

Fitness to Practise Committee, 21 October 2010

## **Audit of final fitness to practise decisions**

### **Executive summary and recommendations**

#### **Introduction**

At its meeting in December 2009, the Council agreed with the recommendation resulting out of the review by the Executive of the CHRE's review into the conduct function of the General Social Care Council, that the Executive should consider mechanisms by which the HPC could be satisfied with the quality of decisions reached by practice committee panels.

Following the Council's decision, at its February 2010 meeting the Fitness to Practise Committee considered and approved a proposed mechanism to review 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.

Using the approved format, the audit of final fitness to practise panel decisions made between April and August of this year has been carried out by the Policy and Standards Department. This paper documents the results of that audit.

#### **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 17.

#### **Background information**

Fitness to Practise Committee paper, Mechanism to review decisions, 25 February 2010, [www.hpc-uk.org/assets/documents/10002C8B20100225FTP-12-mechanismstoreviewdecisions.pdf](http://www.hpc-uk.org/assets/documents/10002C8B20100225FTP-12-mechanismstoreviewdecisions.pdf)

Council paper, CHRE Review of the conduct function of the General Social Care Council: Learning points for HPC, 10 December 2009, [www.hpc-uk.org/assets/documents/10002BD7GSCC-enc7.pdf](http://www.hpc-uk.org/assets/documents/10002BD7GSCC-enc7.pdf)

#### **Resource implications**

None at this time

**Financial implications**

None at this time

**Appendices**

Audit form for final/review hearing decisions

**Date of paper**

8 October 2010

# **1. Introduction**

## **1.1 About the audit**

At its meeting in December 2009, the Council agreed with the recommendation resulting out of the review by the Executive of the CHRE's review into the conduct function of the General Social Care Council, that the Executive should consider mechanisms by which the HPC 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 Practise Decisions', which provides guidance to panels on the content that should be included in written decisions.

The audit of final fitness to practise panel decisions made between April and August of this year has been carried out by the Policy and Standards Department. This paper documents the results of that audit. The audit assesses Fitness to Practise panel adherence to the applicable law and to HPC policy in particular areas. The focus of the audit was on monitoring whether panels have followed correct process and procedure including whether sufficient reasons have been given for their decisions. The audit does not go as far as to 'second guess' the judgements reached by the panel – i.e. by 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. The audit also flags any areas where further policy development or consideration is required.

The learning points from the audit will be fed back into operational policy development and into training and appraisal processes.

## **1.2 About this document**

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 **3** provides a summary of emerging themes identified the responses. Section **4** discusses the emerging policy issues identified during the audit. Section **5** 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**

The audit period covered decisions made between 1 April and 31 August 2010. The analysis includes only final hearing cases 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.

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

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**

A total of **155** decisions were analysed as part of the audit, of which **118** were final hearing cases, and **37** were Article 30 reviews. The majority of cases (**143**) were considered by conduct and competence panels, with smaller numbers considered by health panels (**9**) and the investigating committee in cases where it was alleged the registrant's entry onto the Register was fraudulently procured or incorrectly made (**3**).

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.

### **2.2.1 Procedural issues**

#### **If the Registrant was not there and unrepresented, did the panel consider the issue of proceeding in absence?**

<b>Yes</b>	<b>No</b>	<b>Not applicable (registrant present)</b>
51 (33%)	4 (3%)	100 (64%)

During the audit period, there were 55 hearings where the registrant did not attend or was not represented. Of those 55 hearings, there were only four cases where panels did not consider the issue of proceeding in absence of the registrant. However, all of these cases were voluntary consent order decisions where the registrant has already accepted the facts of the allegations and made an application to be removed from the order. In these situations, the panel does not need to consider the issue of proceeding in absence.

### Did any other procedural issues arise?

Yes	No
48 (30%)	107 (70%)

Other procedural issues noted by the auditor included amendments to, or withdrawals of allegations; applications for hearings to be heard in private; applications for allegations to be dismissed because of lack of evidence; issues of potential bias of panel members; joinder of separate allegations; transfer of fitness to practise cases from the Hearing Aid Council or the British Psychological Society; and cases where the registrant requested an adjournment of proceedings or made a submission of no case to answer at the start of the hearing. For further discussion of emerging issues from this question, please refer to section 3.

### Was Legal Assessor advice disregarded?

Yes	No
0 (0%)	155 (100%)

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

### Was the three-stage test applied?

Yes	No	Not applicable (review hearings/voluntary consent orders)
94 (61%)	17 (11%)	44 (28%)

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 voluntary removal order cases, the facts are already accepted as proven, and the three-stage test is not necessary.

Of the 17 remaining cases, in cases where a registrant was subject to a hearing because of a criminal conviction or caution, the auditor understood those cases to be applying a 'two-stage' test instead of the usual three stage test, as by implication the facts were already proven.

