

Fitness to Practise Committee

Public minutes of the fourth meeting of the Fitness to Practise Committee held as follows:

Date: Thursday 21 October 2010

Time: 10:30 am

Venue: The Council Chamber, Health Professions Council, Park House, 184 Kennington Park Road, London SE11 4BU

Members: Mary Clark-Glass
Malcolm Cross
John Donaghy
Julia Drown
Morag MacKellar
Penny Renwick (items 1-9)
Keith Ross (Chair)
Deep Sagar
Neil Willis

In attendance:

Alison Abodarham, Head of Adjudication
Jonathan Dillon, Lead Hearings Officer
Alison Dittmer, Policy Officer
Anna van der Gaag, Chair of Council
Michael Guthrie, Director of Policy and Standards
Kelly Johnson, Director of Fitness to Practise
Zoe Maguire, Investigations Manager
Steve Rayner, Secretary to the Committee
Eve Seall, Head of Case Management

Part 1 – Public Agenda

Item 1 Chair's welcome

- 1.1 The Chair welcomed members to the Committee.

Item 2 Apologies for absence

- 2.1 Apologies were received from Annie Turner.

Item 3 Approval of agenda

- 3.1 The Committee heard a request from a member that it should discuss the practice notes 'Cross examination in Cases of a Sexual Nature' and 'Equal Treatment'. The Committee agreed that it would discuss the practice notes under item 24 (Any other business).
- 3.2 The Committee agreed the remainder of the agenda.

Item 4 Declaration of members' interests

- 4.1 The Chair declared an interest in item 21 (CHRE progress report). The Chair's wife was a member of the Commission for Health Regulatory Excellence. The Committee did not consider that this precluded the Chair from discussions.

Item 5 Minutes of the meeting of 3 June 2010

- 5.1 The minutes were accepted as a true record and signed by the Chair.

Item 6 Matters arising

- 6.1 The Committee received a paper to note from the Executive summarising actions taken against matters from previous meetings.
- 6.2 The Committee noted that the actions.

Item 7 Chair's report

- 7.1 The Chair had nothing to report

Item 8 Director report

- 8.1 The Committee received a paper from the Executive providing a summary of the work of the Fitness to Practise Department (the Department) from April 2010 to September 2010. The report also included monitoring information on key statistical information, as well as the management reporting information on the fitness to practise process.
- 8.2 In addition to the report, the Director provided the committee with an update on the parts of the regulation of social workers project that related to the Department. The Council had requested that the executive provide an update on the project to each HPC committee meeting.

Regulation of social workers project

- 8.3 The Director had met with the General Social Care Council (GSCC) to discuss case numbers, and along with the IT team had met with the GSCC to discuss data issues.

FTP process

- 8.4 The Committee noted that there had been a higher than usual number of allegations received regarding biomedical scientists in the reporting period, and requested further information on the reasons why.

ACTION: Director of Fitness to Practise to provide analysis on the number of allegations against biomedical scientists to the next meeting of the committee as part of the Director's report.

- 8.5 The Committee noted that there had been a decline of 13% in the number of allegations. The Executive were reviewing this in line with the six month budget reforecast.
- 8.6 The Committee noted that the great deal of work that went towards the accessibility of the FTP process and that this should be reflected accordingly in the work plan was not reflected in the work-scheme.

ACTION: Director of Fitness to Practise to update the work plan accordingly.

Item 9 Alternate mechanisms for resolving disputes -

- 9.1 The Committee received a paper from the Executive for discussion regarding a literature review of alternate dispute resolution. The review had been commissioned as part of the FTP workplan (agreed by the committee on 25 February 2010) as a result of Council discussions on the potential role alternate dispute mechanisms might have in the regulatory process.
- 9.2 The work was also linked, and would inform the HPC's work on expectations of complainants, length of time to final hearing and the role of

the regulator, and would also provide context for professions joining the HPC register in the future which may have existing alternate mechanisms for resolving disputes.

