

## Fitness to Practise – Kelly Johnson

### Striking off

Peter Jones, Operating Department Practitioner – convictions for indecent photographs of children

### Suspension

Julia Hollinrake, Occupational Therapist - alcohol related convictions  
Claire Fox, Occupational Therapist – cautions for shoplifting  
Alan Sutheran, Operating Department Practitioner- drug misuse  
Wendie McNabb, Dietitian – record keeping  
Thabo Phirie, Biomedical Scientist – wounding with intent to do grievous bodily harm

### Conditions of Practice

Kara Glen, Physiotherapist – inappropriate relationship

### Caution

Paul Cooney, Paramedic- driving under the influence of alcohol  
Sarah Jane Hooper, Chiropodist – incorrect assessment of a patient  
James Sheehan, Paramedic – self administered entonox  
Claire Groom, Paramedic – failure to report a hoax call  
Angus Sutherland, Operating Department Practitioner – internet use

### Part Heard/Adjourned

Gwyn Lishman, Occupational Therapist  
Paul Flack, Paramedic

The case of Kay Cousins was referred from the Health Committee

### No Further Action

Vickie Darnley, Operating Department Practitioner - incorrect entry – Notice of Decision and Order attached.

### Allegations not well founded

One conduct and competence case was not well founded

### Review Hearings

Esther Randall, Physiotherapist – suspension continued  
Fiona Drew, Physiotherapist – conditions extended  
Minette Magno, Physiotherapist – suspension continued  
Richard Adams, Physiotherapist – suspension continued  
Joe Osmond, Speech and Language Therapist –conditions revoked, suspension order imposed  
Asarath Aliyar, Physiotherapist –suspension continued  
Baldev Mehra, Physiotherapist – suspension continued  
Gordon Mendy, Physiotherapist – conditions extended.

### Interim Orders

Interim Orders have been granted in the following cases:

Derek Dredge, Paramedic  
Christopher Wall, Chiropodist

The following interim orders have been reviewed:

Karl Tett  
Rachel Winnard  
Kathryn Crain  
Kay Cousins  
Prajake Nawathe  
June Elliott  
Matthew Hankin

### **Investigating Committee**

92 allegations were received between August and October 2006. Panels of the Investigating Committee considered 59 cases between August and October 2006. The panels referred 39 cases There is a current case to answer rate of 70% At the end of October there were 195 cases within the remit of the Investigating Committee

### **Conduct and Competence Committee**

At the end of October there were 127 cases within the remit of the Conduct and Competence Committee

### **Health Committee**

At the end of October there were 8 cases within the remit of the Health Committee

### **Review Hearings**

At the end of October there were 59 registrants subject to a conditions of practice or suspension order

### **Hearing Fixing**

As at the 1<sup>st</sup> November , 56 full hearings have been fixed for hearing before April 2007

### **Registration Appeals**

In August and September 15 registration appeals were received, 33 appeals were heard and 10 appeals were allowed. At the end of September there were 35 open registration appeals.

### **Health and Character**

In August and September, 67 health and character declarations were received. Panels considered 65 cases. 3 applicants were rejected for registration and 4 registrants had their self referrals referred to a fitness to practise panel.

### **Protection of Title**

70 complaints about the misuse of title were received between August and September 2006.

### **High Court Appeals**

The appeal in the matter of Mohammed Khokhar was dismissed on 20<sup>th</sup> October 2006. A hearing with regards to costs is scheduled to take place on 6<sup>th</sup> November 2006.

### **Other Information**

#### **Training Attended:**

Diversity Training

Interview Training  
Particulars Training

**Meetings:**

Suzanne Phillips, GDC – to discuss the approach the GDC and the HPC take in relation to the drafting of allegations

