

## Fitness to Practise Committee, 13 October 2011

### **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 from the review by the Executive of the CHRE's review into the conduct function of the General Social Care Council, namely that the Executive should consider mechanisms by which the 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 audit format 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. The first two audits of final fitness to practise decisions covered the period from April to December 2010. All the audits have been carried out by the Policy and Standards Department.

This audit analyses decisions made between 1 January and 31 August 2011.

##### **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 pages 17-18.

##### **Background information**

- Fitness to Practise Committee paper, Audit of final fitness to practise decisions September-December 2010, [www.hpc-uk.org/assets/documents/1000333220110216FTP06-auditoffinalFTPdecisions.pdf](http://www.hpc-uk.org/assets/documents/1000333220110216FTP06-auditoffinalFTPdecisions.pdf)
- Fitness to Practise Committee paper, Audit of final fitness to practise decisions April-August 2010, [www.hpc-uk.org/assets/documents/1000315B20101021FTP10-auditoffinaldecisions.pdf](http://www.hpc-uk.org/assets/documents/1000315B20101021FTP10-auditoffinaldecisions.pdf)
- Fitness to Practise Committee paper, Mechanism to review decisions, 25 February 2010, [www.hpc-uk.org/assets/documents/1000315B20101021FTP10-auditoffinaldecisions.pdf](http://www.hpc-uk.org/assets/documents/1000315B20101021FTP10-auditoffinaldecisions.pdf)

[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**

3 October 2011

# **1. Introduction**

## **1.1 About the audit**

At its meeting in December 2009, the Council agreed with the recommendation resulting from the review by the Executive of the CHRE's review into the conduct function of the General Social Care Council, namely that the Executive should consider mechanisms by which the 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. Two audits of final fitness to practise panel decisions using this format were carried out by the Policy and Standards Department between April and December 2010.

The third audit—documented in this paper—was carried out between 1 January and 31 August 2011, and applies the same process as the previous audits. The audit assesses Fitness to Practise panel adherence to the applicable law and to HPC policy in particular areas. The focus of the audit is on monitoring whether panels have followed correct process and procedure including whether sufficient reasons have been given for their decisions. The audit flags any areas where further policy development or consideration is required, but does not go as far as to 'second guess' the judgements reached by the panel – such as concluding that the sanction applied was disproportionate or insufficient. The audit also does not question whether particular decisions are right or wrong, as this would jeopardise the independence of panels which operate at arm's length from the Council and the Executive.

The learning points from the audit will be fed back into operational policy development and into training and appraisal processes. The next audit of final fitness to practise decisions will be carried out between September 2011 and March 2012.

## **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, and also notes some notable areas of change or improvement since the previous audit was carried out. 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 January and 31 August 2011. The analysis includes final hearings, restoration hearings, and Article 30 review cases—reviews of conditions of practice orders and suspensions. Interim order cases and cases which were adjourned and did not reach a final decision during the audit period were not included, as the audit has been designed to only audit final hearings rather than cases where decisions are still pending.

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 **282** decisions were analysed as part of the audit, of which **212** were final hearing cases, and **70** were Article 30 reviews. The majority of cases (**265**) were considered by conduct and competence panels, with a smaller number considered by health panels (**17**).

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?**

Yes	No	Not applicable (registrant present)
116 (41.1%)	2 (0.7%)	164 (58.2%)

During the audit period, there were 118 hearings where the registrant did not attend or was not represented. There was one hearing where the registrant initially attended, and then left the hearing early, where the panel when went on to consider proceeding in absence. There was also one other case where the panel considered proceeding in the absence of the registrant, even though the registrant was represented.

Of those hearings where the registrant was not present, there were only two cases where the panel did not consider the issue of proceeding in absence of the registrant.

- One case was a voluntary consent order decision where the registrant had already accepted the facts of the allegations, was aware and in agreement with the proceedings taking place 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, although most consent order decisions during the audit period did consider this issue.
- The other hearing was a case that the panel decided was not well founded. The decision did not state whether the registrant was present, nor consider proceeding in the absence of the registrant.

**Did any other procedural issues arise?**

Yes	No
90 (32%)	192 (68%)

Other procedural issues noted by the auditor included amendments to, or withdrawals of allegations; applications for hearings to be heard in private; submissions of ‘no case to answer’, joinder of separate allegations; and screening of vulnerable witnesses. For further discussion of emerging issues from this question, please refer to section 3.

