

Unconfirmed
THE HEALTH PROFESSIONS COUNCIL

Chief Executive and Registrar: Mr Marc Seale

Park House
 184 Kennington Park Road
 London SE11 4BU
 Telephone: +44 (0)20 7840 9711
 Fax: +44 (0)20 7840 9807
 e-mail: *sophie.butcher@hpc-uk.org*

MINUTES of the twelfth meeting of the Investigating Committee held at **11a.m. on Thursday 10 February 2005** at Park House, 184 Kennington Park Road, London, SE11 4BU.

Mr N Willis (Chairman)
 Mr M Barham
 Mr P Frowen
 Mr C Lea
 Miss M MacKellar
 Dr N Callaghan

IN ATTENDANCE:

Ms S Butcher, Secretary to Committees
 Miss K Johnson, Director, Fitness to Practise
 Mr M Seale, Chief Executive and Registrar

Item 1.04/58 INTRODUCTION AND WELCOME

- 1.1 The Chairman welcomed Dr N Callaghan, the Registered Medical Practitioner for the Investigating Committee to his first meeting.

Item 2.04/59 APOLOGIES FOR ABSENCE

- 2.1 Apologies for absence were received from the following Investigating Committee members; Ms C Farrell, Mr W Munro and Mrs J Pearce.

Item 3.04/60 APPROVAL OF AGENDA

- 3.1 The Investigating Committee approved the agenda.

Item 4.04/61 MINUTES

- 4.1 It was agreed that the minutes of the eleventh meeting of Investigating Committee be confirmed as a true record and signed by the Chairman.

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Item 5.04/62 MATTERS ARISING

- 5.1 Item 4.5 - Matters Arising- Award of Costs
- 5.1.1 The Investigating Committee noted that at its last meeting the Chairman had requested clarification as to whether a registrant could claim costs if an appeal against a decision was successful in a High Court. Similarly if the HPC had a decision upheld in the High Court could costs be claimed against the appellant? The Executive established that in theory costs could be claimed by either party and that insurance of costs had been acquired by the HPC three years ago and recently extended for a further three years.
- 5.2 Item 4.12 – Brochures about FTP Processes
- 5.2.1 The Investigating Committee noted that the fitness to practise brochures would be available as of April 2005 and presented as an item to note at its next meeting.
- 5.3 Item 4.14 – Allegations
- 5.3.1 The Investigating Committee further discussed the scenario whereby on occasion health professionals were reluctant to make an allegation against another health professional as they could face a counter allegation. The Director of Fitness to Practise reported that registrants were within their rights to make counter claims and that the HPC was obliged to act on such claims if and when received. HPC's primary function was for the protection of the public and fitness to practise proceedings were therefore followed through as expeditiously as possible.
- 5.4 Item 9.3 – Incorrect information on application forms – action required
- 5.4.1 The Investigating Committee noted that at its last meeting it was discussed that if an applicant had gained fraudulent entry to the HPC register there was provision under Article 22(6) of the Order 2001 for the Chief Executive to activate the following procedure:
- 'If an allegation is not made under paragraph (1) but it appears to the Council that there should be an investigation into the fitness to practise of a registrant or into his entry in the register it may refer the matter in accordance with paragraph (5) and this Order shall apply as if it were an allegation made under paragraph (1).'*
- 5.4.2 The Investigating Committee noted the further clarification provided that legal advice would first be sought by the Chief Executive so to ascertain that this was the most appropriate course of action.

Item 6.04/63 CHAIRMAN'S REPORT

- 6.1 The Investigating Committee received an oral report from the Chairman.
- 6.2 The Investigating Committee noted that the Chairman and Director of

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Fitness to Practise had recently met to discuss the fitness to practise processes, and its work in progress. The Chairman reported that he had found the meeting helpful in consolidating fitness to practise themes to date.