Equality and Diversity Project Meeting

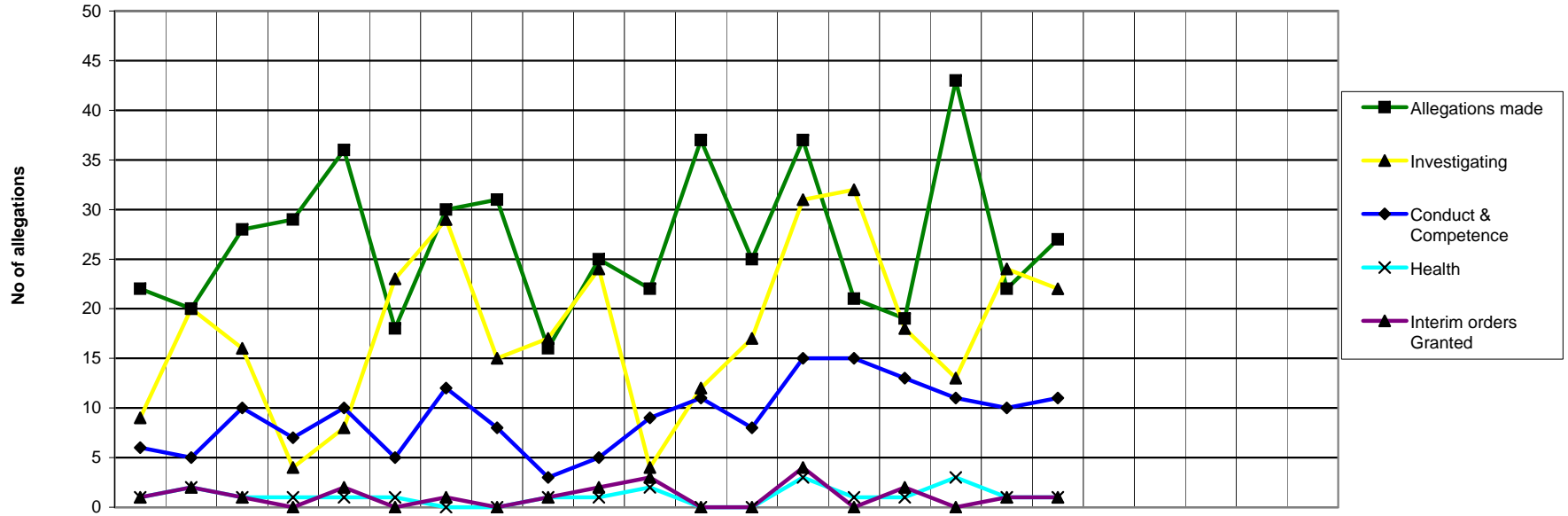
Office of Fair Trading – to discuss the provisions of the Enterprise Act and how it may assist the HPC

Legal Assessor and Panel Chair Review Day – Report attached

Health Professions Council

Fitness to Practise

Fitness to Practise Department



	2005									2006									2007			2003/4	2004/5	2005/6	2006/7		
	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	FYE	FYE	FYE
Allegations made	22	20	28	29	36	18	30	31	16	25	22	37	25	37	21	19	43	22	27				134	172	314	194	
Investigating	9	20	16	4	8	23	29	15	17	24	4	12	17	31	32	18	13	24	22				134	181	181	157	
Conduct & Competence	6	5	10	7	10	5	12	8	3	5	9	11	8	15	15	13	11	10	11				19	68	91	83	
Health	1	2	1	1	1	1	0	0	1	1	2	0	0	3	1	1	3	1	1				2	9	11	10	
Interim orders Granted	1	2	1	0	2	0	1	0	1	2	3	0	0	4	0	2	0	1	1				14	18	13	8	

This table outlines how many allegations have been made and how many cases each of the three fitness to practise panels have heard. It does not display how many cases are currently within the remit of a particular panel. In some instances the allegation may have been made prior to April 2004