**Was Legal Assessor advice disregarded?**

Yes	No
0 (0%)	282 (100%)

During the audit 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/consent orders)
192 (68%)	90 (32%)

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

The table below breaks down the number of cases where the three-stage test was not applied by the type of decision hearing. The results show that there

were no cases considered during the audit period that did not apply the three-stage test when it should have been applied.

Type of decision hearing	Number of cases (from 90)
Review hearings	67
Consent orders	17
Other	6

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:

- Four cases of restoration to the Register. Cases for restoration to the Register are heard when a former registrant who was previously struck off reapplies to the Register after five years have elapsed.
- One discontinuance order. Discontinuance orders are made on occasions when after the Investigating Committee has determined that there is a 'case to answer' in respect of an allegation, objective appraisal of the evidence gathered after the decision is made shows that there is little prospect of proving the allegation. There was one other discontinuance order made during the audit period where the three-stage test was applied.
- One finding of no case to answer. At the start of this hearing the HPC representative invited the panel to make a finding of no case to answer, as the HPC had no evidence against the registrant.

### Evidence by way of mitigation considered?

Yes	No
193 (68%)	89 (32%)

Evidence by way of mitigation was not considered in 89 (32%) of cases. Mitigation may have been submitted in some of the other cases, but was not necessarily mentioned by panels in their decisions. Cases where mitigating evidence was not considered included the 17 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)?

Yes	No
269 (95%)	13 (5%)

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?**

<b>Yes</b>	<b>No</b>
280 (99%)	2 (1%)

As for the previous audit question, the auditor interpreted the phrase to mean that the sentence length was appropriate for the subject. Most decisions during the audit period generally showed appropriate sentence lengths for the subject being discussed – in some decisions, while the sentences were not necessarily short, the concepts and reasoning required a more complex sentence structure which was generally appropriate in that context. The two decisions where the auditor felt the sentence length was disproportionate are discussed in section 3.

### **Is it written for the target audience?**

<b>Yes</b>	<b>No</b>
277 (98%)	5 (2%)

The auditor interpreted the phrase ‘target audience’ to mean members of the public and 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. The few decisions where the auditor felt the decision was not written appropriately for the target audience are discussed in section 3.

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

<b>Yes</b>	<b>No</b>
275 (97%)	7 (3%)

A small number of decisions (7) did not include the factual background of the case, all of which were either review hearings or voluntary consent order hearings where facts had been previously established. Compared with the results of the previous audits where between 8 and 12 per cent of decisions did not include the factual background of the case, significantly more review and consent order decisions now include a summary of the facts of the allegations.

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

<b>Yes</b>	<b>No</b>	<b>Not a review hearing</b>
67 (24%)	3 (1%)	212 (75%)

**Is it a stand alone decision?**

<b>Yes</b>	<b>No</b>
279 (99%)	3 (1%)

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 one consent order decision 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. The two other decisions that did not stand alone were a case where the decision did not state what the sanction was, and a review case where a variation was made to the original conditions of practice imposed but the length of time for the new order was not stated in the review decision.

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

<b>Yes</b>	<b>No</b>
281 (99.7%)	1 (0.3%)

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)?**

<b>Yes</b>	<b>No</b>
281 (99.7%)	1 (0.3%)

Almost 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)?**

<b>Yes</b>	<b>No</b>
280 (99%)	2 (1%)

Not all cases need to set out a finding of facts – for instance, the convention for consent orders is that the facts have been admitted in total by the registrant in question, and are not always included in the decision. However, most decisions now do set out the findings of facts, including consent order



decisions. In this audit, both of the decisions that did not set out the full finding of facts were consent order hearings.

### What standards were referred to?

147 (52%) decisions made reference to some form of standards, with the remaining 135 decisions (48%) not referring directly to the standards. The following table sets out which standards were referred to in those decisions which referenced them – some decisions (47) referred to more than one set of standards, so the total number of references is greater than the number of decisions that mentioned specific standards.

