hpc health professions council

1 April 2008 to 31 March 2009

Fitness to practise annual report 2009

Contents

Executive summary

Welcome to the sixth fitness to practise annual report of the Health Professions Council (HPC) covering the period 1 April 2008 to 31 March 2009. This report provides information about the HPC's work in considering allegations about the fitness to practise of our registrants.

This report presents the ways in which our fitness to practise panels have dealt with the cases brought before them, as well as information about the number and types of case and the outcomes of those cases.

Allegations

There has been an increase in the number of allegations we have received about registrants. These allegations represent 0.26 per cent of the HPC Register. As in previous years, the distribution of allegations according to the route by which individuals entered the Register (eg international, grandparenting and UK), is proportional to the Register as a whole.

Investigating panels

Three hundred and sixty three cases were considered by panels of the Investigating Committee in 2008 – 09. This differs to the number of allegations received as not all cases received in a financial year are considered by a panel in that same year. The case to answer rate has fallen by five per cent from 62 per cent in 2007 – 08, to 57 per cent in 2008 – 09. Panels decide whether there is a realistic prospect that the allegation will be proven at a final hearing. Eighty one per cent of cases received from employers resulted in a case to answer decision. In 2009 – 10 we plan to undertake research into the expectations of complainants when they make a complaint to the HPC. This will aid us in ensuring that we are providing appropriate information to those who might wish to complain.

Final hearings

We have seen an increase in the number of hearings that have taken place this year. The most widely used sanction was a striking off order, making up 38 per cent of final disposal decisions. It is important to note that this equates to just 0.03 per cent of registrants.

This report demonstrates that although the number of cases considered by fitness to practise panels is increasing, the number of registrants this involves is less than 0.5 per cent. We have seen a reduction in cases being referred for a final hearing and an increase in the number of not well founded cases. Our panels take the action necessary to protect the public and the fitness to practise process is designed not to punish a registrant but to take proportionate action to ensure public protection.

We continue to strive to improve our processes and in 2009 – 10 will endeavour to ensure the length of time it takes cases to conclude is reduced. The HPC began the regulation of practitioner psychologists on 1 July 2009, further enhancing public protection. We plan to implement a number of new practice notes to aid panels and those appearing before them and to further review our literature to ensure that it is clear and accessible.

I hope you find this report of interest. If you have any feedback or comments please email me at ftp@hpc-uk.org

Kelly Johnson
Director of Fitness to Practise

Introduction

About us (the Health Professions Council)

We are the Health Professions Council, a regulator set up to protect the public. To do this, we keep a register of professionals who meet our standards for their professional skills, behaviour and health.

In 2008–09 we regulated members of 13 professions.

- Arts therapists
- Biomedical scientists
- Chiropodists / podiatrists
- Clinical scientists
- Dietitians
- Occupational therapists
- Operating department practitioners
- Orthoptists
- Paramedics
- Physiotherapists
- Prosthetists / orthotists
- Radiographers
- Speech and language therapists

On 1 July 2009 we began regulating practitioner psychologists and we may regulate other professions in the future. For an up-to-date list of the professions we regulate, please see our website at www.hpc-uk.org

Each of these professions has one or more 'protected titles' (protected titles include titles like 'physiotherapist' and 'dietitian'). Anyone who uses a protected title and is not registered with us is breaking the law, and could be prosecuted. For a full list of protected titles, please go to our website at www.hpc-uk.org. Registration can be checked either by logging on to www.hpcheck.org or calling +44 (0)20 7582 0866.

Our main functions

To protect the public, we:

- set standards for the education and training, professional skills, conduct, performance, ethics and health of registrants (the professionals who are on our Register);
- keep a register of health professionals who meet those standards;
- approve programmes which professionals must complete before they can register with us; and
- take action when professionals on our Register do not meet our standards.

What is 'fitness to practise'?

When a registrant is described as 'fit to practise', this means that they have the health and character, as well as the necessary skills and knowledge, to do their job safely and effectively.

The behaviour and minimum levels of skills and knowledge we can expect from a registrant are set out in the standards of conduct, performance and ethics and the standards of proficiency. The standards of conduct, performance and ethics were reviewed and updated and a new version of the standards was published in July 2008. For more information on the standards, please see our website at www.hpc-uk.org

The Fitness to Practise Department is responsible for handling complaints. These are also known as 'allegations'. Allegations question whether professionals who are registered with us are fit to practise.

Who can complain?

Anyone can make a complaint to us about a professional on our Register. This includes members of the public, employers, the police and other registrants.

We can only consider complaints about fitness to practise. The types of complaints we can consider are those that question whether a registrant's fitness to practise is 'impaired' (negatively affected) by:

– misconduct;

– a lack of competence;

– a conviction or caution for a criminal offence (or a finding of guilt by a court martial);

– their physical or mental health; or

– a determination (a decision reached) by another regulator responsible for healthcare.

We can also consider allegations about whether an entry to the Register has been made fraudulently or incorrectly.

We will consider individually each case that is referred to us. There is no time limit in which a complaint has to be made, but it should be made as soon as possible after the events that gave rise to the complaint occurred. We can also consider complaints when the matter being complained about occurred at a time that the registrant being complained about was not registered, or where the incident occurred in another country.

How can a complaint be made?

Complaints can be made in writing or by using our 'Reporting a Concern to the HPC' form which is available on the HPC website. We can also, in certain circumstances, take a statement of complaint over the telephone. The statement of complaint will still need to be signed by the complainant. We also have facilities to consider complaints which are made in another language. Please contact the Fitness to Practise Department for more information on this facility.

We also have a free phone number for use by complainants which can be found on page 46 of this report with our full contact details.

We can only consider complaints that are about fitness to practise and can close cases that do not meet this criteria or where evidence to support the complaint has not been provided.

What happens when a complaint is received?

For more information about how to make a complaint and the process we follow when we receive a complaint about a professional registered with us, please contact us to request one of the following brochures:

– What happens if a complaint is made about me?;

– The fitness to practise process: information for employers; and

– How to make a complaint about a health professional.

You can also find this information at www.hpc-uk.org

Partners and panels

The HPC has approximately 250 partners to help carry out its work. Partners are drawn from a wide variety of backgrounds – including clinical practice, education and management. We also use lay partners to sit on our panels. At least one registrant and one lay partner sits on our panels to ensure that we have appropriate public input and professional expertise in the decision-making process.

At every public hearing there is also a legal assessor. The legal assessor does not take part in the decision-making process, but gives the panel and the others involved advice and information on law and legal procedure.

HPC Council Members do not sit on our fitness to practise panels. This is to maintain separation between those who set Council policy and those who make decisions in relation to individual fitness to practise cases. This contributes to ensuring that our tribunals are fair, independent and impartial. Furthermore, employees of the HPC are not involved in the decision-making process. This ensures decisions are made independently and free from any appearance of bias.

Standard of proof

The HPC uses the 'civil standard of proof' in its fitness to practise cases. This means that panels consider, on the balance of probabilities, whether an allegation is proven. All nine UK health regulators are now using, or are moving towards using, the civil standard of proof.

Cases received in 2008 – 09

This section provides information on the number and type of fitness to practise allegations and enquiries received. A complaint is classified as an 'allegation' when it meets the Council's standard of acceptance. The standard of acceptance sets out the minimum information that must be provided for a case to be treated as an allegation, such as the name of the registrant and complainant, and sufficient details of the complaint. A complaint is classified as an 'enquiry' when we do not have all of the information for the case to meet the standard of acceptance for allegations, and we are seeking further information. Many enquiries go on to become allegations once further information is received.

Table 1 below shows the number of cases received since 2002 – 03 and the number of registrants registered by the HPC.

Year	Number of cases	Total number of registrants	% of registrants with complaints
2002 – 03	70	144,141	0.05
2003 – 04	134	144,834	0.09
2004 – 05	172	160,513	0.11
2005 – 06	316	169,366	0.19
2006 – 07	322	177,230	0.18
2007 – 08	424	178,289	0.24
2008 – 09	483	185,554	0.26

There was an increase of twelve per cent in the number of cases received by the HPC in 2008 – 09 compared to 2007 – 08. However, there has also been an increase of four per cent in the number of registrants in that same period. The number of cases as a percentage of the total number of registrants has remained similar to 2007 – 08, at 0.26 per cent. It should be noted that in a small number of instances more than one case relates to the same registrant.

Graph 1 below shows the number of cases received between 2002 – 03 and 2008 – 09 compared to the number of registrants.

