

**CONFIRMED**

**The Health Professions Council**

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MINUTES of the fourth meeting of the Joint Fitness to Practise Forum held on **Friday 24 April 2009** at Park House, 184 Kennington Park Road, London, SE11 4BU.

**Present**

Mr K Ross (Chair)

Mrs M Clark-Glass

Ms H Davis

Mr J Donaghy

Miss M MacKellar

Ms C Farrell

Mrs D Haggerty

Mrs B Stuart

Professor D Waller

Mr M Woolcock

Ms S Drayton

Mr O Altay

Mrs P Blackburn

Dr S Khan

Mr N Willis

**In attendance:**

Mrs A Abodarham, Hearings Manager

Ms K Johnson, Director of Fitness to Practise

Mr S Rayner, Secretary to Committees

Ms E Seall, Head of Case Management

**Item 1.09/01 Chair's welcome and introduction**

- 1.1 The Chair welcomed members to the meeting. This would be the final meeting of the FtP Forum.
- 1.2 The Department of Health had submitted the statutory instrument to Parliament which would make changes to the Health Professions Order (the Order). The Order made a number of amendments to the way the HPC is governed, including placing a requirement for a new, fully appointed Council.
- 1.3 One of the key changes in the Order was the revision of the purpose of the three statutory Fitness to Practice (FtP) Committees (Investigating, Conduct and Competence and Health), limiting their role to the conduct of FTP hearings.
- 1.4 At its meeting on Thursday 26 March 2009 the Council agreed to establish a new non-statutory committee to oversee the work of the

Fitness to Practise function. These changes will apply when the Order comes into force on Wednesday 1 July 2009.

#### **Item 2.09/02 Apologies for absence**

- 2.1 Apologies were received from Dr N Callaghan, Mr R Clegg, Professor C Lloyd, Mr W Munro, Mrs J Pearce, Mr D Proctor, Miss P Sabine and Professor A Turner.

#### **Item 3.09/03 Approval of agenda**

- 3.1 The Forum approved the agenda.

#### **Item 4.09/04 Declaration of members interests**

- 4.1 The members declared no personal interest in the agenda items.

#### **Item 5.09/05 Minutes of the Forum of 17 September 2009**

- 5.1 The Forum approved the minutes subject to the following changes:

Item 6.8 Removal of: "the outdated IT system?"

- 5.2 The Chair signed the minutes as a fair and accurate record.

#### **Item 6.09/06 Annual review of action points**

- 6.1 The Forum received a paper to note from the Executive outlining progress against the action points agreed during the meetings of the FtP forum between April 2008 and April 2009.

- 6.2 The Forum noted the progress against the action points.

#### **Item 7.09/07 Chairs report**

- 7.1 The Chair had nothing to report.

#### **Item 8.09/08 Director of Fitness to Practise report**

- 8.1 The Forum received a paper to note from the Executive outlining the work of the FtP Department over the previous three months. The Director had not included within the paper the usual data from hearings, as this was included as part of the annual report.

- 8.2 In addition to highlighting data in the report the Director informed the Forum that seven new panel Chairs had been appointed.

- 8.3 The Forum noted the report.

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## **Item 9.09/09 Fitness to Practise Annual Report 2009**

- 9.1 The Forum received a paper for discussion and recommendation from the Executive inviting it to consider the draft Fitness to Practise Annual Report 2009. The Forum was invited to make a recommendation regarding the draft report to the Health, Investigating and Conduct and Competence Committees.
- 9.2 The Executive had received a report from Reading University on statistical significance and on the display of data shortly before the Forum. This feedback would be fed into the final version, which would be submitted to Council in July.
- 9.3 The Forum agreed to submit minor editing suggestions to the Director of Fitness to Practise by email.
- 9.4 The Forum recommended a separate section highlighting the costs of the HPC fitness to practise process.
- 9.5 The Forum noted that it would be helpful to have further analysis on the reasons for not well founded decision and whether there was any link to a registrant being represented at a hearing.
- 9.6 The Forum recommended that the Health, Investigating and Conduct and Competence Committees recommend that the Council approve the FtP annual report 2009 (subject to editorial changes and the addition of the above minuted comments).

## **Item 10.09/10 Feedback from hearings**

- 10.1 The Forum received a paper for information from the Executive drawing together feedback from Panels and Legal Assessors in hearings during 2008-2009.
- 10.2 The Forum noted that there was a 50% return rate for feedback forms. The Forum also noted that evidence presented on difficulties experienced because of case management, facilities and case procedures showed the importance of receiving feedback in developing mechanisms to improve processes.

## **Item 11.09/10 New practice notes**

- 11.1 The Forum received a paper for discussion and recommendation from the Executive introducing a number of new practice notes. The practice notes had been produced as part of the departmental work plan for the guidance of Panels and to assist those appearing before them.

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11.2 The Forum was invited to make recommendations to the Health, Investigating and Conduct and Competence Committees in relation to each individual practice note.

### 11.3 Concurrent court proceedings

11.3.1 This practice note set out procedures to be adopted when a registrant is subject to concurrent proceedings in other courts.