Standards referred to	Number of references
Standards of conduct, performance, and ethics	133
Standards of proficiency	53
Standards of another regulatory body	7

### 2.2.3 Order

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

Sanction	Number of orders made (from 282)
Striking off	52 (18.5%)
Suspension	63 (22.5%)
Conditions	33 (12%)
Caution	49 (17%)
Mediation	0 (0%)
Not well founded	53 (19%)
No further action	9 (3%)
Consent order	17 (6%)
Other	6 (2%)

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

- Four cases of restoration to the Register. Cases for restoration to the Register are heard when a former registrant who was previously struck off reapplies to the Register after five years have elapsed.
- Two discontinuance orders. Discontinuance orders are made on occasions when after the Investigating Committee has determined that there is a 'case to answer' in respect of an allegation, objective appraisal of the evidence gathered after the decision is made shows that there is little prospect of proving the allegation.

#### 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."*

<b>Length of suspension</b>	<b>Number of orders (total 63)</b>
3 months	2
4 months	1
6 months	7
9 months	2
12 months/1 year	51

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 three month suspension order made by a health panel to bring the total period that the registrant had been suspended to two years, so the next panel would have the full range of sanctions available to it. This was a case where the registrant was very unlikely to be able to recover from their health condition.
- Two suspension orders (four months and six months) to allow registrants to be able to go through the process of applying for a consent order for voluntary removal from the Register, or to pursue the option of engaging in training;
- A six month suspension made by a health panel to allow for new medical reports to be produced and for registrant to develop their ability to work outside their home before possibly returning to practise;
- A nine month suspension order made to allow the registrant to try to return to work;
- Seven shorter periods of suspension (between three-nine months) to give the registrants concerned time to engage with the fitness to practise process. Some of these periods of suspension were imposed prior to the option of striking off being considered at the next review.

## 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.”*

<b>Length of conditions order</b>	<b>Number of orders (total 33)</b>
4 months	1
6 months	1
8 months	1
12 months/1 year	15
18 months	4
2 years	5
16 months	1
3 years	4
Not stated in decision	1

Generally the conditions orders imposed seemed to be consistent with the guidance in the indicative sanctions policy. The longer conditions of practice orders were imposed for registrants with a greater need for support to reach full competence, with shorter sanctions imposed for registrants where panels were of the view that there were a few issues that could be readily addressed in a shorter time. However, there were a few decisions where the auditor felt that certain conditions were not appropriate. These decisions have been discussed in section 3.

## 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.”*

<b>Length of caution order</b>	<b>Number of orders (total 49)</b>
12 months/1 year	5
2 years	9
3 years	22
4 years	6
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 – this decision is discussed in section 3 in more detail.

### Does the order accord with sanction policy?

Yes	No/not clear	Not applicable
208 (73%)	10 (4%)	64 (23%)

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 case was discontinued or the panel decided that no further action was necessary. For further discussion of the cases that did not accord with sanction policy, please refer to section 3.

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

Yes	No	Not applicable
227 (81%)	0 (0%)	55 (19%)

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 for restoration to the register and 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.

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

Yes	No	Not applicable
145 (52%)	0 (%)	137 (48%)

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 such as 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. Restoration orders are also excluded from this question.

### Conditions orders

Conditions were imposed in 33 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
28 (85%)	5 (15%)

In most of the decisions made, the conditions were realistic and able to be complied with – however, in some cases, the conditions were only realistic if the registrant was able to fulfil certain other aspects – such as being able to

find a suitable position of employment that allowed them to fulfil the conditions set. These issues are discussed further in section 3.

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

Yes	No
33 (100%)	0 (0%)

**Are they imposed on anyone other than the registrant?**

Yes	No
1 (3%)	32 (97%)

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.

There was only one order where the auditor felt the conditions seemed to be imposed on another person, where there was a direct request for a mentor to provide a report to the HPC.

### **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 32 per cent of the cases considered. The following table sets out the number of instances of different types of procedural issues. In some cases, a number of different procedural issues were considered, so the

total number of issues raised does not tally with the number of hearings (90) where procedural issues were considered.

