with a focus on its contribution to public protection.

Item 9.11/181 CHRE performance review 2010/11 (report ref:-HPC 121/11)

- 9.1 The Council received a paper for discussion/approval from the Executive.
- 9.2 The Council noted that, in June 2011, the Council for Healthcare Regulatory Excellence (CHRE) had published its 2010/2011 performance review of the healthcare regulatory bodies, including its performance assessment of the HPC. The paper discussed the outcomes of the review, summarised and discussed CHRE’s assessment of HPC’s performance and highlighted other areas of interest.

- 9.3 The Council noted that HPC had received a positive performance review report. CHRE considered HPC to be 'an effective and efficient regulator for the diverse range of professions that it regulates' (give page reference).
- 9.4 During the course of discussion, a query was raised in relation to the research carried out on professionalism. The Council noted that this research had been disseminated through a series of seminars and the Council's commitment to be proactive in disseminating research was emphasised.
- 9.5 The Council noted the paper.

Item 10.11/182 CHRE report on 'Modern and efficient fitness to practise adjudication' (report ref:- HPC 122/11)

- 10.1 The Council received a paper for discussion/approval from the Executive.
- 10.2 The Council noted that in August 2011, CHRE had published its advice to the Secretary of State for Health on 'Modern and Efficient Adjudication.' That advice had been requested following the coalition government's decision not to proceed with the establishment of the Office of the Health Professions Adjudicator. CHRE had been asked to 'set out a vision of what a modern, cost effective and efficient adjudication system would like for health professional regulators.'
- 10.3 The Council noted that the paper reviewed the recommendations made by the CHRE as how to achieve their vision of a 'modern and efficient system of adjudication.' The observations and comments of the Executive about the recommendations were included, including an indication of any relevant on-going work being undertaken and any proposed actions as a result of the report.
- 10.4 During the course of discussion, the following points were made:-
- With reference to paragraph nine of the paper, a suggestion was made that HPC should investigate the use of cost powers. It was further suggested that the introduction of such powers could stop the adoption of delaying tactics by those involved in the process. However, other members felt that the use of cost powers was not appropriate given that the HPC's funding model was not based on this and a registrant did not necessarily invite Fitness to practise proceedings;
 - The Council noted that a cost driven model could move the fitness to practise regime to a more adversarial approach yet

HPC's regime had always been based on a restorative, rehabilitative approach;

- A suggestion was made that further information relating to cost powers was required in order to make an informed decision about how to proceed. On the basis that a clear steer was required from Council in order to inform the work being carried out by the Law Commission, the Executive undertook to submit a paper to the December meeting of Council;
- Concern was expressed that the Council was being asked to agree with the views of the Executive in relation to paragraph 9.2. The suggestion was made that the recommendation be amended so that Council "acknowledged" the views of the Executive. The Council concurred with this suggestion.

10.5 The Council:-

- a) Acknowledged the views of the Executive outlined at paragraph 9.2, as follows:-

The Executive considers that the use of cost powers in proceedings about the fitness to practise of individual registrants is disproportionate and not sufficiently aligned to the purpose of those proceedings. There are a number of reasons for this. Firstly, the purpose of the fitness to practise process is public protection and the HPC's approach as far as is possible is to align with the models of restorative and rehabilitative justice. The introduction of cost orders (combined with the bureaucracy and resource required to support them) appear more in line with a retributive model of justice. Second, a key component of fitness to practise proceedings is involvement with those proceedings. Insight is core to how those proceedings progress. If the registrant concerned was facing costs they may be reluctant to fully engage in the process, which could compromise the administration of justice.

- b) agreed the work plan set out in appendix one to the paper; and
- c) requested the Executive to submit a paper to the next meeting of Council providing further information on the issue of cost powers.

Item 11.11/183 Outcome of consultation on the guidance on health and character (report ref:- HPC 123/11)

- 11.1 The Council received a paper for discussion/approval from the Executive.