Graph 1 Total number of cases and registrants

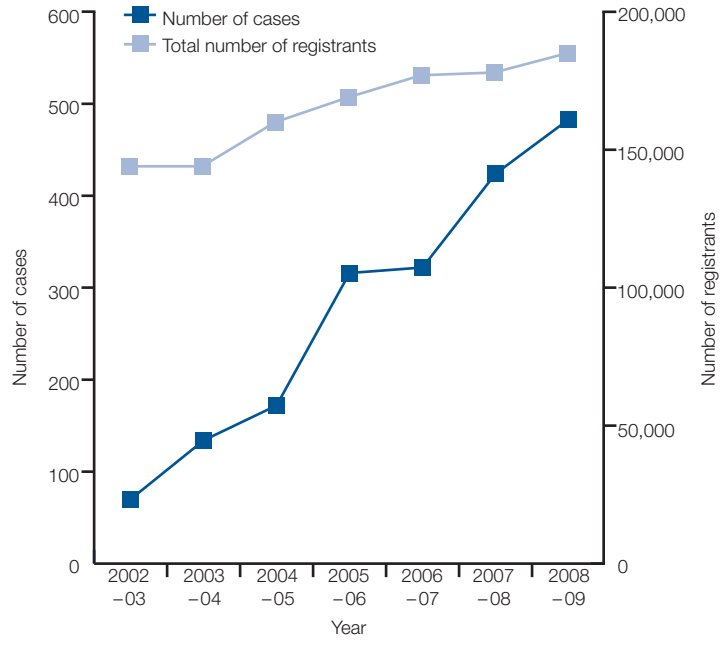


Table 2 below provides details on the sources of complaints to the HPC. Information from the previous three years has been provided for comparison.

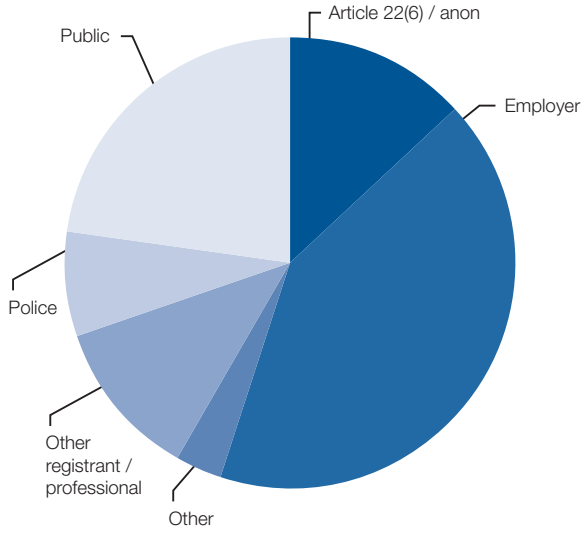
Table 2 Who makes complaints?

Type of complainant	2005 – 06	% of cases	2006 – 07	% of cases	2007 – 08	% of cases	2008 – 09	% of cases
Article 22(6) / anon	58	18	35	11	63	15	64	13
Employer	123	39	161	50	171	40	202	42
Other	15	5	1	0.3	5	1	16	3
Other registrant / professional	28	9	16	5	42	10	56	12
Police	24	8	31	10	35	8	36	7
Public	68	21	78	24	108	25	109	23
Total	**316**	**100**	**322**	**100**	**424**	**100**	**483**	**100**

Graph 2 below shows the percentage of cases received from each type of complainant in 2008 – 09, which remained broadly similar to 2007 – 08.

Employers continue to be the largest single complaint group making up 42 per cent of the complaints made, which is two per cent higher than in 2007 – 08, but still lower than 2006 – 07 in percentage terms. Complaints from members of the public make up almost a quarter of cases, two per cent less than in 2007 – 08.

Graph 2 Who made complaints in 2008 – 09?



The category 'Other' in Graph 2 and Table 2 above includes universities, hospitals / clinics (when not acting in the capacity of employer) and the Department of Health.

Article 22(6) of the Health Professions Order 2001

Article 22(6) of the Health Professions Order 2001 allows us to investigate a matter even if a complaint is not made to us in the usual way (for example, media reports or information provided by a person who does not wish to make a formal complaint). This is an important way in which we use our powers to protect the public.

Article 22(6) is also important in cases of 'self-referral'. When an individual is on the Register, we encourage self-referral of any issue that may affect their fitness to practise. Standard 4 of the standards of conduct, performance and ethics published in July 2008 states that: "You must provide (to us and any other relevant regulators) any important information about conduct and competence."

When a self-referral is received, the case will initially be considered by a Registration Panel under the Council's Health and Character Policy which was revised in December 2008. The decision for the panel is whether the matter declared is sufficiently serious to be considered through the fitness to practise process. When a Registration Panel refers a matter to the fitness to practise process it is dealt with in the same way as an allegation under Article 22(6).

In 2008 – 09, the HPC received 193 self referrals. Of those, 17 were referred to the fitness to practise process in 2008 – 09. A further 23 self-referrals which were received during 2007 – 08 but not considered by a Registration Panel in 2008 – 09 were also referred to the fitness to practise process. This total of 40 cases is included in the total of 483 fitness to practise cases received in 2008 – 09, and is part of the Article 22(6) / anon category in Table 2 and Graph 2 above.

Cases by profession and complainant type

The following tables and graphs display information about the cases received against each profession. The total number of cases received in 2008 – 09 was 483 (Table 1, page 7).

Table 3 overleaf shows the breakdown of cases that have been received by profession, and provides a comparison to the Register as a whole.

The largest number of cases were received about paramedics (99) and physiotherapists (95). The least number of cases were about orthoptists, with none received, and dietitians with one. Paramedics make up eight per cent of the Register and are the fifth largest profession. Orthoptists and dietitians are much smaller professions making up one per cent and 3.5 per cent of the Register respectively. The largest profession in terms of the number of registrants is physiotherapists making up 23 per cent of the register with the smallest being prosthetists and orthotists at 0.5 per cent.

Table 3 Cases by profession

Profession	Number of cases	% of total cases	Number of registrants	% of the Register	% of registrants subject to complaints
Arts therapists	8	1.66	2,574	1.5	0.31
Biomedical scientists	46	9.52	22,369	12	0.21
Chiropodists / podiatrists	62	12.84	12,579	7	0.49
Clinical scientists	8	1.66	4,397	2.5	0.18
Dietitians	1	0.21	6,683	3.5	0.01
Occupational therapists	55	11.39	30,103	16	0.18
Operating department practitioners	55	11.39	9,582	5	0.57
Orthoptists	0	0.00	1,278	1	0.00
Paramedics	99	20.50	14,991	8	0.66
Physiotherapists	95	19.67	42,651	23	0.22
Prosthetists / orthotists	6	1.24	875	0.5	0.69
Radiographers	34	7.04	25,313	13.5	0.13
Speech and language therapists	14	2.90	12,159	6.5	0.12
Total	**483**	**100**	**185,554**	**100**	**0.26**

Graph 3 displays the number of cases received about each profession between April 2005 and March 2009. Some professions have a higher number of cases and there may be a number of reasons for this. Some professions have more patient contact that others, or may work in a higher-risk environment.

Graph 3 Cases by profession, April 2005 to March 2009

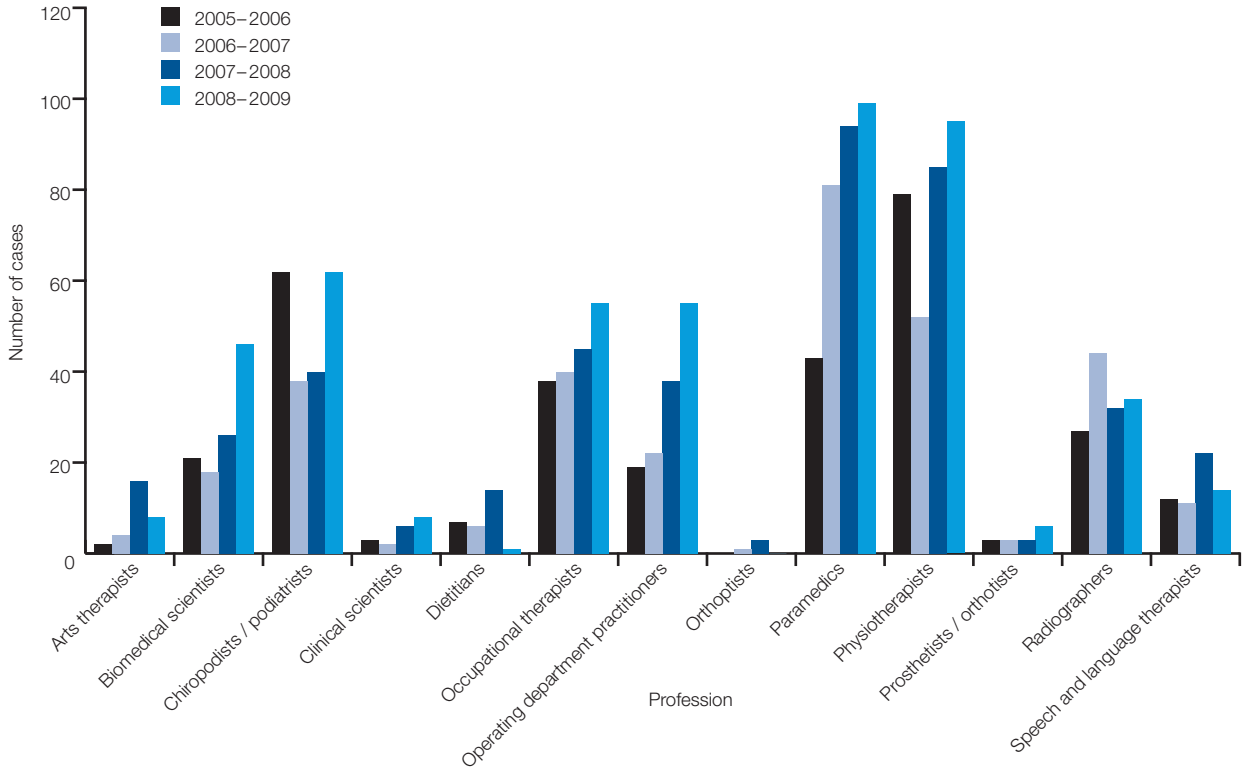


Table 4 shows a breakdown of allegations by profession and complainant type. Employers are the biggest complainant group with 42 per cent of complaints being made by an employer. Speech and language therapists had the highest proportion of complaints, 64 per cent, made by the employer. In relation to paramedics, who have the largest number of cases in total, 47 per cent of cases were referred to the HPC by an employer.