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.

<b>Type of decision hearing</b>	<b>Number of cases (from 58)</b>
Review hearings	36
Consent orders	8
Criminal conviction/caution	9
Other	5

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:

- A case of incorrect entry where a registrant was removed from the Register because they had been entered into the Register in error;
- A case where a former registrant was applying for re-entry to the Register as they had been previously struck off at a time when they were unable to engage in the fitness to practise process;
- A health panel hearing where the panel were unable to come to a decision on the registrant's health status and made a referral of the case to a conduct and competence panel – this type of case would not be considered in future audits of this type.
- Two cases where at the beginning of the hearing the HPC was not able to provide evidence in support of allegations, so the cases went not well founded.

#### **Evidence by way of mitigation considered?**

<b>Yes</b>	<b>No</b>
108 (70%)	47 (30%)

Evidence by way of mitigation was not considered in 47 (30% of cases). Cases where mitigating evidence was not considered included the eight consent order cases where the allegations had been accepted by the registrant. 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.

#### **2.2.2 Drafting**

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

<b>Yes</b>	<b>No</b>
151 (97%)	4 (3%)

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 3 of this paper.

### Is it written in short sentences?

Yes	No
155 (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. In all decisions during the audit period, the sentence length used was generally appropriate 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.

### Is it written for the target audience?

Yes	No
155 (100%)	0 (0%)

The auditor interpreted the phrase ‘target audience’ to mean members of the public and the profession. Generally, the decisions from the audit period were also pitched appropriately to the target audience. 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.

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

Yes	No
143 (92%)	12 (8%)

A small number of decisions (12) did not include the factual background of the case, all of which were either review hearings or voluntary removal order hearings where facts had been previously established.

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

Yes	No	Not a review hearing
33 (21%)	4 (3%)	118 (76%)

### Is it a stand alone decision?

Yes	No
136 (88%)	19 (12%)

Most of 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. Of the decisions that did not stand alone, this included the eight consent order decisions where a statement of agreed facts has been agreed in advance of the hearing and is made available if the panel agree to the removal. Other decisions that did not stand

alone were review cases where the full finding of facts in relation to the original issue was not included in the decision, and three cases where the auditor felt that the panel could have included more detail of reasoning or evidence given in order to reflect the decision made more accurately.

**Are there adequate reasons for the decision?**

Yes	No
148 (94%)	7 (6%)

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. Please refer to section 3 of this report for more discussion of this issue.

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

Yes	No
155 (100%)	0 (0%)

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

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

Yes	No
139 (89%)	16 (11%)

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 included in the voluntary removal order decision. Of the 16 decisions that did not set out the full finding of facts, six were voluntary removal order hearings, and nine were review hearings where the facts of misconduct or competence had already been established.

**What standards were referred to?**

**73** (47%) of decisions made reference to some form of standards, with the remaining **82** decisions (53%) not referring directly to the standards. The following table sets out which standards were referred to in those decisions which referenced them – some decisions (**14**) referred to more than one set of standards, so the total number of references is greater than the number of decisions.

<b>Standards referred to</b>	<b>Number of references</b>
Standards of conduct, performance, and ethics	61
Standards of proficiency	24
Standards of another regulatory body	2

It should be noted that on a few occasions one of the principles from the HPC's standards was mentioned in a decision, although without referring to the exact standard in question. In these cases, the auditor decided not to count this as a reference of a particular standard.

### 2.2.3 Order

#### What was the panel's decision?

<b>Sanction</b>	<b>Number of orders made</b>
Striking off	27 (17%)
Suspension	24 (16%)
Conditions	14 (8%)
Caution	36 (23%)
Mediation	0 (0%)
Not well founded	33 (21%)
No further action	12 (8%)
Consent order	8 (5%)
Other	3 (2%)

There were **156** sanction orders made, from **155** decisions. This is because in one case the conduct of two separate registrants was considered as the same case, with each registrant given a separate sanction.

The 'other' category refers to cases where alternative orders were made outside the range of the usual sanctions. These orders were the removal from the Register in the case of a registrant who had been entered into the Register in error and a case where a registrant was restored to the Register with conditions of practice subsequent to a prior striking-off order. One other case that was considered during the audit was the referral of a health panel case to a conduct and competence panel for consideration – this type of case will not be included within the remit of future audits.

#### 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 24)
3 months	2
6 months	2
12 months/1 year	20

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 applied by panels in cases where there was a specific reason for doing so. These cases were:

- A case where a three month suspension was imposed so the registrant could investigate the option of voluntary removal from the Register;
- In two cases, panels made three month and six month suspension orders to encourage the respective registrants to engage with the regulatory process before they were struck off the Register;
- One case where the panel agreed to request for a short period of suspension to allow for the preparation of a report by a consultant psychiatrist in order to advance a case that the registrant should no longer be suspended.