11.3.2 The Forum recommended that the Investigating Committee approve the Practice Note.

### 11.4 Disclosure

11.4.1 This practice note provided on the disclosure of material evidence.

11.4.2 The Forum noted that a future committee would consider a paper on the disclosure of documents to complainants

11.4.3 The Forum recommended that the Investigating, Health and Conduct and Competence Committees approve the Practice Note.

### 11.5 Finding that fitness to practise is impaired

11.5.1 This practice note provided guidance for panels on finding a registrants' fitness to practise impaired

11.5.2 The forum noted that a flow chart may be useful in any guidance to the practice note provided. The forum also noted that the practice note would be updated as case law evolved.

11.5.3 The Forum recommended that the Health and Conduct and Competence Committees approve the Practice Note.

### 11.6 Conducting hearings in private

11.6.1 This practice note provided guidance on the circumstances under which hearings may be held in private.

11.6.2 The Forum recommended that the Investigating, Health and Conduct and Competence Committees approve the Practice Note.

### 11.7 Joinder

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11.7.1 This practice note provided guidance on the procedure to be adopted when determining whether two or more allegations should be heard together and in determining whether allegations against two or more registrants should be heard together.

11.7.2 The Forum noted that circumstances in which cases should be heard together were happening more frequently.

11.7.3 The Forum recommended that that the Investigating, Conduct and Competence and Health Committees approve the practice note.

#### 11.8 Postponement and adjournment of proceedings

11.8.1 This practice note provided guidance on the circumstances under which hearings may be postponed or adjourned.

11.8.2 The Forum was also asked to recommend that discretionary authority to postpone the hearing of any allegation by the Committee be delegated to the Hearings Manager (or a person nominated by the Hearings Manager) provided that any application for such a postponement is made by one of the parties not less than 14 days before the date on which the hearing of the allegation is due to first commence.

11.8.3 The Forum recommended that the Health, Investigating and Conduct and Competence Committees;

a) approve the practice note; and

b) agree to delegate discretionary authority to the Hearings Manager under as detailed above.

#### 11.9 Proceedings in the absence of the registrant

11.9.1 This practice note provided guidance on whether to proceed with a hearing in the absence of the registrant.

11.9.2 The Forum recommended that the Investigating, Health and Conduct and Competence Committees approve the Practice Note.

#### 11.10 Unrepresented parties

11.10.1 This practice note provided guidance on the steps Panels should adopt when a registrant is unrepresented at a hearing.

11.10.2 The Forum recommended that the Investigating, Health and Conduct and Competence Committees approve the practice

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note subject to the addition of wording to the effect that the Chair may invite the legal assessor to explain the process to the registrant.

### **Item 12.09/12 Practice Notes: updates to terminology**

12.1 The Forum received a paper for discussion and recommendation from the Executive introducing minor changes to a number of practice notes. As part of the FtP workplan the Executive had reviewed the following practice notes and proposed changes to ensure that they reflect current regulatory best practice, including making the gender neutral:

- Case to answer practice note
- Disposal of cases by consent
- Cross examination in cases of a sexual nature
- Equal treatment
- Preliminary hearings
- Use of Welsh in FtP hearings

12.2 The Forum recommended that the Investigating, Health and Conduct and Competence Committees approve the above practice notes.

#### **12.3 Interim orders**

12.3.1 The Forum recommended that the Investigating, Health and Conduct and Competence Committees approve the practice note subject to;

- a) clarification in the note of appropriate time periods for interim orders; and
- b) the addition of wording to the effect that the Chair may invite the legal assessor to explain the process to the registrant.

### **Item 13.09/13 Practice notes: fit for purpose**

13.1 The Forum received a paper for discussion and approval from the Executive introducing changes to a number of practice notes. As part of the FtP workplan the Executive had reviewed the following practice notes and proposed changes to ensure that they reflect current terminology.

#### **13.2 Assessors and expert witnesses**

13.2.1 The practice note had been amended in line with best practice to incorporate a requirement statement of truth, which was set out as an Annex to the practice note.

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13.2.2 The Forum recommended that the Health and Conduct and competence Committees approve the practice note subject to clarification in the note on the stages at which a medical assessor may be appointed.

13.3 Requiring the production of information and documents and summoning witnesses

13.3.1 The practice note had been amended to provide further guidance on the production of information.

13.3.2 The Forum recommended that the Investigating, Health and Conduct and Competence Committees approve the practice note.

13.4 Mediation

13.4.1 The practice note had been amended to include guidance on suitable cases under which mediation may be appropriate.

13.4.2 The Forum noted that a future piece of work should be undertaken on the reasons for mediation not being used.

13.4.3 The Forum recommended that the Investigating, Health and Conduct and Competence Committees approve the practice note.

13.5 Restoration to the register

13.4.1 The practice note had been amended to include guidance on cases in which Panels may grant a conditional restoration to the register.

13.4.2 The Forum recommended that the Health and Conduct and Competence Committees approve the practice note subject to an amendment to the first bullet point to the effect that the registrant should achieve specific outcomes through education and training.

**Item 14.09/14 Any other business**

14.1 There was no further business. This was the final meeting of the Fitness to Practise Forum.

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