The public made up almost a quarter of the cases received by the HPC in 2008 – 09 (23%). Cases about chiropodists / podiatrists had the highest proportion coming from members of the public (45%) apart from dietitians where there was only one case in total which was made by a member of the public.

Table 4 Cases by profession and complainant type

Profession	Article 22(6) / anon	Employer	Other	Police	Public	Registrant / professional	Total
Arts therapists	1	5	0	0	1	1	**8**
Biomedical scientists	17	20	0	2	1	6	**46**
Chiropodists / podiatrists	2	11	4	7	28	10	**62**
Clinical scientists	1	3	1	0	1	2	**8**
Dietitians	0	0	0	0	1	0	**1**
Occupational therapists	4	34	1	2	12	2	**55**
Operating department practitioners	14	25	1	5	2	8	**55**
Orthoptists	0	0	0	0	0	0	**0**
Paramedics	17	47	0	8	15	12	**99**
Physiotherapists	5	30	6	7	37	10	**95**
Prosthetists / orthotists	0	1	0	0	2	3	**6**
Radiographers	3	17	1	5	6	2	**34**
Speech and language therapists	0	9	2	0	3	0	**14**
Total	**64**	**202**	**16**	**36**	**109**	**56**	**483**

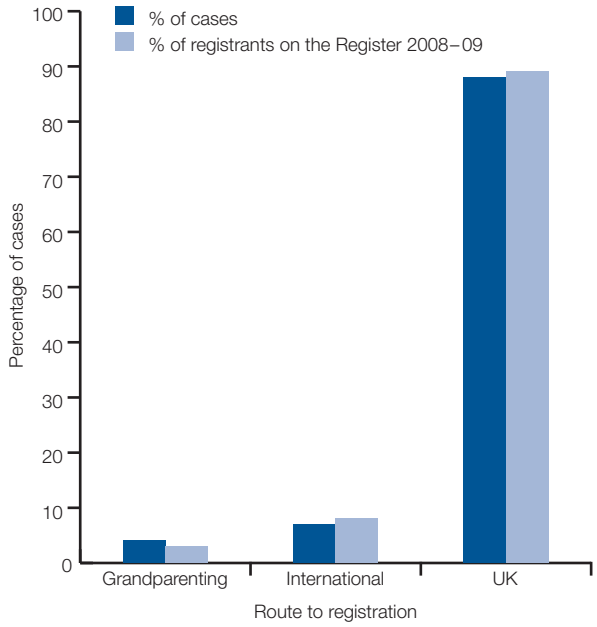
Cases by route to registration

Table 5 and Graph 4 below, which show the number of cases by route to registration, clearly indicate that there is consistency between the percentage of registrants who entered the Register by a particular route, and the registrants about whom complaints are made.

Table 5 Cases by route to registration

Route to registration	2005–06 cases	% of cases	2006–07 cases	% of cases	2007–08 cases	% of cases	2008–09 cases	% of cases	% of registrants on the Register 2008–09
Grandparenting	35	11	15	5	15	3.5	21	4	3
International	30	9.5	29	9	36	8.5	35	7	8
UK	242	77	278	86	373	88	425	88	89
Not known	9	2.5	0	0	0	0	2	0	0
Total	**316**	**100**	**322**	**100**	**424**	**100**	**483**	**100**	**100**

Graph 4 Cases by route to registration 2008–09



Cases by UK home country

Table 6 below provides information about where registrants who have had a complaint made against them live within the UK. The majority of the cases we receive are about professionals whose registered address is in England (86%). The distribution of cases by home country is similar to that in previous years.

Table 6 Cases by UK home country

UK home country	2005 – 06	2006 – 07	2007 – 08	2008 – 09	% of cases in 2008 – 09
England	281	279	358	414	86
Northern Ireland	10	7	9	3	1
Scotland	10	19	24	26	5
Wales	3	13	17	25	5
Address outside UK	12	4	16	15	3
Total	**316**	**322**	**424**	**483**	**100**

Cases by gender

Fifty nine per cent of cases are about male registrants and 41 per cent are made about female registrants. The Register is made up of 24 per cent male registrants and 76 per cent female registrants. A higher number of complaints are made against males compared to the percentage on the Register. This is consistent with 2007 – 08 where a similar pattern occurred (57 per cent male and 43 per cent female). Table 7 overleaf sets out the percentage of cases according to profession and the percentage of men and women on the Register.

Table 7 Cases by gender

	Cases					Registrants	
Profession	Female		Male			Female	Male
	Number of cases	% of cases	Number of cases	% of cases	Total	% of the Register	% of the Register
Arts therapists	4	50	4	50	8	82	18
Biomedical scientists	18	39	28	61	46	64	36
Chiropodists / podiatrists	26	42	36	58	62	72	28
Clinical scientists	1	13	7	88	8	50	50
Dietitians	1	100	0	0	1	96	4
Occupational therapists	40	73	15	27	55	94	6
Operating department practitioners	22	40	33	60	55	64	36
Orthoptists	0	0	0	0	0	92	8
Paramedics	14	14	85	86	99	27	73
Physiotherapists	42	44	53	56	95	80	20
Prosthetists / orthotists	1	17	5	83	6	36	64
Radiographers	16	47	18	53	34	80	20
Speech and language therapists	11	79	3	21	14	97	3
Total	**196**	**41**	**287**	**59**	**483**	**76**	**24**

Convictions

The professions regulated by the HPC are exempt from the Rehabilitation of Offenders Act. This means that convictions are never regarded as 'spent' and can be considered in relation to a registrant's character. Home Office Circular 6/2006 provides that the HPC must be notified when a registrant is convicted or cautioned of an offence and also when the offence is disposed of via a conditional discharge.

The offences we have been informed about in 2008 – 09 have included:

- battery;
- breach of the peace;
- common assault;
- criminal damage;
- driving under the influence of alcohol;
- fraud;
- possession of controlled drugs;
- possession of indecent images or pseudo-images of children; and
- theft.

Investigating Committee panels

From this stage of the process onwards all cases are referred to as 'allegations' as they meet the Council's standard of acceptance which is explained on page 7.

The role of an Investigating Committee panel (ICP) is to investigate any allegations made to the HPC and to consider whether there is a case to answer.

An ICP is a paper-based exercise at which the registrant and complainant do not appear. The function of this process is to help ensure that a registrant is not required to answer an allegation at a full public hearing unless there is a 'realistic prospect' that the Council will be able to establish that the registrant's fitness to practise is impaired.

The purpose of the fitness to practise process is to protect the public and not to punish registrants. Therefore, only cases where a panel is satisfied that there is a realistic prospect that the HPC will be able to establish its case will proceed to a full hearing. In some cases it may be possible to prove the facts of the case, but the panel may find that there is no realistic prospect that a registrant's fitness to practise will be found to be impaired as a result. This would result in a 'no case to answer' decision and the case would not proceed. Examples of case to answer decisions are provided on page 19 in Table 10.

ICPs meet in private and consider all the available information, including any information sent to us by the registrant in response to the allegation.

If a panel decides that there is a case to answer, it is at this point that information enters the public domain and is disclosable. This means we have to inform the four departments of health (or equivalents) for the UK and can provide information about the allegation if this is requested. The allegation will be published on our website four weeks prior to the final hearing.

In 2008 – 09 panels of the Investigating Committee met four times a month and considered 363 cases to determine whether there was a case to answer in relation to the allegations received. This number includes some cases that had been heard twice in that year, where panels had requested further information.