Item 7.04/64 DIRECTOR OF FITNESS TO PRACTISE REPORT

- 7.1 The Investigating Committee received the Director of Fitness to Practise Report.
- 7.2 The Investigating Committee noted that there had been an increase in the number of review hearings which would in due course have an impact upon the number of hearings heard by both the Investigating and Conduct and Competence Committee panels.
- 7.3 The Investigating Committee noted that at its last meeting further information was requested on the reason why there was a high incidence of registration appeals. The Director of Fitness to Practise reported that as per Article 37 of the HPO 2001, '*Appeals*' are '*..against the decisions of the Education and Training Committee*' and as such do not fall within the remit of the practise committees function. This information was only privy to Council.
- 7.4 The Investigating Committee noted that further Partner Training days had been set for April, June and July 2005. 218 hearings had already been scheduled for 2006 of which approximately 40 cases were to be heard away from the HPC in the registrant's home country as per Article 22(7)(a)(b)(c) of the HPO 2001.
- 7.5 The Director of Fitness to Practise reported that following the legal assessor review day a number of recommendations had been made so to further assist panels and panel chairmen in their decision making processes. It was agreed that legal advisors be given first sight of the panels final decision and the following documents devised; a standardised introduction for panel chairmen and decision making checklists. It was agreed that these documents were very useful in maintaining consistency across the board.
- 7.6 At the last meeting of the Investigating Committee it was reported that the AODP had transferred to the HPC 15 AODP disciplinary cases. Of those cases 5 were not ODP's. The Committee had requested further information on the 5 persons who were not actually ODP's and why the HPC was dealing with such cases when the individuals involved were not eligible for entry to the register.
- 7.7 The Fitness to Practise Director reported that when the AODP disciplinary cases were transferred to HPC on the 18th October 2004 such persons were not eligible for registration until they had had their cases reviewed. After the review process was completed a case would be allocated to the most appropriate committee – Conduct and

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Competence and or Health. The 5 cases that concerned individuals who were not ODP's were in fact Operating Department Assistants. Those 5 cases had been dealt with by the AODP at their initial stages before being transferred across to the HPC. The Investigating Committee noted that registration with the HPC was a necessary prerequisite before employment as an operating department practitioner within the NHS could be sought.

- 7.8 The Investigating Committee noted that the Director of Fitness to Practise now met with the Council for Healthcare Regulatory Excellence (CHRE) twice a month to discuss matters of mutual concern. The Director of Fitness to Practise reported that CHRE were in the process of producing their annual regulation scoping report which would be made available as of April 2005. The report was a comparative exercise detailing the main procedures as exercised by the 9 healthcare regulators that sit within CHRE's oversight. The Investigating Committee noted that last years report was available on CHRE's website if required.
- 7.9 The Investigating Committee noted that the Director of Fitness to Practise had also met with the following bodies:

Kingsley Napley Solicitors
 Association of Clinical Scientists
 NHS Counter Fraud Squad
 Metropolitan Police

The meetings had helped to establish good working relationships with external bodies. The Metropolitan Police for example had agreed to include an HPC notice on their intranet site.

- 7.10 The Investigating Committee noted that the IT department were in the process of developing a fitness to practise tracking system within lotus notes that had the provision to randomly select partners for hearings.

Item 8.04/65 SELF-REFERRALS

- 8.1 The Investigating Committee received a paper from the Director of Fitness to Practise for discussion/approval.
- 8.2 The Investigating Committee noted that at its last meeting clarification had been sought on a number of points regarding the paper on self-referrals. One of these concerned the fact that for some professions such as paramedics, a motoring offence could impair such registrant's abilities to effectively carry out their duties on a day to day basis. The Fitness to Practise Director reported that the HPC Standards of Proficiency for paramedics did not require paramedics to possess a valid driving licence and there were many paramedics who did not need to drive in order to perform their role, such as paramedic practitioners and those working in the Armed Forces or on oil rigs.

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This was a matter for employers and, if that was the case, HPC had no locus to compel a registrant to inform his or her employer about matters which were outside HPC's remit. The Investigating Committee recommended that a caveat was provided for drink driving offences where it stated that 'registrants must inform the Council if they are convicted of a criminal offence (other than a motoring offence). As such convictions would impair such a registrant's fitness to practise. The Director of Fitness to Practise agreed to make this amendment. It was also agreed that the standard letters would be amended in line with this change.