## 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)
4 months	1
6 months	1
12 months/1 year	4
18 months	1
2 years	2
3 years	5

Generally the conditions orders imposed seemed to be consistent with the guidance in the indicative sanctions policy. However, given that there were only a small number of conditions orders imposed during the period of the audit, a longer period of audit may be more useful for identifying trends. 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.

### 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 36)
12 months/1 year	6
18 months	2
2 years	10
3 years	9
4 years	2
5 years	7

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 larger numbers of two and three year caution orders imposed. However, there were four caution decisions where the auditor was concerned as to whether the wider principles of the indicative sanctions policy had been applied – these are discussed in section 3 in more detail.

### Does the order accord with sanction policy?

Yes	No	Not applicable
105 (67%)	4 (3%)	47 (30%)

Only orders that applied a sanction are included in this category, including consent orders. This question does not include decisions that were not well founded/no case to answer, or where 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 3.

### Does it state the operative date of the order?

Yes	No	Not applicable
118 (75%)	0 (0%)	38 (25%)

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' in cases of a review of a sanction order the panel decided that the registrant had met all the (usually conditions) set. In cases of 'no further action' that were not review hearings, there was no operative date, so those orders are included in the 'not applicable' category.

**Does it state the end date of the order?**

Yes	No	Not applicable
74 (47%)	0 (0%)	82 (53%)

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. The other sanction orders – consent orders, and orders to strike off, do not have end dates, and in cases that went not well founded, there was no sanction order.

**Conditions orders**

Conditions were imposed in **14** cases.

The following tables analyses 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
14 (100%)	0 (0%)

**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
2 (14%)	12 (86%)

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.

In the two cases where the conditions were directly imposed on another person, the panel required the appointed supervisors to report directly to the HPC regarding the work of the registrant, rather than requiring the registrant to organise for the supervisor's report to be sent to the HPC. The conditions set in those cases are set out below:

- The Registrant must submit any psychological report they prepare, (including any neuropsychological reports), for audit by the appropriately qualified external supervisor(s), who shall produce a report to the HPC at the end of the twelve month period detailing the strengths and weaknesses of the registrant's report writing.
- Your mentor must conduct an audit of 25 randomly selected case notes from both your current and recently discharged caseload (25 case notes in total).

### **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**

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.

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 30 percent 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 (48) where procedural issues were considered.

<b>Procedural issues</b>	<b>Number of instances</b>
Request for hearing to be held in private	14
Amendments/corrections to allegations or facts	15
HPC request for withdrawal of allegations due to lack of supporting evidence	5
Application by registrant of no case to answer	3
Application to consider two separate allegations in the same hearing (joinder)	4
Potential panel member conflict of interest	3
Registrant application for adjournment at start of proceedings	2
Transfer of fitness to practise case from a previous voluntary regulator	4
Other	3

The 'other' category includes:

- A conduct and competence hearing where the case was referred to a health panel;
- Case where a previous decision to strike off the registrant had been appealed in the High Court. As a result of a Consent Order from the court, the option of striking off was removed from the panel. Hearing was on sanction only, not facts;
- Hearing that needed to be adjourned due to a panel member being unavailable.

Most procedural issues were relatively straightforward such as applications for hearings to be heard in private, joinder of separate allegations, minor amendments to allegations, or the transfer of fitness to practise cases from previous voluntary regulators.

There is one procedural issue that may need further consideration. In five instances during the audit period the HPC withdrew some or all of the allegations in relation to a case due to a lack of supporting evidence. In some cases, this meant that there was not enough supporting evidence for the hearing to proceed. In one instance, the HPC representative made an application at the start of the hearing for a significant amount of supporting evidence to be admitted. The panel considered this application and decided that it would be unfair to the registrant concerned to admit the evidence at such a late stage. Due to a lack of supporting evidence for the allegations, the registrant then made an application of no case to answer that was accepted by the panel.

### **3.2 Drafting**

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 four cases where the auditor felt that the language was consistently sufficiently unclear that it did not meet the 'clear and unambiguous' test, the auditor noted concerns about nine other decisions where there was some occasional use of overtly legal terminology or inadequately explained acronyms. In one decision the term 'disciplinary' was used to describe the HPC's fitness to practise procedures. Panels should avoid using words related to discipline or punishment when talking about regulatory action.

One area of note is the standard of proof reading and editing before decisions are released in their final version. The decisions sent for audit were supposed to be the final decision made by the panel, but 44 decisions analysed during the audit contained identifiable spelling, grammar, and/or formatting mistakes. While in most decisions there were only a few incidences, in some decisions grammatical errors in particular were consistent enough to suggest that these were not due to typographical errors. Additionally in some decisions the spelling of the registrant's name was inconsistent throughout the document.