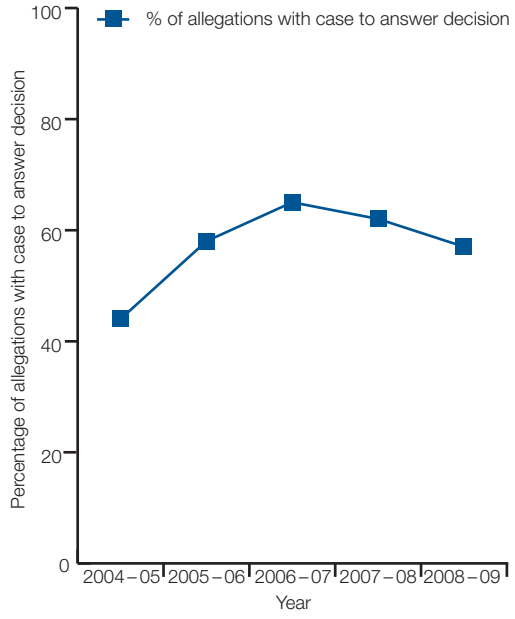
Not all of the 483 cases received in 2008 – 09 (see Table 1, page 7) were considered by an ICP in the same year. In some cases the investigation had not been completed and the matter will be considered in 2009 – 10. Some cases are closed prior to being considered by the Investigating Committee. This may be the case if, for example, the complainant does not wish to pursue the complaint or if a registrant is found not guilty at a criminal trial.

In 2008 – 09 there was an increase in the number of cases considered by a panel. In 2007 – 08, 299 cases were considered, compared to 363 in 2008 – 09. Table 8 and Graph 5 overleaf show the percentage of allegations where a case to answer decision was reached. The percentage of cases where a case to answer decision was reached has decreased by five per cent from 2007 – 08.

Table 8 Allegations where a case to answer decision was reached

Year	% of allegations with case to answer decision
2004 – 05	44
2005 – 06	58
2006 – 07	65
2007 – 08	62
2008 – 09	57

Graph 5 Case to answer rate



Decisions by panels

Table 9 overleaf shows decisions made by panels of the Investigating Committee.

The overall case to answer rate in 2008 – 09 was 57 per cent. Table 9 shows the case to answer decisions made for each profession. The professions with the highest case to answer rate were orthoptists, operating department practitioners and clinical scientists (although there were a very small number of cases relating to orthoptists and clinical scientists).

Table 9 Investigating Committee panel decisions

Profession	Total allegations heard	No case to answer	Further information requested	Case to answer				
				Conduct and Competence Committee	Health Committee	Investigating Committee	Total case to answer	% case to answer
Arts therapists	6	2	0	4	0	0	4	67
Biomedical scientists	42	21	0	19	2	0	21	50
Chiropodists / podiatrists	31	12	2	17	0	0	17	54
Clinical scientists	7	2	0	5	0	0	5	71
Dietitians	5	3	0	2	0	0	2	40
Occupational therapists	40	17	0	21	1	1	23	58
Operating department practitioners	30	6	2	21	1	0	22	73
Orthoptists	1	0	0	1	0	0	1	100
Paramedics	72	23	0	49	0	0	49	68
Physiotherapists	75	38	4	32	1	0	33	44
Prosthetists / orthotists	2	1	0	1	0	0	1	50
Radiographers	32	13	0	19	0	0	19	59
Speech and language therapists	20	11	0	9	0	0	9	45
Total	**363**	**149**	**8**	**200**	**5**	**1**	**206**	**57**

Allegations that have resulted in a case to answer decision have included:

- attending work whilst under the influence of alcohol;
- bullying and harassment of colleagues;
- conviction for possession of indecent images of children;
- fraud;
- inappropriate relationships with patients / clients;
- ongoing lack of competence;
- poor record keeping;
- self-administration of drugs whilst at work;
- theft of controlled drugs; and
- working whilst on sick leave.

Allegations that have resulted in a no case to answer decision have involved the issues set out in Table 10 below.

Table 10 Examples of no case to answer decisions

Type of issue	Reason for no case to answer
Copyright of website content	No intent to mislead. Not the appropriate forum to consider this type of issue.
Drink-driving conviction	Incident took place outside of work at a weekend.
Internet misuse at work	Employer actions were sufficient – no concerns about current fitness to practise.
Rude behaviour towards a patient	No credible evidence to support allegation – not capable of supporting impairment of fitness to practise.
Inappropriate treatment of patients	Facts do not amount to misconduct and / or lack of competence. Registrant submitted a credible account of treatment rationale supported by records.

Inappropriate conduct towards a patient's family	Police involvement in incident was an adequate response. Registrant's actions were justified in the circumstances.
Caused injuries to a patient	Evidence to show that injuries were not caused by registrant.
Failure to adequately supervise staff	Adequate supervision arrangements in place.
Altercation with work colleagues	One-off incident.
Work hours infringement	Failure of employer's policy – no fitness to practise issues.

There were a number of cases where panels determined that there was no case to answer in relation to drink-driving convictions which occurred outside of work hours and were isolated incidents. Panels will take into account whether a registrant was on-call, on their way to or from work and the level of alcohol in the blood. They also take into account the penalty imposed by the courts.

Case to answer by complainant

Table 11 overleaf shows the breakdown of the 363 cases considered by an ICP by type of complainant.

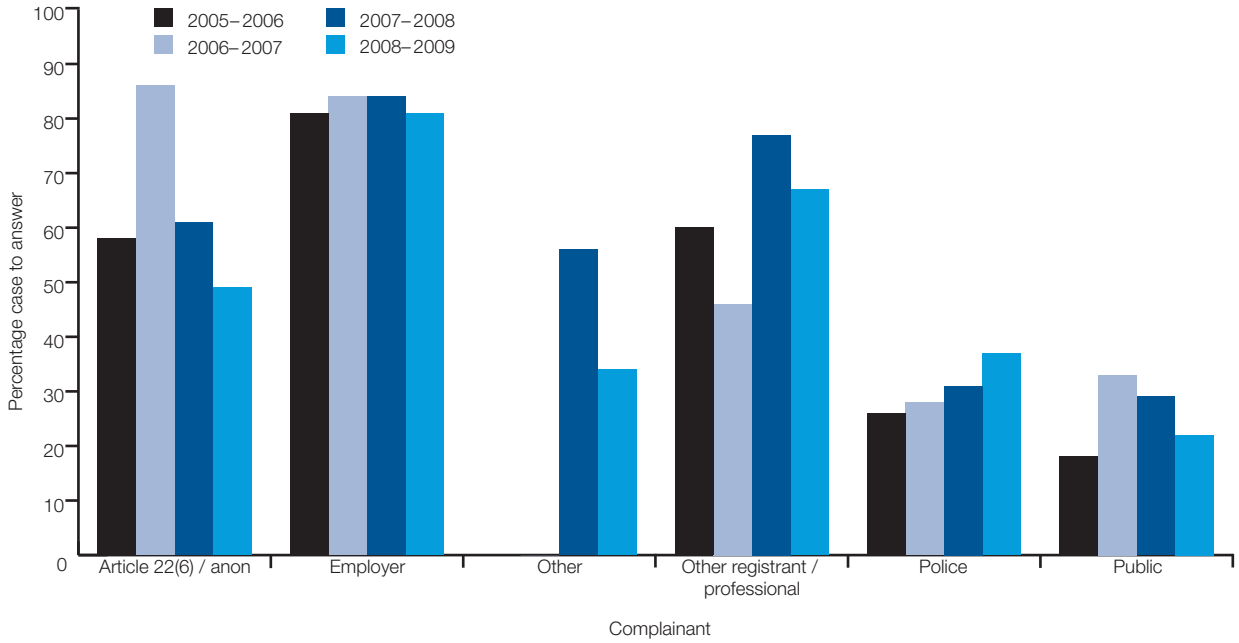
Complaints made by employers formed the greatest number (176) and of these 81 per cent were found to have a case to answer, the largest proportion from a complaint group. These allegations have usually been dealt with by the employer at local level before being referred to the HPC. A number of allegations were considered from employers about misuse of drugs, competency issues, dishonesty and poor record-keeping.

The second largest complaint group was the public, from whom 78 cases were considered by an ICP. However, a case to answer decision was only made in 22 per cent of these cases which is the lowest of all the complainant groups.

Table 11 Case to answer by complainant

Complainant	Number of 'case to answer'	Number of 'no case to answer'	Further information requested	Total	% case to answer
Article 22(6) / anon	23	23	1	47	49
Employer	143	33	0	176	81
Other	10	16	3	29	34
Police	11	19	0	30	37
Professional body	2	1	0	3	67
Public	17	57	4	78	22
Registrant	0	0	0	0	0
Total	**206**	**149**	**8**	**363**	**57**

Graph 6 Percentage case to answer, comparison of 2005 – 06, 2006 – 07, 2007 – 08 and 2008 – 09



Graph 6 above shows the percentage case to answer rate by complainant between 2005 – 06 and 2008 – 09. It should be noted that some of the percentages are based on very small numbers. The case to answer rate for allegations made by members of the public has fallen slightly since 2006 – 07.

We can take complaints over the telephone and we are continually working to ensure that our processes are accessible to all sections of the community. Case Managers ensure that as much information as possible is obtained prior to the Investigating Panel, such as relevant medical records, which assists the Panel in making a reasoned and informed decision

Case to answer and route to registration

Table 12 provides information about case to answer / no case to answer decisions by route to registration. This table does not include the cases where further information was requested by the Investigating Committee Panel (8). There is consistency between the percentage of registrants that entered the Register by a particular route and the case to answer and no case to answer decisions that were made. Table 5 and Graph 4 on page 13 show the percentage of the Register as a whole and the route to registration.