- 9.3 The Committee considered a literature review undertaken by Charlie Irvine, visiting lecturer at the University of Strathclyde. The accompanying paper from the Executive did not provide any additional analysis on the literature or the implications for the HPC. The Committee were invited to discuss the review. The Committee's discussions would inform the development of a further paper from the Executive on the topic of alternative mechanisms to resolve disputes at its meeting in February 2011.
- 9.4 The Committee also received a presentation on the review from Mr Irvine, a copy of which is attached as an appendix to these minutes.
- 9.5 The Committee discussed the paper, and the following points were raised:
 - 9.5.1 There was a potential for decreased costs as a result of a mediation system, as mediation could improve the likelihood of complaints dealt with at a local level.
 - 9.5.2 Employers may be best placed to undertake mediation. Those without direct employers could be encouraged to use existing mediation services. Could more work be done to signpost complainants to existing mediation services?
 - 9.5.3 What would be the impact on the length of time taken to conclude fitness to practise cases?
 - 9.5.4 Was mediation appropriate in cases where a registrant's fitness to practise was impaired?
 - 9.5.5 Whether mediation would assist in resolving complaints which centre on a breakdown in communication between the registrant and patient/client or service user.
 - 9.5.6 With the increasing number of registrant professions in the realm of relationships and human behaviour, it was the HPC's responsibility to explore other ways of doing things, and to consider whether these changes will be relevant for HPC in the future.
 - 9.5.7 The expectations of some complainants in recent research commissioned by the HPC should be addressed, but this should be balanced against HPC's core duty to protect the public. Did this fit within HPC's legislative responsibilities? Would this require a change in legislation?
 - 9.5.8 It was discussed whether a mediation process would be a legitimate way of contributing to ensuring that HPC met its main objective of safeguarding the health and well-being of persons using or needing the

services of registrants. It was recognised that a mediation approach would represent a shift in how HPC had conceived its public protection role to date.

9.5.9 Without knowing how many HPC cases this decision would affect it was difficult to assess the risks. How many HPC FTP cases would this impact?

9.5.10 It would be useful to see evidence as to how likely people involved in mediation were to be involved in fitness to practise issues in the future. Was there evidence of the long-term impact of mediation?

9.5.11 FTP costs were currently a third of HPC's financial outlay. Changes to the FTP process could have considerable implications for the HPC's budget. It would be useful to have an estimate of how much an additional mechanism would cost HPC.

9.6 The Committee agreed that a further exploration of the issue was appropriate in order to inform HPC's approach in this area.

Action: **Director of Policy and Standards and Director of Fitness to Practise** to submit a paper to the February 2011 meeting of the Committee providing analysis of the literature review and taking into account the views of the Committee in point 9.5.

Item 10 Response to OHPA consultation on the future of fitness to practise adjudication

10.1 The Committee received a paper from the Executive for discussion and approval and regarding a Department of Health consultation on the delivery of fitness to practise adjudication for health professionals.

10.2 The consultation was being run on whether the functions of the Office of the Health Professions Adjudicator could be delivered more proportionately by other means. The paper provided a review of the HPC's position in relation to the consultation document.

10.3 The Committee were invited to discuss the review, and consider whether further work on the highlighted issues should be undertaken as part of the work-plan for 2011-12.

10.4 The Committee agreed that HPC should continue to monitor the Government's position on adjudication, but that no further work should be undertaken at this time.

Item 11 Practice note: Discontinuance

11.1 The Committee received a paper from the Executive for discussion and approval regarding a practice note on the issue of discontinuance.

11.2 The guidance had been developed following a recent case considered by a panel of the Conduct and Competence committee, and was designed to provide further guidance for Panels in the light of a Court of Appeal case (Ruscillo v CHRE).

11.3 The Committee were invited to discuss the practice note, and recommend it for approval to the Council.

11.4 The Committee noted that it would be useful in the future to see the trends of the number of cases which were subject to 'not well founded' determinations.

11.5 The Committee recommended that the Council approve the practice note.

ACTION: Director of Fitness to Practise to submit the practice note to the next meeting of the Council.

Item 12 Practice note: Collective mark

12.1 The Committee received a paper from the Executive for discussion and approval regarding a practice note to provide guidance to Panels on the misuse of the HPC collective mark (or logo).

12.2 The practice note had been developed as a result of work by the Communications Department

12.3 The Committee were invited to discuss the practice note, and recommend it for approval by the Council

12.4 The Committee recommended that the Council approve the practice note.

ACTION: Director of Fitness to Practise to submit the practice note to the next meeting of the Council.

Item 13 Practice note: Assessors and expert witnesses

13.1 The Committee received a paper from the Executive for discussion and approval regarding a practice note to provide guidance the use of assessors and expert witnesses

13.2 The practice note had been amended following a change to the Health Professions Council (Practice Committees and Miscellaneous Amendments) Rules, in April 2009, which removed the requirement to have a medical practitioner on panels where health was relevant to the case.

13.3 The Committee were invited to discuss the practice note, and recommend it for approval by the Council

13.4 The Committee noted that the changes provided further clarity and operational functionality for the fitness to practise process.