### **3.3 Adequate reasoning**

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. Consent order cases have not been included in this category, as by definition they do not include detailed reasoning beyond what is necessary to make the order.

In seven decisions, the auditor felt that there could have been more considered reasoning shown in the decision. This was certainly the case in some decisions where the panel's ultimate decision on sanction was unusual or perhaps a little controversial given the nature of the allegations considered. Please refer to subsection 3.4 below for more discussion of some of these cases. In three cases, the auditor felt that more detail of the evidence considered by the panel should have been included in the decision.

### **3.4 Application of sanction policy**

Generally, the auditor was satisfied that the sanction policy had been applied consistently, with relevant policy applied in over 96 percent of cases where a sanction was imposed. However, in four cases where caution orders were imposed, the auditor was concerned as to whether those decisions were made in line with the relevant policies.

The guidance on caution orders states:

*"A caution order may be the appropriate sanction for slightly more serious cases, where the lapse is isolated or of a 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."*

In all four cases, the auditor was concerned as to whether the registrant in question had shown the requisite degree of insight into their own actions in order for a caution order to be imposed.

In one instance, a three year caution order was imposed on a registrant who had been previously suspended due to a conviction for possession of a large volume of child pornography. In this case the auditor was concerned as to whether the registrant had shown insight as they had not attended the hearing or actively engaged with the fitness to practise process. There is also an associated issue of whether it could ever be considered appropriate to impose a conditions order on a registrant who had committed offences of this nature, given the guidance in the policy. The auditor was uncertain as to whether adequate reasoning had been shown in this decision.

One other case where the panel imposed a three year caution order although the registrant had not engaged with the FTP process, and had not provided any evidence of insight or remedial action. However, in this case the panel felt that because the incidents that were the subject of the hearing were part of the registrant's private life, it would be difficult to impose any other relevant type of sanction that would be meaningful.

#### **4. Emerging policy issues**

Emerging policy issues identified in the audit are not all about the process applied by fitness to practise panels, but also about wider issues to do with the HPC's policy.

##### **4.1 Additional comments by panels**

In two instances, the auditor was concerned by the scope of panel comments, and whether there should be clarification of what sort of comment panels should be involved in making.

In one case, the panel directed that its decision should be sent to the chief executive of the Trust for which the registrant worked, as they felt staffing levels at that trust were dangerously low.

In the second case, a panel made the following comment in relation to the nature of the allegations considered: 'The Panel is aware from its own knowledge and experience that Australians may sometimes express themselves in a direct or robust manner and that, accordingly, that there may be a cultural dimension'.

##### **4.2 Adequate provision of evidence**

In a number of cases, issues were raised about the provision of evidence by the HPC in support of allegations, including five separate cases where the HPC withdrew all or some of the allegations against the registrant due to lack of evidence.

In a number of other cases, the allegations considered did not stand up to closer scrutiny and were readily dismissed by the panel. The practice note on case to answer determinations has been revised to give investigating panels

more guidance on deciding whether there is a realistic prospect that the HPC will be able to establish that a registrant's fitness to practise is impaired.

#### **4.3 Making decisions on sanction**

In one case considered during the audit, the panel made a decision on sanction with reference to previous adverse events which did not come to the HPC to consider, and that did not form part of the allegations for the case being considered. The auditor was uncertain as to whether the panel should be able to refer to previous events in making a decision on sanction if they had not been considered by the HPC previously.

### **5. Learning points and recommendations**

As a result of this audit, the Fitness to Practise department proposes that it takes the following actions/work forward. The Committee is asked to agree with those proposals:

- that registrants continue to be encouraged to attend fitness to practise hearings;
- that registrants and their representatives are encouraged to provide procedural issues in advance of the date listed to consider the hearing so consideration can be given as to whether it is appropriate to hold a preliminary hearing;
- that the Executive takes steps to ensure that the factual background in review cases is included in the decision;
- that the Executive continue to focus on drafting and the importance of reasons at partner training sessions;
- that the Executive take steps to ensure consistency in terms of the length of time an order is imposed for;
- that HPC take steps to ensure that it provides clear and earlier indication of when it is unable to prove its case;
- that the Executive proceeds with the intention to introduce skeleton arguments at final hearings;
- that further consideration is given to whether more guidance is needed on the subject of insight; and that
- the Lead Hearings Officer reviews all decisions before they are published to negate any issues regarding spelling, grammar or formatting.

## Appendix

### Audit Form Final/Review Hearing Decisions

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

#### 1. Procedural issues

If the Registrant was not there and unrepresented, did panel consider issue of proceeding in absence?	Yes/No/Registrant or rep 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
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	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?
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**Audited by:**

**Date:**