Table 12 Case to answer and route to registration

Route to registration	Number of 'no case to answer'	% of allegations	Number of 'case to answer'	% of allegations
Grandparenting	6	4	5	2
International	12	8	18	9
UK	129	87	181	88
Not known	2	1	2	1
Total	**149**	**100**	**206**	**100**

Case to answer and representation

Table 13 overleaf provides information on the case to answer / no case to answer correlation by representation. This table does not include the cases where further information was requested by the Investigating Committee Panel (8). Registrants who are subject to allegations are provided with 28 days in which to provide a response to the Investigating Committee. In some cases a representative, such as a union representative or lawyer, will respond on behalf of the registrant. In other cases the registrant provides a response themselves and in a number of cases no response is provided.

We received a response in 77 per cent of cases. This is an increase of seven per cent from 2007 – 08.

In 86 per cent of cases where a panel found there was no case to answer, the registrant provided a response to the allegation, either personally or through a representative. The registrant provided a response in 70 per cent of cases where a panel found there was a case to answer.

Table 13 Representations provided to Investigating Panel by profession

	Case to answer				No case to answer			
Profession	**No response**	**Response from registrant**	**Response from representative**	**Total case to answer**	**No response**	**Response from registrant**	**Response from representative**	**Total to no case answer**
Arts therapists	0	4	0	4	0	2	0	2
Biomedical scientists	5	15	1	21	10	11	0	21
Chiropodists / podiatrists	2	14	1	17	1	11	0	12
Clinical scientists	1	3	1	5	0	1	1	2
Dietitians	1	1	0	2	1	2	0	3
Occupational therapists	6	17	0	23	1	16	0	17
Operating department practitioners	6	15	1	22	0	6	0	6
Orthoptists	1	0	0	1	0	0	0	0
Paramedics	17	24	8	49	1	21	1	23
Physiotherapists	9	23	1	33	3	30	5	38
Prosthetists / orthotists	1	0	0	1	0	1		1
Radiographers	8	11	0	19	3	8	2	13
Speech and language therapists	4	4	1	9	1	6	4	11
Total	**61**	**131**	**14**	**206**	**21**	**115**	**13**	**149**

Time taken from receipt of allegation to Investigating Panel

Table 14 shows how long it took for allegations to reach an Investigating Panel in 2008 – 09. The table also shows the number and percentage of allegations cumulatively as the length of time increases. Three quarters (75%) of allegations were considered by a panel within eight months of receipt.

Table 14 Length of time from receipt of allegation to Investigating Panel

Number of months	Number of allegations	Cumulative number of allegations	% of allegations	Cumulative % of allegations
1–4	133	133	37	37
5–8	138	271	38	75
9–12	57	328	16	90
13–16	15	343	4	94
17–20	8	351	2	97
21–24	5	356	1	98
25–28	2	358	1	99
29–32	1	359	0	99
33–36	3	362	1	100
over 36	1	363	0	100
Total	**363**	**363**	**100**	**100**

On receipt of an allegation, the case is allocated to a Case Manager. The Case Manager will look into the matter further, and gather relevant information, for example from the police or the employer. In some instances we may need to take witness statements.

We will write to the registrant and provide them with the information we have received. We will allow the registrant 28 days to respond, before we present the case to an Investigating Panel. There may, however, be some delay in this process. The reasons for delay include requests for extension of time from the registrant and delays in receiving the information that we have requested.

It is important to note that the HPC has powers to demand information if it is relevant to the investigation of a fitness to practise issue. We use this power to obtain information from, for example, the police and employers. We may also delay our investigation until any proceedings undertaken by an employer have been concluded or when a criminal trial is pending.

It may also be necessary to delay our processes when we receive another allegation about the same registrant or the same allegation about more than one registrant. However, every case will be treated on its own merits. If the allegation is so serious as to require immediate public protection we can consider applying for an interim order. More information about interim orders is provided later in this report.

We are obliged to manage our case load expeditiously and we try to ensure that we have the processes in place for us to do so. We need to balance the need to move complaints forward – in order to protect the public – with the need to gather the necessary information.

The average length of time taken for a case to reach an Investigating Panel is seven months. This is a decrease of one month from 2007 – 08. At the end of March 2009, 206 cases were the subject of ongoing investigation or awaiting consideration by panels of the Investigating Committee.

Incorrect entry to the Register

The HPC can consider allegations about whether an entry to the Register has been made fraudulently or incorrectly. Decisions about such cases are within the remit of the Investigating Committee. If a panel decides that an entry to the Register has been made fraudulently or incorrectly they can remove or amend the entry or take no further action.

During 2008 – 09 the Investigating Committee considered one case of incorrect or fraudulent entry onto the HPC Register.

The allegation was that the registrant's entry onto the HPC Register had been incorrectly made or fraudulently procured in that it had been annotated to the effect that the registrant was competent to administer local anaesthetics. There was evidence to demonstrate that the registrant was not in fact competent in this area, having failed to complete a relevant local anaesthesia module. It was ascertained that in this instance the appropriate procedural checks had not been carried out leading to the registrant's entry on the Register being incorrectly annotated.

The Panel was satisfied that the entry on the Register had not been fraudulently procured and concluded that the entry concerning local anaesthetic competence had been incorrectly made. The Panel determined that the registrant's entry on the Register should be amended to the effect that the registrant is not qualified to administer local anaesthetic.

The HPC reviews all of its processes on a regular basis to ensure that all procedural checks are carried out. Although these types of cases are rare, any decisions involving an incorrect entry on the HPC Register are considered when reviewing processes to ensure that we have adequate procedures and checks in place.

Interim orders

In certain circumstances, panels of our practice committees may impose an 'interim conditions of practice order' or an 'interim suspension order' on registrants subject to a fitness to practise investigation. This power is used when the nature and severity of the allegation is such that, if the registrant remains free to practice without restraint, they may pose a risk to the public or to themselves. Panels will only impose an interim order when they feel that the public or the registrant involved require immediate protection. Panels will also consider the potential impact on public faith in the regulatory process should a registrant be allowed to continue to practise without restriction whilst subject to an allegation.

The power to impose an interim order can be used prior to a decision about a case being reached or when a decision has been reached to cover the period of the appeal.

Case Managers from the Fitness to Practise Department acting in their capacity of Presenting Officers present the majority of applications for interim orders and reviews of interim orders. This is done so as to ensure resources are used to their best effect.

Tables 15 and 16 overleaf show the number of interim orders granted prior to a final hearing and indicate the number of cases where an interim order has been reviewed or revoked. We are obliged to review an interim order six months after it is first imposed and every three months thereafter. In some cases an interim suspension order may be changed to an interim conditions of practice order if the panel consider this will adequately protect the public. In one case in 2008 – 09 an interim order was revoked by a review panel.

There were 30 applications made for interim orders of which 27 were granted (three were rejected) and 55 interim order review hearings were held.

The HPC applied to the High Court for an extension of an interim order in one case. The application was granted and the registrant was suspended for a further period of six months.

Table 15 Number of interim orders by profession

Profession	Applications considered	Applications granted	Applications rejected	Orders reviewed	Orders revoked
Arts therapists	0	0	0	4	0
Biomedical scientists	4	3	1	12	0
Chiropodists / podiatrists	2	2	0	3	1
Clinical scientists	0	0	0	0	0
Dietitians	0	0	0	0	0
Occupational therapists	4	4	0	2	0
Operating department practitioners	5	4	1	13	0
Orthoptists	0	0	0	0	0
Paramedics	7	7	0	7	0
Physiotherapists	5	4	1	8	0
Prosthetists / orthotists	0	0	0	0	0
Radiographers	2	2	0	4	0
Speech and language therapists	1	1	0	2	0
Total	**30**	**27**	**3**	**55**	**1**

Table 16 Interim orders 1 April 2004 to 31 March 2009

Year	Applications granted	Applications reviewed	Orders revoked	Number of cases	% of allegations where interim order was imposed
2004 – 05	15	0	0	172	9
2005 – 06	15	12	1	316	5
2006 – 07	17	38	1	322	5
2007 – 08	19	52	3	424	4
2008 – 09	27	55	1	483	6
Total	**93**	**157**	**6**	**1,717**	**5**

Since 2004 – 05 the percentage of cases where an interim order has been granted has remained at a similar level, although the total number of orders has increased (Table 16).

In 2008 – 09 there were 30 applications for interim orders made, and 27 were granted. In two of the cases the panel considered that an interim 'conditions of practice order' would sufficiently protect the public. In the other 25 cases it was decided that an interim suspension order was the only option that would adequately protect the public.

In one case the original order of suspension was changed to a conditions of practice order and subsequently revoked following the receipt of further information.