13.5 The Committee recommended that the Council approve the practice note.

ACTION: Director of Fitness to Practise to submit the practice note to the next meeting of the Council.

Item 14 Mechanisms for dealing with alcohol or drug related criminal offences

14.1 The Committee received a paper from the Executive regarding the current HPC process for dealing with alcohol and drug related offences, outlining the approach taken by other healthcare regulators, and providing recommendations for HPC's approach.

14.2 The paper was part of a wider review undertaken by the Council in March 2010, which had been undertaken in response to the publication of the CHRE's audit of health professional regulatory bodies' fitness to practise decisions published on 1 March 2010.

14.3 The paper dealt with the CHRE recommendation to adopt as far as appropriate the practise of routine medical examinations of registrants who are convicted of drink driving or drug offences.

14.4 The Committee were invited to discuss the report, and consider whether the Council's current procedure for dealing with cases where registrants had been convicted of drink driving or drug offences was proportionate or whether further work should be done to amend HPC's processes.

14.5 The Committee noted that the number of cases this impacted for HPC was likely to be very low, and so it was hard to measure the risk in terms of public protection.

14.6 The Committee agreed that changes to the system should not be made at the present moment, but that it would like more information regarding the number of fitness to practise cases this would affect in order to measure the risk to public protection.

ACTION: Director of Fitness to Practise to provide data on the number of fitness to practise cases in which registrants had been convicted of a drug or alcohol offence to a future meeting of the Committee.

Item 15 Audit of fitness to practise decisions

15.1 The Committee received a paper from the Executive for discussion and approval regarding an audit of fitness to practise decisions made between April and August of 2010.

- 15.2 The review had been a recommendation of the Council following the CHRE's audit of the conduct function of the General Social Care Council, and provided a summary of the results, emerging themes and policy issues, as well as the FTP Department's response to the learning points from the audit.
- 15.3 The Committee were invited to discuss the results of the audit and to agree to recommendations for further work found at item 5 of the paper.
- 15.4 The Committee noted that the review was a quality improvement mechanism for HPC, and was intended to become an ongoing audit process.
- 15.5 The Committee agreed to the recommendations of the Executive and approved the actions as stated in the paper.
- 15.6 The Committee also requested that the learning points of this exercise should be promoted to registrants as evidence of the actions HPC takes to monitor its own processes and as an indication of HPC's culture of internal review.

ACTION: The Executive to consider how to promote the review.

Item 16 Investigating Committee decision review

- 16.1 The Committee received a paper from the Executive for discussion and approval regarding a review of Investigating Committee decisions between April and August of 2010.
- 16.2 The review had been commissioned by the Committee at its meeting on 25 February 2010, as part of its general approach to reviewing FTP decision making processes.
- 16.3 The Committee were invited to discuss the review, and consider the recommendations for further work arising from the audit found at item 6 of the paper.
- 16.4 The Committee agreed to the recommendations of the Executive and approved the actions as stated in the paper.
- 16.5 The Committee also requested that the learning points of this exercise should be promoted to registrants as evidence of the actions HPC takes to monitor its own processes and as an indication of HPC's culture of internal review.

ACTION: The Executive to consider how to promote the review.

Item 17 Not well founded determination review

- 17.1 The Committee received a paper from the Executive regarding a review of cases where Panels of the Conduct and Competence Committee or Health Committee had determined that an allegation that a registrant's fitness to practise was impaired was not well founded.
- 17.2 The review was conducted as part of the FTP department workplan, approved by the Committee on 25 February 2010, and followed a paper on 'not well founded' determinations to the Committee on that date.
- 17.3 The Committee were invited to discuss the results of the audit and to agree that the Executive should continue to brief future meetings of the Committee.
- 17.4 The Committee approved the review, and agreed to the recommendation that "not well founded" determinations should be kept under review and that reports should be submitted to future meetings.

Item 18 Adjourned/part heard/cancelled final reviews

- 18.1 The Committee received a paper for discussion and approval from the Executive regarding a review of the hearings between April 2009 and March 2010 that did not conclude as expected at final hearing.
- 18.2 The review had been conducted as part of the FTP Departmental workplan for 2009-10.
- 18.3 The Committee were invited to discuss the report, and consider the recommendations for continuing work as found at item 8.1 of the paper.
- 18.4 The Committee agreed that HPC's approach was appropriate, and approved the recommendations of the Executive as stated in the paper.

To note section of agenda

Item 19 Investigating Committee update

- 19.1 The Committee received a paper to note from the Executive providing an update on the Investigating Committee process.
- 19.2 The Committee noted the update.