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- 8.3 The second point required that further advice be sought from the HPC's legal advisor to clarify categories of convictions that registrants should declare to HPC when those offences were in contradiction to the (SCPE). The Fitness to Practise Director reported that HPC's involvement in a registrant's criminal conviction or caution must be on the basis that it may impair the registrant's fitness to practise. Consequently, while there were some offences that would always be HPC's business – sexual assault, homicide, serious drugs offences – it would not be possible to provide a definitive list of those offences which always needed to be disclosed, as it would be dependent on the circumstances surrounding the offence. The Investigating Committee noted that the HPC was on the Home Office's automated list sent regarding convictions to date of registrants.
- 8.4 The Investigating Committee had discussed the possibility of putting in place a timescale in which relevant convictions were flagged for disclosure and specifying an expiry date when this was no longer necessary. The Fitness to Practise Director reported that it was not always possible to protect set a timescale after which offences needed to be disclosed. HPC's role was to protect the public and therefore it must consider relevant convictions whenever they come to light.
- 8.5 The Investigating Committee had requested clarification of the term 'double jeopardy' as used in the paper. The Director of Fitness to Practise reported that the common law principle known as 'double jeopardy' was that, if a person was cleared for an offence, the courts could not and would not permit that person to be tried again for the same offence. The principle extended to other forms of adjudication and, in relation to HPC, meant that it would be unlawful for a registrant who was told that there was no case to answer in relation to an allegation based on a particular set of facts or circumstances to then find that he or she was facing what amounted to the same allegation for a second time.
- 8.6 The Investigating Committee noted that the problem was most likely to occur at the Investigating Committee stage when a case was prematurely presented and, on the limited evidence available to it, the

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Panel was compelled to determine that there was no case to answer. The Investigating Committee noted that it was therefore important for procedures to be put into place which ensured that cases were fully prepared before a Panel and asked to determine whether there was a case to answer. The FTP team were working currently on these procedures and processes and a document explaining case management would be presented to the Investigating Committee shortly.

- 8.7 The Investigating Committee approved the practice note on Self-Referrals subject to the amendment (as detailed at 8.2) and recommended that the Education and Training Committee did the same.

Item 9.04/66 REGISTERED MEDICAL PRACTITIONERS

- 9.1 The Investigating Committee received a paper from the Secretary to the Committee for note.
- 9.2 The Investigating Committee noted that as per Article 19(1) of the Health Professions Order 2001 (the Order) *'the members of each Practice Committee shall include registered professionals and other members, of whom at least one shall be a registered medical practitioner.'* The Health Professions Council had now formally appointed three registered medical practitioners to the following practice committees:

Health Committee
Dr Christine Kenny

Investigating Committee
Dr Nigel Callaghan

Conduct and Competence Committee
Dr Gopal Sharma

- 9.3 The Investigating Committee noted that their appointment took effect from Tuesday 1st February 2005, until Friday 8th July 2005, when the term of current Council and Committees comes to an end. A new Council will take office on Monday 11th July and they will be reappointed for two years of that date.

Item 10.04/67 COMMITTEE MEMBERSHIP

- 10.1 The Investigating Committee received a paper from the Secretary to the Committee for note.
- 10.2 The Investigating Committee noted that as per Article 19 (2) of the Health Professions Order 2001 (the Order) that 'the number of registered professionals on a Practice Committee may, but need not

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exceed the number of other members on the Committee and shall not in any case exceed that number by more than one.'

10.3 The Investigating Committee noted that as currently constituted the Investigating and Conduct and Competence Committees did not meet the membership requirements set out in the Order as the number of registered professionals exceeded the number of other members by three. Therefore two of the registered professionals were asked to resign voluntarily from the Committee. The Council agreed at their meeting on the 7th December 2004 that the Executive work with the President to agree a revised membership for both Committees which conformed to the requirement of the Order, taking into account as far as possible the opinions of the Committee Chairmen and current members.

10.4 The following committee members voluntarily put their names forward to step down from the Investigating Committee which was ratified by Council on Tuesday 18th January 2005.

Mrs Gill Pearson
Mr David Whitmore

10.5 The Chairman thanked Mrs G Pearson and Mr D Whitmore on behalf of the Investigating Committee for all of their time and hard work given.

10.6 The Investigating Committee noted that the ratio of registrant to lay members as currently composed was still incorrect. Therefore two more lay members had been sought to make the membership commensurate with the Order. Jeff Lucas and Shaheen Chaudhry had been approached to fulfil these roles which they have agreed to undertake. Their membership to the Investigating Committee was currently being ratified by Council.

Item 11.04/68 DECISION MAKING CHECK LISTS

11.1 The Investigating Committee received a paper from the Director of Fitness to Practise for information.

11.2 The Investigating Committee noted the decision making check lists that had been devised as very useful documents for assisting both panel members and panel chairmen in the deliberation of fitness to practise proceedings. The Director of Fitness to Practise reported that similar checklists had also been devised for the Registration Appeals process and could be provided if required. The Investigating Committee noted that if they wanted to comment or recommend changes to these documents so send an e-mail to the Director of Fitness to Practise so that such amendments could be incorporated at the earliest opportunity.

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