In three of the cases where an interim order was imposed, the substantive cases proceeded to a final hearing and were concluded. Two of these cases involved criminal convictions arising from serious criminal offences and both of the registrants were struck off the Register. One was for a serious sexual offence against a child and the other was for possession of child pornography. The third case involved a registrant who was suspended for a period of twelve months following the theft of drugs and equipment from their place of work.

Types of case where an interim order was imposed

Eleven cases where an interim order was imposed concerned charges or convictions for serious sexual offences, including rape of a child and sexual assault. There were also three applications that were granted in cases involving either accessing or distributing child pornography, and in one case, both.

In one case the registrant faced allegations of inappropriate behaviour towards a colleague.

Two cases had interim orders imposed due to serious concerns regarding the competence of the registrant. In one of these cases, the allegation related to multiple clinical incidents.

Other cases that had an interim order imposed related to the misuse of drugs, both in and out of the work environment.

Final hearings

The HPC has to hold hearings in the home country of the registrant concerned. In 2008 – 09 we continued to hold hearings in locations throughout the United Kingdom.

Hearings are usually held in public, as required by the Health Professions Order 2001. However we can hold a hearing, or parts of it, in private in some circumstances.

HPC legislation means that panels are obliged to announce their decision in public and give reasons for that decision. If a case is deemed to be not well founded, information will not be published unless specifically requested by the registrant concerned.

Table 17 below displays the number of hearings that have taken place in 2008 – 09, including cases that were adjourned or not concluded. The total number of cases concluded at a final hearing in 2008 – 09 was 175 (of the 219 panels that were held). Further sections of this report deal only with cases that were concluded at a final hearing. Some cases may have been considered more than once in the same year.

Table 17 Number of public hearings

Type of hearing	2004 – 05	2005 – 06	2006 – 07	2007 – 08	2008 – 09
Interim order and review	25	28	55	71	85
Final hearing	66	86	125	187	219
Review hearing	11	26	42	66	92
Total	**102**	**140**	**222**	**324**	**396**

Time taken from receipt of allegation to final hearing

Table 18 overleaf shows the length of time the cases concluded in 2008 – 09 took from receipt of the allegation to conclusion at a final hearing. The table also shows the number and percentage of allegations cumulatively as the length of time increases.

Just over 50 per cent of cases (51%) were concluded within 16 months. The average length of time for a case to conclude was 18 months from the receipt of the allegation. If the two cases that took over 36 months were removed from the equation, cases would have taken an average of 17 months which is the same as the average in 2007 – 08.

We are continually striving to ensure that cases are heard expeditiously as we recognise that hearings are a difficult process for all involved. In 2009 – 10 we will endeavour to ensure that the length of time taken for hearings to conclude is reduced. There are a number of factors that can result in a hearing taking longer than anticipated to conclude. Those factors can include protracted investigations, availability of the parties involved in the case, requests for adjournments and outstanding criminal proceedings.

Table 18 Length of time from receipt of allegation to final hearing

Number of months	Number of cases	Cumulative number of cases	% of cases	Cumulative % cases
1–4	0	0	0	0
4–8	10	10	6	6
9–12	28	38	16	22
13–16	51	89	29	51
17–20	38	127	22	73
21–24	23	150	13	86
25–28	15	165	9	94
29–32	2	167	1	95
33–36	6	173	3	99
over 36	2	175	1	100
Total	**175**	**175**	**100**	**100**

Days of hearing

Panels of the Conduct and Competence Committee, Health Committee and Investigating Committee (meeting when considering incorrect entries) met on a total of 369 days during 2008 – 09, with more than one hearing taking place on some days. Cases took on average 1.8 days to conclude. This is a slight increase from 2007 – 08 when the average was 1.5 days.

What powers do panels have?

Where action is taken by our panels it is intended to protect the public, not to be a punitive measure. Panels carefully consider all of the individual circumstances of each case and take into account what has been said by all those at the hearing before making their decision.

Panels must first consider whether allegations against a registrant are proven. They have to decide whether the incident, as alleged, amounts to the 'grounds' set out in the allegation, for example misconduct or lack of competence, and if, as a result, the registrant's fitness to practise is impaired.

If the panel decide a registrant's fitness to practise is impaired they go on to consider whether to impose a sanction.

In hearings of the Health Committee or where the allegation relates to lack of competence, the panel does not have the option to make a striking off order at the first hearing. It is recognised that in cases where ill-health has impaired fitness to practise or where competence has fallen below expected standards, it may be possible for the situation to be remedied over time. The registrant is provided with the opportunity to seek treatment or training and may be able to return to practice if the panel is satisfied that this is a safe option at any review.

A number of options (known as 'sanctions') are available to substantive hearing panels. They are as follows.

– Take no further action.

– Send the case for mediation.

– Impose a caution order – this means that the word 'caution' will appear against the registrant's name on the Register.

– Impose some sort of restriction or condition on the registrant's registration, known as a 'conditions of practice order' – this might include, for example, requiring the registrant to work under supervision or to undertake further training.

– Suspend registration, for no longer than one year.

– Order the removal of the registrant's name from the Register, which is known as a 'striking off order'.

In cases of incorrect or fraudulent entry to the Register, the options available to the panel are to take no action, to amend the entry on the register (eg change the modality or remove rights to prescribe medicines) or to remove the person from the Register.

Suspension or conditions of practice orders must be reviewed before they expire. At the review a panel can continue or vary the original order. For health and competence cases, registration must have been suspended, or had conditions, or a combination of both, for at least two years before the panel can make a striking off order. Registrants can also request early reviews of any order if circumstances have changed and they are able to demonstrate this to the panel.

Action taken at final hearings

Table 19 overleaf is a summary of the action taken by final hearing panels. It does not include cases where the hearing was part heard or adjourned. All well founded HPC decisions are published on our website at www.hpc-uk.org. A list of the well founded decisions can be found in Appendix one of this report.

Table 19 Outcome by type of allegation

Type of allegation	Amended	Caution	Conditions of practice	No further action	Not well found	Struck off	Suspension	Voluntary removal	Total
Conviction / caution	0	8	0	1	0	19	1	0	**29**
Conviction / misconduct	0	0	0	0	0	1	0	0	**1**
Health	0	0	1	0	1	0	1	0	**3**
Incorrect entry	1	0	0	0	0	0	0	0	**1**
Lack of competence	0	0	4	0	3	1	4	1	**13**
Misconduct	0	11	6	3	22	38	12	0	**92**
Misconduct / lack of competence	0	5	2	0	14	6	6	0	**33**
Determination by anther regulator	0	1	0	0	0	1	1	0	**3**
Total	**1**	**25**	**13**	**4**	**40**	**66**	**25**	**1**	**175**

Outcome by profession

Table 20 overleaf shows the sanctions that were imposed by final hearing panels in 2008 – 09 by each profession. In some cases there was more than one allegation against the same registrant. This is detailed in Appendix one.

Table 20 Sanctions imposed by profession

Profession	Amended	Caution	Conditions of practice	No further action	Not well found	Struck off	Suspension	Voluntary removal	Total
Biomedical scientists	0	1	1	0	0	6	1	0	**9**
Chiropodists / podiatrists	1	2	2	0	6	2	1	0	**14**
Clinical scientists	0	0	0	0	2	1	0	0	**3**
Dietitians	0	1	0	0	0	2	1	0	**4**
Occupational therapists	0	1	1	0	5	4	3	0	**14**
Operating department practitioners	0	2	0	0	2	15	3	0	**22**
Orthoptists	0	0	0	0	1	0	0	0	**1**
Paramedics	0	12	2	0	11	18	6	0	**49**
Physiotherapists	0	3	5	0	7	9	3	0	**27**
Radiographers	0	3	2	4	5	5	7	1	**27**
Speech and language therapists	0	0	0	0	1	4	0	0	**5**
Total	**1**	**25**	**13**	**4**	**40**	**66**	**25**	**1**	**175**

Outcome and representation of registrants

All registrants are entitled to attend the final hearing and be represented if they choose. Some registrants choose not to attend, some represent themselves and others have professional representation.

Panels may proceed in a registrant's absence if the HPC has served them with notice of the hearing in accordance with relevant legislative requirements. The panel must be satisfied that, in all the circumstances, it is appropriate to do so. The role of the legal assessor at hearings is to ensure the proceedings are fair and conducted in an impartial manner and this includes ensuring the panel considers whether adequate notice has been served.

Table 21 overleaf shows the number of registrants represented at final hearings. In 2008 – 09, the number of registrants who were represented or attended the hearing to represent themselves has fallen to 54 per cent from 62 per cent in 2007 – 08.

Table 21 Representation at final hearings

Representation	2006 – 07	2007 – 08	2008 – 09
Registrant	13	17	21
Representative	46	80	74
None	43	59	80
Total	**102**	**156**	**175**

Table 22 details outcomes of final hearings correlated with registrant's absence, attendance or attendance with a representative.