Item 20 FTP Department work plan 2009-10

- 20.1 The Committee received a paper to note from the Executive providing an update to the FTP Departmental workplan for 2009-10.
- 20.2 The Committee requested that the work done to improve the length of time for cases to conclude should be reflected in the workplan as it included a

significant commitment from the Executive that should be recorded and acknowledged.

20.3 The Committee noted the work plan.

ACTION: Director of Fitness to Practise to record length of time as part of the work-plan.

Item 21 CHRE progress report

21.1 The Committee received a paper to note from the Executive providing a progress report against HPC work resulting from the CHRE audit of FTP processes of March 2010.

21.2 The Committee noted the progress report.

Item 22 Ambulance service meetings

22.1 The Committee received a paper to note from the Executive setting out key feedback from the eight ambulance trusts the FTP Department had met since June 2010.

22.2 The Committee noted the report.

Item 23 Case Management system update

23.1 The Committee received a paper to note from the Executive providing an update on the FTP case management system project.

23.2 The Committee noted the report.

Item 24 Any other business

Cross examination in cases of a sexual nature

24.1 The Committee received a verbal request by a member regarding HPC's policy in relation to cross examination of witnesses in cases of a sexual nature.

24.2 The Committee discussed that the procedures in respect of the cross examination of witnesses had been tightened in other jurisdictions

24.3 HPC's procedure in fitness to practise cases was provided in the Health Professions Council (Practice Committees and Registration) Rules 2003.

24.4 The HPC's procedure in relation to cross examination by the registrant in cases of a sexual nature was set out in rules. A Practice note providing guidance for Panels on cross examination by the registrant in cases of a

sexual nature had been agreed by the Practice Committees on 17 September 2008.

24.5 The Committee noted that the HPC's rules permitted the registrant to cross-examine witnesses in cases of a sexual nature, as long as the witness had provided the consent to do so.

24.6 The Committee noted that there was currently no provision within the Rules regarding cross examination on grounds of previous sexual history.

24.7 The Committee noted that any change to procedure would require a change to the legislation.

24.8 The Committee made the following request:

ACTION: Director for Fitness to Practise to review HPC's policy in relation to cross examination by the registrant in cases of a sexual nature and cross examination on grounds of previous sexual history and produce a paper to the next meeting setting out:

- the case for changing the rules and the case for not doing so;
- the legal context for the HPC's current approach; and
- the process and implications of changes to the rules.

Private part of agenda

Item 25 Judicial review update

25.1 The Committee received a verbal update from the Director of Fitness to Practise regarding an appeal to the Administrative Court.

25.2 The Committee noted the update.

SUSPENSION OF THE STANDING ORDERS OF THE COMMITTEE

At 13.30, with the meeting having been convened for three hours in total, the Committee agreed to suspend Standing Order No. 13 in order that the rest of the business could be transacted that day.

Item 26 Vetting and Barring update

26.1 The Committee received a paper from the Executive detailing the work done by HPC in relation to the implementation of the Government scheme to vet persons working with children and/or vulnerable adults.

26.2 The Committee were invited to discuss the paper, and consider the enclosed recommendations for continuing work.

26.3 The Committee agreed to the recommendations of the Executive and approved the actions as stated in the paper.

26.4 In addition to the actions stated the Committee requested that:

ACTION: The Committee to revisit the approach to historic cases once the current review has been concluded.

Chair:

Date:



Alternative Mechanisms for Resolving Disputes

Charlie Irvine
Rachel Robertson
Dr Bryan Clark

The Law School, University of Strathclyde



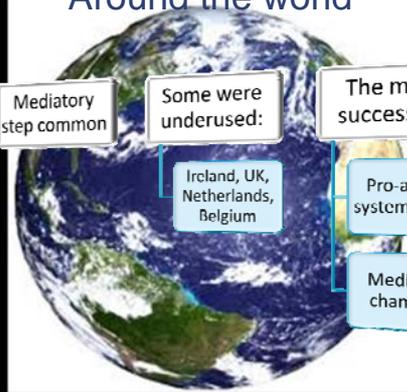
Findings

- Most 'ADR' is mediation
- Some schemes remain unused
- Where they are used they tend to be effective and appreciated
- Clear, positive steps needed to make it effective

Policy issues for the HPC

-  'Professional' v 'consumer' approaches
-  The public interest
-  Face-to-face encounters
-  Apologies

Around the world



- Mediatory step common
- Some were underused: Ireland, UK, Netherlands, Belgium
- The most successful: Pro-active, systemic view; Mediation champion