11.2 The Council noted that HPC had consulted between 11 April and 1 July 2011 on proposed changes to 'Guidance on health and character'. Changes to the guidance were needed as a result of the Council's recent decisions to remove the health reference requirement for registration and to change the way HPC considered information provided by registrants through self-referral.

11.3 The Council noted that the paper set out the process of the consultation, an analysis of the responses received for each question and conclusions. In response to the submissions received as part of the consultation, the paper proposed a number of revisions to the guidance document to improve the clarity of the guidance. The paper also recommended that the amended guidance should now be approved for publication, subject to legal scrutiny and 'Plain English' requirements.

11.4 The Council:

- a) agreed that the amended 'Guidance on health and character' should be approved for publication (subject to legal scrutiny and 'Plain English' editing requirements); and
- b) the text of the consultation responses document should be approved for publication on the HPC website.

Item 12.11/184 Transfer of regulatory functions from General Social Care Council to HPC (report ref:- HPC 124/11)

12.1 The Council received a paper for discussion/approval from the Executive.

12.2 In accordance with the decision of Council to be kept informed of ongoing work relating to the transfer of regulatory functions from the GSCC to the HPC, a verbal update was provided.

12.3 During the course of discussion, the following points were made:-

- That the Health and Social Care Bill was due to enter Committee stage in the House of Lords in December;
- That the Department of Health had issued a press release on 18 October 2011 stating that the GSCC would close on 31 July 2012 and its regulatory functions transferred to the HPC.

12.4 The Council noted the update.

Item 13.11/185 National Audit Office (NAO) audit report (report ref:- HPC 125/11)

- 13.1 The Council received a paper for discussion/approval from the Executive.
- 13.2 The Council noted that the paper included the NAO audit completion report, following the audit of the year-end financial statements and draft 2010-11 annual report.
- 13.3 The Council noted the three observations identified during the audit, namely the issue of the deferred income balance, the capitalisation of training and support and the income recognition.
- 13.4 In discussion, the following points were made:-
- That forensic auditors from Mazars had been commissioned to identify the issues within the accounting system in relation to differences in deferred income accounts;
 - That a “lessons learnt” paper on the issue of the deferred income account would be submitted to the Finance and Resources and Audit Committee and Council in due course.
- 13.5 The Council approved the NAO audit completion report for 2010-11.

Item 14.11/186 Draft annual report and accounts 2010-11 (report ref:- HPC 126/11)

- 14.1 The Council received a paper for discussion/approval from the Executive.
- 14.2 The Council noted that the paper included the latest version of the draft annual report and accounts for the year ended 31 March 2011. It included feedback from the NAO. Baker Tilly Tax Advisory Services LLP had provided advice on the note relating to taxation in the financial statements.
- 14.3 The Committee noted that the annual report had been reviewed by the Audit Committee at their meeting immediately preceding the Council meeting that day. The Committee had agreed to recommend the draft annual report and accounts and the audit report to the Council.
- 14.4 The Council approved the annual report and accounts 2010-11.

Item 15.11/187 Nomination of Committee Chairs (report ref:- HPC 127/11)

- 15.1 The Council received a paper for discussion/approval from the Executive.

15.2 The Council noted that, in July 2005, it had agreed the process for election of Committee Chairs. On 22 September 2011, it had agreed that each committee should nominate a Chair at their first meeting after 22 September. The Audit Committee had been asked to nominate a Chair at its meeting on 29 September 2011 and had nominated Jeff Lucas as Chair and as its observer at Finance and Resources Committee meetings. The Fitness to Practise Committee had been asked to nominate a Chair at its meeting on 13 October 2011 and had nominated Keith Ross as Chair.

15.3 The Council agreed to:

- a) appoint Jeff Lucas as Chair of the Audit Committee and observer at the meetings of the Finance and Resources Committee for a term of two years;
- b) appoint Keith Ross as Chair of the Fitness to Practise Committee for a term of two years.