Table 22 Outcome and representation at final hearings

Outcome	Registrant	Representative	None	Total
Amended	1	0	0	**1**
Caution	9	14	2	**25**
Conditions of practice	2	11	0	**13**
No further action	1	3	0	**4**
Not well founded	5	32	3	**40**
Struck off	2	9	55	**66**
Suspension	1	5	19	**25**
Voluntary removal	0	0	1	**1**
Total	**21**	**74**	**80**	**175**

Table 23 overleaf demonstrates the representation at final hearing by profession. Apart from orthoptists, where there was only one case, the profession with the highest level of representation at final hearings is chiropodists / podiatrists (86%). The profession with the lowest level of representation is speech and language therapists (20%), although there were only five cases.

Table 23 Representation by profession

Profession	Registrant	Representative	None	Total	% of representation
Biomedical scientists	1	2	6	9	33
Chiropodists / podiatrists	3	9	2	14	86
Clinical scientists	0	2	1	3	67
Dietitians	0	2	2	4	50
Occupational therapists	0	5	9	14	36
Operating department practitioners	4	6	12	22	45
Orthoptists	0	1	0	1	100
Paramedics	6	19	24	49	51
Physiotherapists	3	16	8	27	70
Radiographers	4	11	12	27	56
Speech and language therapists	0	1	4	5	20
Total	**21**	**74**	**80**	**175**	**54**

Outcome and route to registration

Table 24 overleaf demonstrates the correlation between the route to registration and the outcome of final hearings. As with the route to registration by case to answer decision, the percentage of well founded decisions broadly correlates with the percentage of registrants and their route to registration. The number of hearings concerning registrants who had entered the Register via the UK approved route was 89 per cent.

Table 24 Outcome and route to registration

Route to registration	Amended	Caution	Conditions of practice	No further action	Not well found	Struck off	Suspension	Voluntary removal	Total
Grandparenting	0	1	0	0	4	1	1	0	**7**
International	0	0	2	0	4	4	2	0	**12**
UK	1	24	11	4	32	61	22	1	**156**
Total	**1**	**25**	**13**	**4**	**40**	**66**	**25**	**1**	**175**

Types of allegation

The next section of the report outlines the types of allegation considered by panels of the Health and Conduct and Competence Committee.

Conduct and Competence Committee panels

Panels of the Conduct and Competence Committee consider allegations that a registrant's fitness to practise is impaired by reason of their misconduct, lack of competence, a conviction or caution, or a determination by another regulator. This section of the report provides more information about the kinds of case considered by panels of the Conduct and Competence Committee.

Misconduct

In 2008–09 a number of decisions were made in cases involving allegations to the effect that a registrant's fitness to practise was impaired by reason of their misconduct. In some cases, allegations of misconduct accompanied those of lack of competence and convictions.

Some of the issues considered included:

- attending work under the influence of alcohol;
- failure to provide adequate patient care;
- fraudulent sick leave claims;
- misappropriation of controlled drugs; and
- theft or misuse of employer property.

Below are two case studies which provide further detail on the types of misconduct that have taken place.

Case study 1

An occupational therapist was struck off the Register following allegations that they failed to maintain adequate records, provided inappropriate treatment to patients, wrote-up case-notes retrospectively, falsely wrote-up case-notes and incorrectly closed cases that required further assessment.

The Panel determined that the misconduct was wide ranging, covered a period of time and concerned basic competencies. The allegations relating to note-keeping, which included the falsification of records, demonstrated a marked lack of honesty and integrity. Furthermore, the Panel concluded that the Registrant had not shown insight into their failings or the consequences of them.

Case study 2

An operating department practitioner was struck off the Register for self-administring the drug Propofol having accessed their employers' drug store without authorisation. The Registrant had also received a police caution for this offence.

The Panel took into account the fact that for a police caution to be given, a full admission of the allegation has to have been made. Accordingly, the Panel were satisfied that the theft of the drugs had occurred. The Panel were also satisfied that the Registrant had self-administered the drug

The Panel considered that a caution order would not reflect the severity of the matter and that a conditions of practice order would be not be appropriate given that the Registrant was not present at the hearing. It was not known if the Registrant was working, with the result that conditions could not be considered. The Panel gave careful consideration to imposing a suspension order but concluded that there had been a serious breach of trust on the Registrant's part which had had the effect of putting patients and colleagues at risk.

Convictions / cautions

Thirty cases were considered by panels where the registrant had been convicted or cautioned for a criminal offence. Criminal convictions and cautions constituted the second most frequently reported grounds of allegations heard at hearings. Registrants are included on the notifiable occupations scheme, which means that the Police will notify the HPC of any impending criminal proceedings.

Lack of competence

The types of competence issue that were considered by panels in 2008–09 included failure to:

- follow instructions or comply with supervision;
- meet the standards of proficiency; and
- provide adequate patient care.

Health Committee panels

Panels of our Health Committee consider allegations that a registrant's fitness to practise is impaired by reason of their physical or mental health.

The HPC can take action when the health of a registrant may impair their ability to practise safely or endanger themselves. For example, if the registrant lacks insight and understanding of their condition this may impact upon practice in their chosen profession. Registrants who manage their health condition effectively and work within any limitations their condition present would not usually be considered to pose any risk.

The HPC appreciates that registrants suffering from physical or mental ill-health may find investigations into their fitness to practise to be a difficult period and deals with these cases as sensitively as possible. Health Committee hearings are often heard in private following an application from the registrant or the HPC Presenting Officer.

Panels cannot strike someone off the Register in cases concerning ill-health except where the registrant in question has been suspended, subject to a conditions of practice order, or a combination of both, for two or more years.

Sanctions available to panels of the Health Committee are intended to provide the opportunity for registrants to overcome health problems. For example, a suspension order may allow a registrant to tackle health issues, eg attend a rehabilitation course, before returning to practice.

The Health Committee considered three substantive cases in 2008–09. In one case the registrant concerned was suspended, in another a conditions of practice order was imposed and the final case was not well founded.

Not well founded

The HPC has to prove that an allegation is well founded. Once an Investigating Committee has determined that there is a 'case to answer' the HPC is obliged to proceed with the case.

In 2008 – 09 there were 40 cases where panels did not find the allegations well founded. Our legislation prevents us from publishing details of these cases, unless specifically requested to do so by the registrant concerned. We are also obliged to provide the Council for Healthcare Regulatory Excellence (CHRE) with information about all substantive and review cases that have been concluded by panels of the Conduct and Competence Committee and Health Committee. More information about the role of the CHRE can be found later in this report (see page 43). Table 25 below indicates the number of cases that were not well founded.

Table 25 Cases not well founded

Year	Number of not well founded cases	Total number of concluded cases	% of cases not well founded
2004 – 05	3	45	7
2005 – 06	1	51	2
2006 – 07	18	96	19
2007 – 08	26	156	17
2008 – 09	40	175	23

Thirty three per cent of cases considered to be not well founded were based on allegations of misconduct and / or lack of competence, 56 per cent of cases were based on misconduct alone, three cases were based on lack of competence alone and one on matters of ill-health and misconduct.

In the majority of cases considered to be not well founded, registrants demonstrated insight into the failings that led to allegations being brought against them and their current fitness to practise was not considered to be impaired. In other cases evidence was not strong enough to support allegations or the grounds upon which they were based.

The HPC seeks to ensure consistency in decision-making and regularly undertakes reviews of cases that are not well founded. Regular training sessions using these decisions are held for panel members and employees with a view to making future decision-making better informed.

The following two case studies are examples of cases where panels found that the allegations were not well founded in 2008 – 09.

Case study 1

Registrant A was present at the hearing and was represented by a legal representative. The allegation related to Registrant A's physical and / or mental health.

The Panel carefully considered both the written and oral evidence of both parties, which included two witnesses on behalf of the HPC. One of these witnesses was an expert witness who was instructed by the HPC to conduct an assessment of Registrant A and compile a psychiatric report. The Panel considered the likelihood of a relapse of the Registrant's condition and the consequences of any such relapse.

The Panel concluded that Registrant A demonstrated insight and noted that there were support mechanisms in place which were reinforced by training which had been undertaken by Registrant A in relation to their condition.

In reaching its decision, the Panel reminded itself that it is for the HPC to prove its case. The Panel determined that the HPC had not discharged the burden placed on it to prove the allegation to the requisite standard, namely on the balance of probabilities. Accordingly, the Panel found the allegation to be not

well founded.

Case study 2

Registrant B, an occupational therapist, was not in attendance at the hearing and was not represented, but had made extensive written submissions. The allegations against Registrant B were in relation to failings in areas of her record-keeping over a four-year period. Registrant B's fitness to practise was alleged to be impaired by reason of misconduct and / or lack of competence.

The Panel considered oral evidence from Registrant B's supervisor and written evidence in the form of individual patient files, as well as the written submissions of Registrant B. The Panel felt that in light of the evidence, Registrant B had not behaved knowingly, recklessly or wilfully. They determined that this was not a case of misconduct.

The Panel then went on to consider whether the allegations amounted to a lack of competence on the part of Registrant B. The Panel determined that there were a number of factors which may have led to a failure in Registrant B's standard of recordkeeping, including work-related stress and employer systems to record patient notes.