Wider systemic approach



- Move away from 'defend and deny'
- Apologise where appropriate
- Always offer an explanation
- Robustly defend 'medically reasonable' decisions

2002-2007



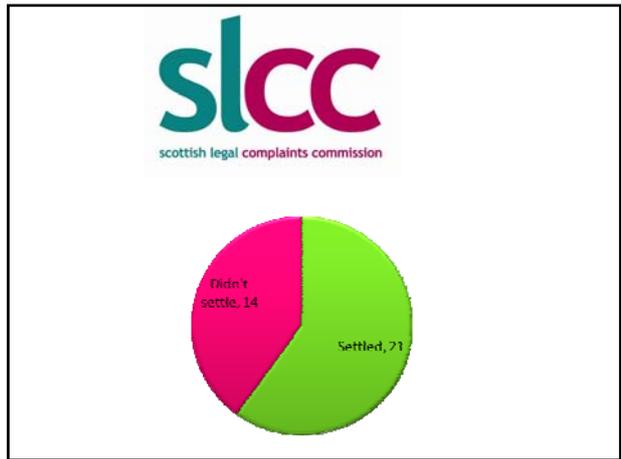
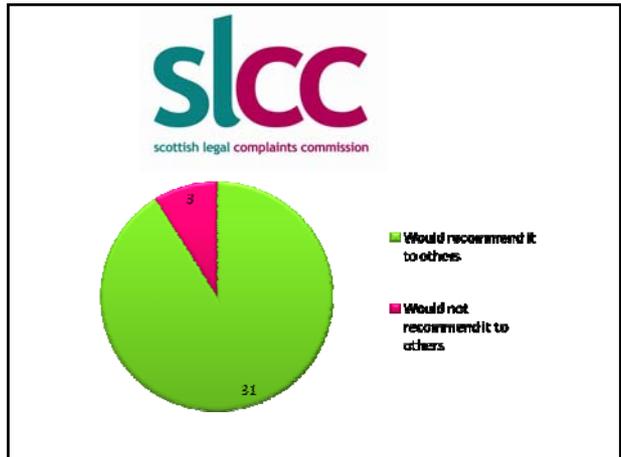
Number of open claims:	Average processing time	Litigation costs
• From 220 to 83	• From 20 months to 8	• Halved

Proactive mediation champion



scottish legal complaints commission

Mediation Manager	Gateway Team	Client Relations Partners
<ul style="list-style-type: none"> • Works to demonstrate even-handedness 	<ul style="list-style-type: none"> • Sift more serious matters 	<ul style="list-style-type: none"> • Strengthen & improve internal (local) complaints procedures




health professions council

Recommendations

- Appoint a 'Mediation Manager' to act as champion
- Publicise the scheme as widely as possible
- Triage system – to determine if case suitable for mediation
- Agreements to be ratified by the HPC (public interest)
- Representative of the profession to be present



health professions council

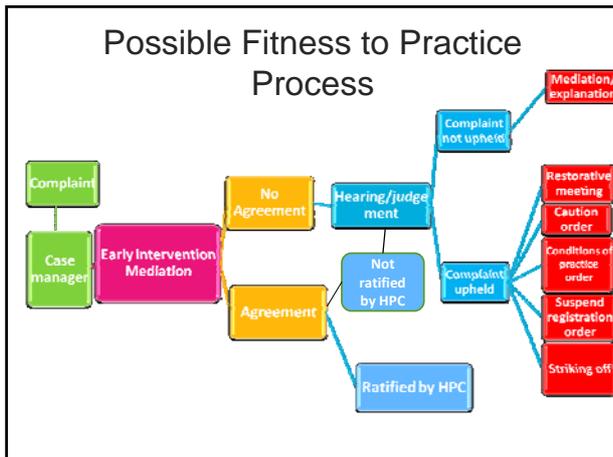
Recommendations

Mediators:

- **Highly experienced practitioners**

Mediation:

- **Broad approach, allowing for:**
- **explanation, apology, remedy and future learning**
- **Confidential**




Alternative Mechanisms for Resolving Disputes

Charlie Irvine
 Rachel Robertson
 Dr Bryan Clark

The Law School, University of Strathclyde



Tamara Relis

*‘For **lawyers** on the whole, mediation was a vehicle for monetary settlement or case abandonment, where strategy, negotiation and money talk played out’*

*‘Yet, far from a forum of tactical strategies, for **disputants** mediation was a place to treat human needs and preserve human dignity’*

What do parties want?

‘93% of plaintiffs and 89% of physicians discussed the importance of expressing themselves and “being heard”’