Item 16.11/188 Minutes of the Finance and Resources Committee held on 7 September 2011 (report ref:- HP128/11)

16.1 The Council received a paper for discussion/approval from the Executive.

16.2 The Council approved the recommendations therein.

Item 17.11/189 Minutes of the Audit Committee held on 8 September 2011 (report ref:- HPC129/11)

17.1 The Council received a paper for discussion/approval from the Executive.

17.2 The Council approved the recommendations therein.

Item 18.11/190 Minutes of the Audit Committee held on 29 September 2011 (report ref:- HPC130/11)

18.1 The Committee received a paper for discussion/approval from the Executive.

18.2 The Council approved the recommendations therein.

The Council noted the following items:-

Item 19.11/191 Approval of the Welsh Language Scheme (report ref:- HPC 131/11)

Item 20.11/192 Minutes of the Education and Training Committee held on 8 September 2011 (report ref:- HPC 132/11)

Item 21.11/193 Any other business

21.1 There was no other business.

Item 22.11/194 Date and time of next meeting

22.1 The next meeting of the Council would be held at 10:30 am on Tuesday 6 December 2011.

Item 23.11/195 Resolution

The Council agreed to adopt the following resolution:-

“The Council hereby resolves that the remainder of the meeting shall be held in private, because the matters being discussed relate to the following;

- (i) information relating to a registrant, former registrant or application for registration;
- (ii) information relating to an employee or office holder, former employee or applicant for any post or office;
- (iii) the terms of, or expenditure under, a tender or contract for the purchase or supply of goods or services or the acquisition or disposal of property;
- (iv) negotiations or consultation concerning labour relations between the Council and its employees;
- (v) any issue relating to legal proceedings which are being contemplated or instituted by or against the Council;
- (vi) action being taken to prevent or detect crime to prosecute offenders;
- (vii) the source of information given to the Council in confidence; or
- (viii) any other matter which, in the opinion of the Chair, is confidential or the public disclosure of which would prejudice the effective discharge of the Council’s functions.

Item	Reason for Exclusion
24	ii, iii, iv, viii
25	-
26	ii
27	iv
28	iii, iv, v, viii
29	ii, iv, viii
30	iii, iv, viii

Item 24.11/196 Minutes of the Private part of the Council meeting held on 22 September 2011 (report ref:- HPC133/11)

24.1 The Council considered and approved the minutes of the private part of the Council meeting held on 22 September 2011.

Item 25.11/197 Matters arising

25.1 The Council noted that there were no matters arising from the private part of the Council minutes of 22 September 2011.

Item 26.11/198 Membership of the Education and Training Committee (report ref:- HPC134/11)

26.1 The Council approved the appointment of Non-Council Committee Members to the Education and Training Committee for a term of two years until October 2012 as follows:

- (i) Appointment for first term:
 - June Copeman (Dietitian)
- (ii) Appointment for second term:
 - Jo-ann Carlyle (Practitioner Psychologist)
 - Helen Davis (Orthoptist)
 - Stephen Hutchins (Prosthetist/Orthotist);
 - Stuart MacKay (Radiographer)
 - Jeff Seneviratne (Clinical Scientist)
 - Robert Smith (Biomedical Scientist)
 - Jois Stansfield (Speech and Language Therapist)
 - Stephen Wordsworth (Operating Department Practitioner)

Item 27.11/199 Transfer of regulatory functions from General Social Care Council to HPC (report ref:- HPC135/11)

27.1 The Council noted that no further verbal update in relation to the transfer of the regulatory functions from the General Social Care Council to HPC was required in the private part of the meeting.

Item 28.11/200 Minutes of the private part of the Finance and Resources Committee held on 7 September 2011 (report ref:- HPC136/11)

28.1 The Council received these minutes and approved the recommendations therein.

Item 29.11/201 Minutes of the private part of the Audit Committee held on 8 September 2011 (report ref:- HPC137/11)

29.1 The Council received these minutes and approved the recommendations therein.

Item 30.11/202 Minutes of the private part of the Audit Committee held on 29 September 2011 (report ref:- HPC138/11)

30.1 The Council received these minutes and approved the recommendations therein.

Item 31.11/203 Any other business for consideration in private

31.1 There were no items for consideration in private.

Chair:

Date:

Unconfirmed