The Panel considered Registrant B's caseload at the time which the allegations related to. The Panel concluded that in all the circumstances the allegations in relation to Registrant B's patient notes were not as a result of any lack of competence on the part of the Registrant. They determined that there was no evidence of risk to patients. The Panel concluded that Registrant B's fitness to practise was not impaired and that the allegations were not well founded.

Costs

The HPC is funded by registration fees. The budget for the Fitness to Practise Department in 2008 – 09 was approximately £4.6 million which is about 34 per cent of the HPC's operating costs. This is an increase from 2007 – 08 of five per cent. We are continuing to use Case Managers to present final hearing cases in their capacity of Presenting Officers and hold multiple cases on the same day wherever possible. We have also implemented a policy whereby cases can be disposed of via consent if the registrant concerned admits to the allegation and the proposed course of action would adequately protect the public.

For each case, the HPC is obliged to cover the cost of:

– a legal assessor (fee and expenses);

– a shorthand writer to take a transcript of the proceedings;

– administration and photocopying costs;

– legal services (costs incurred in preparing and presenting cases);

– panel members (fees and expenses);

– venue hire (and associated costs); and

– witness travel and associated expenses.

We have a 'capped hours' arrangement in place with the firm of solicitors that we use to prepare and present fitness to practise hearings. This means that we do not pay if the hours billed exceed a certain amount. This is a mechanism by which we can effectively manage the cost of fitness to practise hearings. The cost of hearings (not including legal services) is approximately £3,500 per hearing.

Suspension and conditions of practice review hearings

When a suspension or conditions of practice order is imposed, it must be reviewed by another panel before it is due to expire. It may also be reviewed if the registrant makes an application to the panel. A registrant might want to do this if they are experiencing problems complying with any condition imposed by the original panel, or when new information relating to the original order becomes available. The HPC can also review a conditions of practice order if it appears that the registrant has breached any conditions imposed by the panel.

When a conditions of practice order is reviewed, the review panel will look for evidence that the conditions imposed by the original panel have been met.

If a suspension order was imposed, a review panel will look for evidence that the issues that led to the suspension have been addressed.

A review panel will look to ensure that the public continue to be adequately protected. If they are not satisfied that someone is fit to practise they may:

– extend an existing conditions of practice order;

– further extend the period the registrant was suspended for; or

– remove the registrant from the Register (issue a striking off order).

In 2008 – 09 there were 92 review hearings. Table 26 shows that the number of review hearings has increased each year.

Table 26 Number of review hearings

Year	Number of review hearings
2004 – 05	11
2005 – 06	26
2006 – 07	42
2007 – 08	66
2008 – 09	92

The cost of a review hearing in 2008 – 09 was in the region of £3,000. This amount includes the costs of the panel, shorthand writer and, in some cases the cost of an external venue. Fitness to Practise Department Case Managers, in their capacity of Presenting Officers, present the majority of review hearings. This has reduced our reliance on external lawyers and helps us to use our resources to their best effect.

Table 27 below shows the decisions that were reached by panels at review hearings.

Table 27 Review hearing decisions

Review hearing outcome	Number of cases
Conditions continued	4
Conditions revoked	7
Conditions revoked, suspension imposed	1
Suspension continued	52
Suspension revoked, caution imposed	1
Suspension revoked, conditions imposed	3
Suspension revoked	5
Struck off	17
Voluntary removal	2
Total	**92**

In 2008 – 09 the HPC looked at the way in which the legislation was interpreted when considering reviews of suspension and conditions of practice orders imposed in competence or health cases. By following the intention behind the legislation more closely, panels are now able to strike registrants off the Register after two continuous years of suspension, conditions of practice or a combination of the two. We have also seen two cases where the case was disposed of via consent and the registrant concerned voluntarily removed themselves from the Register.

The role of the Council for Healthcare Regulatory Excellence and High Court cases

The Council for Healthcare Regulatory Excellence (CHRE) is the body that promotes best practice and consistency in the regulation of healthcare professionals for the nine UK healthcare regulatory bodies.

The CHRE can refer a regulator's final decision in a fitness to practise case to the High Court (or in Scotland, the Court of Session). They can do this if it is felt that a decision by the regulatory body is unduly lenient and that such a referral is in the public interest.

In 2008 – 09 one HPC case was referred to the High Court by the CHRE. This case was subsequently withdrawn by CHRE.

Registrants can also appeal the decisions made by panels to the High Court, or the Court of Session. In 2008 – 09 six registrants appealed decisions made by panels of the Conduct and Competence Committee. One case was heard by the High Court in December 2008. The grounds of the appeal were that by proceeding in the absence of the registrant, the HPC had violated the human rights of the registrant. The appeal was dismissed and found to be wholly without merit as the registrant had been made aware of the date of the hearing well in advance. One appeal has been withdrawn by the registrant concerned and we are awaiting dates in the other four cases.

One case appealed in 2007 – 08 was heard by the High Court over three days in October 2008. The appeal was dismissed by the High Court. However, the registrant concerned was granted permission to appeal that decision to the Court of Appeal. At the time of writing, that hearing is scheduled for the end of July 2009.

Policy developments

Standards of conduct performance and ethics

In July 2008 there were some changes to the HPC's standards of conduct, performance and ethics for registrants. The main change was the removal of part of the previous standard 4 which placed a requirement on registrants to notify the HPC of any significant changes to their health which might affect their fitness to practise. Registrants are, however, still required to make appropriate adjustments to their practice that may be necessary to ensure safe practice. The other changes were mostly minor in nature, but placed an emphasis on maintaining public confidence in the professions that the HPC regulates.

Regulation of practitioner psychologists and the transfer of the Hearing Aid Council register

Preparations were made in 2008 – 09 for the regulation of practitioner psychologists, and the Register opened on 1 July 2009. Preparations have also continued for the HPC to take over the role currently fulfilled by the Hearing Aid Council by regulating hearing aid dispensers. At the time of writing this is expected to take place in April 2010.

CHRE audit

The CHRE has recently consulted on the auditing of initial decisions made by the nine UK health regulators where cases do not proceed to a full public hearing. It is expected that the audit of HPC cases will take place in late 2009 to early 2010. The audits are designed to provide feedback to regulators on the handling of cases in the early stages of an investigation, and to identify areas of good practice.

Practice notes

A number of new practice notes have been issued by the HPC Practice Committee including case to answer decisions made by Investigation Committee panels and cross-examination in cases of a sexual nature. These practice notes are designed to give guidance to panels and those involved in fitness to practise proceedings. A number of existing practice notes were also reviewed and updated during the year. All practice notes are available on the HPC website at www.hpc-uk.org/publications/practicenotes

Refresher training for panel members

Refresher training for existing panel members took place between October and December 2008 with approximately 50 per cent of panel members receiving refresher training in 2008. The training comprised a legal refresher, sessions on equality and diversity, and an update on issues relating to the different types of panel that panel members sit on. Further training is planned for 2009 – 10 for the remaining panel members.

Recruitment of practitioner psychologist and hearing aid dispenser panel members

In preparation for the HPC regulation of practitioner psychologists and hearing aid dispensers, the HPC recruited a number of practitioner psychologist and hearing aid dispenser partners in 2008 – 09 to sit as panel members. Each new partner must complete comprehensive induction training before they can sit on panels. The first round of this took place for practitioner psychologists in March 2009, with further sessions planned later in the year.

Developments for 2009 – 10

Expectations of complainants

We will undertake a research project in 2009 – 10 looking at the expectations of complainants when making a complaint to the HPC. It is hoped that the outcome of this research will enable the HPC to improve its communication with the public and potential complainants about the role and remit of the HPC's fitness to practise process.

Hearings DVD

We will be producing a DVD to explain the hearings process to all those attending a hearing. It is hoped that this information will better inform those appearing before a panel of what to expect and make the experience less daunting. The information will also be accessible through our website.

Tender for transcription services

The tender process for the provision of transcription services at our hearings will be concluded in 2009 – 10. Each public hearing has a verbatim record made. Through this tender process we aim to ensure that we are receiving the best service from the suppliers we use and make best use of the resources available to us.

Fitness to practise committee

In 2009 the legislation setting out how the Council and statutory committees operate was amended to provide for a smaller Council of 20 members. This legislation also altered the way in which the statutory Fitness to Practise Committees operate. Instead of the strategic and policy decisions being made by the statutory Committees, as of 1 July 2009, panels that consider our cases are now themselves the statutory Committees. Therefore a Fitness to Practise Committee is being established to consider strategic and policy matters in future.

How to make a complaint

If you want to make a complaint about a professional registered by the HPC, please write to our Director of Fitness to Practise at the following address:

Fitness to Practise Department
The Health Professions Council
Park House
184 Kennington Park Road
London SE11 4BU

If you need advice, or feel your complaint should be taken over the telephone, you can also contact a member of the Fitness to Practise Department on:

tel +44 (0)20 7840 9814
freephone 0800 328 4218 (UK only)
fax +44 (0)20 7582 4874

You may also find our 'Reporting a concern' form useful, available at www.hpc-uk.org

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