<b>Procedural issues</b>	<b>Number of instances</b>
Request for hearing to be held in private	32
Amendments/corrections/withdrawal of allegations	39
HPC application for discontinuance order	2
Application of no case to answer	6
Application to consider two separate allegations in the same hearing (joinder)	11
Application for adjournment of hearing by registrant	3
Other	7

The 'other' category includes:

- procedural issues related to the length of time it took to set a date for a final hearing - explained in previous decisions;
- a decision from a previous hearing which was appealed to the High Court. By consent of the parties, the High Court confirmed that the original sanction was quashed and that the matter was to be remitted to another panel for redetermination of its findings;
- consideration of whether some evidence was provided by an 'expert witness' or not;
- a case where the panel on the advice of the legal assessor took into account findings of a previous panel on other allegations;
- a request by a registrant's representative for disclosure of the private medical records of the person who made the allegations against the registrant;
- a hearing where the HPC asked for a witness to be considered as a vulnerable witness, and that they should be shielded by screens whilst giving evidence;
- Application for admission for further evidence by registrant midway through the hearing process.

Most procedural issues were relatively straightforward such as applications for hearings to be heard in private, minor amendments to allegations, or joinder of separate allegations.

### **3.2 Application of sanction policy**

Generally, the auditor was satisfied that the sanction policy had been applied consistently, with relevant policy applied in 95 per cent of cases where a sanction was imposed. There were ten cases where the auditor was concerned that certain aspects of relevant sanction policy had not been applied. However it is important to be aware that in some of these cases the sanction policy may have been applied appropriately but there was insufficient detail or reasoning shown in the decision for the auditor to determine whether

it was appropriate or not. The cases where the auditor had concerns are set out below.

- There were two cases in the audit – one of which applied a striking off order, and another which applied a suspension order where the auditor also had concerns that the panel had not adequately considered the degree of insight shown by the registrant or the registrant’s willingness to resolve matters.

Four of the cases where the auditor had concerns related to caution orders. 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 the following decisions, the auditor was concerned that the policy on caution orders was not applied consistently or appropriately:

- There were two cases heard during the audit where two different registrants had failed to tell the HPC of convictions or cautions they had received, with very similar reasons provided for why they had not informed the HPC. However, the final outcome of these hearings appeared to be inconsistent—one registrant received a caution order, whereas the other registrant was struck off the Register.
- There was one case where a registrant had previously been struck off the Register, and then appealed the decision in the High Court. The panel that then heard the case again decided to impose a caution order.
- There were three other cases where auditor considered that the lapses shown were not isolated or of a minor nature, or that the registrant had shown limited insight.

Three other decisions from the audit were concerning for other reasons:

- There was one case where insufficient detail was included in the decision for the auditor to judge whether the sanction policy was applied appropriately;

There was one decision where no sanction was applied where the auditor was uncertain whether relevant policy has been followed. This was a case where a panel had serious doubts about the honesty and veracity of the registrant’s evidence, but decided that the registrant’s fitness to practise was not impaired.

### **3.3 Realistic conditions of practise orders**

Generally the auditor was satisfied that the relevant sanction policy relating to conditions of practise orders was applied. However, in some cases, the

auditor felt that the conditions were only realistic if the registrant was able to fulfil certain other aspects – such as being able to find a suitable position of employment that allowed them to fulfil the conditions set.

The conditions of practise orders where the auditor felt the requirements were not realistic were:

- Two cases which related to the conditions of practise order of one registrant. The registrant in this case requested an early review of the original conditions of practise order later in the audit period because there were certain aspects of it— relating to employment requirements—that they were unable to meet.
- Two other cases where a large number of very specific conditions were imposed on registrants who were not currently in practice. The conditions were specific enough that the auditor felt that it would be difficult for either of the registrants concerned to be able to find employment that met the necessary requirements – both of role description, and the supervision required.
- One case where one of the conditions imposed required the registrant only to practice ‘when there is at least one other [registrant of the same profession] actually working in the same clinical area as that in which you are working.’ The auditor felt that this requirement was unclear in how it would be applied.

### **3.4 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 two cases where the auditor felt that the language was consistently sufficiently unclear that it did not meet the ‘clear and unambiguous’ test, there were seven other decisions where there was some occasional use of overtly legal terminology or inadequately explained acronyms. In 13 decisions in particular, the auditor felt that the language chosen was particularly jargon-heavy and habitually showed the use of terminology that was unnecessarily complex.

The use of legal terminology in decisions seems to be linked to the increasing quotation of relevant case law in final hearing decisions. While the use of case law is obviously helpful, it may also be good for those drafting the decisions should try to avoid legal jargon and phrasing that would apply to a judicial process, but which is not necessarily part of the HPC fitness to practise process.

Another area of note in the previous audit periods was the standard of proof reading and editing before decisions are released in their final version. The decisions sent for audit are the final decision made by the panel, but in the first audit 28 per cent, and the second audit 22 per cent of the decisions analysed contained identifiable spelling, grammar, and/or formatting mistakes. While the general standard of drafting has improved since the first audit



period, 68 decisions (24 per cent) still showed some minor errors, including incorrect dates or misspelling of registrants' names.

## **4. Emerging policy issues**

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

### **4.1 Realistic prospect test**

There were seven cases heard during the audit period that the auditor felt perhaps should not have reached the stage of a final hearing. In all these hearings it was quickly established that the facts of the case were unsubstantiated, and either the HPC could not provide evidence to support the allegations, or in one case the allegations were not supported by the person who had made them.

### **4.2 Drafting consistency**

Compared to the previous audit period, there were a number of noticeable differences in the standard practice of fitness to practise panels when drafting decisions. Some of the changes noted by the auditor included:

- Almost all decisions now include a summary of the findings of acts and sanction decisions made at the start of the document (with the exception of review hearings);
- The factual background in review cases is included in almost all decisions – including consent order decisions;
- In review hearings, inclusion of comments from previous panels in the new decision;
- Where allegations were amended or withdrawn during the hearing, these continue to be more clearly identified in the decision.

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

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

- Procedural issues that affect panel decisions are generally covered by the Practice Notes and staff support. The Fitness to Practise Department will continue to monitor cases that may result in an amendment to a Practice Note.
- Some of the practical issues highlighted in the report are being addressed through training for staff and/or Panel members. For instance, training for staff and an application process for hearings to be held in private is planned for implementation before December 2011. Further, legal assessors have been reminded that it is not always necessary to reference case law in decisions.
- The numbers of cases where applications for no case to answer, to be discontinued, adjourned or joined are will continue to be reviewed on a case by case basis. The implementation of the new case management

system in early 2012 will make data analysis easier. Emerging issues will continue to be brought to future Fitness to Practise Committee meetings.

- The Fitness to Practise Department are reviewing performance of external legal investigations with a view to improve allegations put before Panels, and minimise time spent amending them in hearings. The team are in the process of reviewing the current service level agreements with the external legal providers with a view to implement in November 2011
- Practical issues relating to the length of hearings, time to schedule, or risk assessment of parties attending will continue to be monitored by teams and existing checklists and operating guidance amended accordingly.
- For the small number of cases where there are concerns regarding appropriateness of sanction or clarity of decision-making, these are consistent with feedback from Council for Healthcare Regulatory Excellence (CHRE) via their monthly learning points process. The Fitness to Practise Department will continue to review cases highlighted and respond to CHRE, and use examples as case studies on regular refresher training. A programme of training exists throughout 2012 for new and existing panel members. It is worth noting that the number of CHRE learning points relating to poor decision-making and wording has decreased since the training in May and June 2011. The Fitness to Practise Department expect to see further decreases in 2012 as Panels become more familiar with the advice and guidance issued.
- Assessment of specific training and induction needs of new panel members currently being recruited in anticipation of regulation of social workers in England has started and there will be dedicated training for this group in early 2012, to prepare them for hearings starting in the autumn.

The fitness to practise adjudications team are introducing a checking process to ensure minor spelling or grammar errors are identified and eliminated before publishing decisions. Examples will be used to support induction and refresher training for hearings officers.

The fitness to practise team proposes to take the following work forward and the Committee is asked to agree with those recommendations:

- Continue to monitor changes that are required to the Practice Notes;
- Continue to ensure that appropriate training is provided to the team, to panel members and to legal assessors; and
- Continue to take steps that decisions are of a high quality.

- 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 off
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How long was the sanction imposed for?	
Does the order accord with sanction policy?	Yes/No/Comments
Does it state the operative date of the order?	Yes/No/Comments
Does it state the end date of the order?	Yes/No/Comments
If conditions imposed:	
- are they realistic (is the registrant able to comply)?	Yes/No/Comments
- are they verifiable (are dates on which information is due specific and clear)?	Yes/No/Comments
- are they imposed on anyone other than the registrant?	Yes/No/Comments

#### 4. Policy issues

Are there any emerging policy issues?

**Audited by:**

**Date:**