Health Professions Council

Allegations - Conduct & Competence and Health Committees

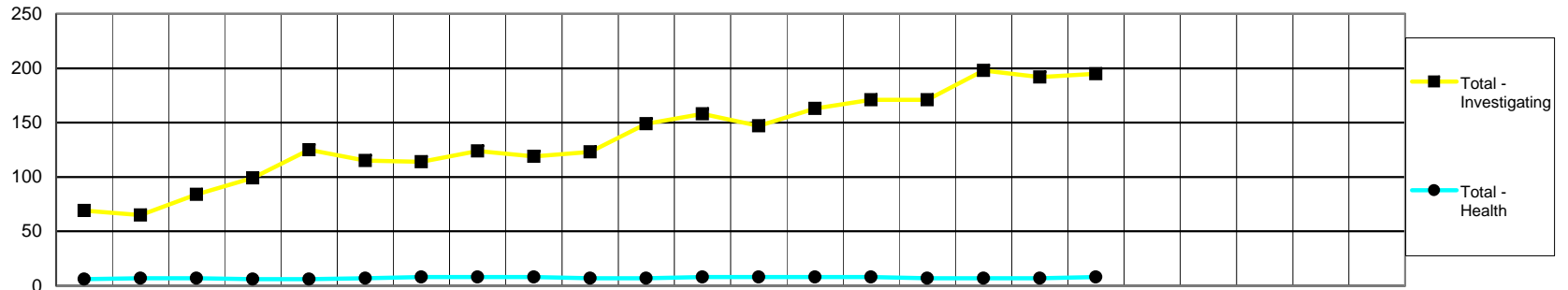
Fitness to Practise Department

		2005										2006										2007			2003/4	2004/5	2005/6	2006/7			
		Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	FYE	FYE	FYE	YTD		
	<b>Total Allegations</b>	22	20	28	29	36	18	30	31	16	25	22	37	25	35	21	19	43	22	27								134	172	314	192
Conduct & Competence Committee	<b>C&amp;C Cases Heard</b>	6	5	10	5	6	4	8	7	0	4	7	11	8	10	14	8	8	9	7								-	55	73	64
	<b>Review Cases Heard</b>	0	0	2	2	4	1	4	1	3	1	2	0	0	5	1	5	3	1	4								-	13	20	19
	<b>Struck Off</b>	1	1	2	2	1	0	1	0	0	0	0	3	1	3	4	5	3	1	0								-	13	11	17
	<b>Suspended</b>	2	1	0	3	2	3	1	2	0	1	2	2	1	1	2	1	2	3	2								-	13	19	12
	<b>Conditions of Practice</b>	0	1	1	0	1	0	1	0	0	0	0	1	1	0	1	0	0	0	1								-	11	5	3
	<b>Caution</b>	2	1	1	0	0	0	1	0	0	0	2	1	3	4	1	2	2	3	2								-	8	8	17
	<b>No Further Action</b>	0	0	1	0	1	0	0	0	0	0	1	1	2	1	1	0	0	0	0								-	3	4	4
	<b>Adjourned</b>	1	0	2	1	2	2	1	5	0	3	3	2	0	1	5	0	1	1	2								-	5	22	10
	<b>Referred to Health</b>	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0								-	2	1	0
	<b>C&amp;C Cases to be heard</b>	58	59	56	55	54	62	71	83	93	108	104	105	98	107	108	108	112	118	127								-	59	59	778
	<b>Review cses to be heard</b>	31	31	30	31	33	35	35	36	36	36	35	37	39	38	40	42	41	47	50								-	28	28	297
Health Committee	<b>Health Cases Heard</b>	1	2	1	1	0	0	0	0	1	1	1	0	0	1	1	1	0	1	0								-	9	8	4
	<b>Review Cases Heard</b>	0	0	0	0	0	0	0	0	0	0	1	0	0	2	0	0	3	0	1											6
	<b>Struck Off</b>	0	0	0	0	0	1	0	0	0	0	0	1	0	0	0	0	0	0	0								-	0	2	0
	<b>Suspended</b>	0	0	0	0	0	0	0	0	1	0	1	0	0	0	0	0	0	0	0								-	5	2	0
	<b>Conditions of Practice</b>	0	1	1	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0								-	1	3	0
	<b>Caution</b>	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0								-	0	0	0
	<b>No further action</b>	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0								-	2	0	1
	<b>Review cases heard</b>	0	2	0	0	1	0	0	0	0	0	0	0	0	2	0	0	0	0	1								-	0	3	3
	<b>HCC cases to be heard</b>	6	7	7	6	6	7	8	8	8	7	7	7	9	9	8	7	7	6	8								-	7	7	54
	<b>Review cses to be heard</b>	6	6	7	8	8	8	8	8	8	8	8	8	8	8	9	13	10	10	9								-	6	6	67
Interim Order Panels	<b>Interim Order Panels</b>	1	3	2	0	2	0	1	0	1	2	3	0	4	11	4	3	0	5	3								-	22	15	30
	<b>Interim Orders Granted</b>	1	2	1	0	2	0	1	0	1	2	3	0	0	4	0	2	0	1	1								-	17	13	8

Health Professions Council

Cases Pending - Investigating Panel & Health Panel

Fitness to Practise Department

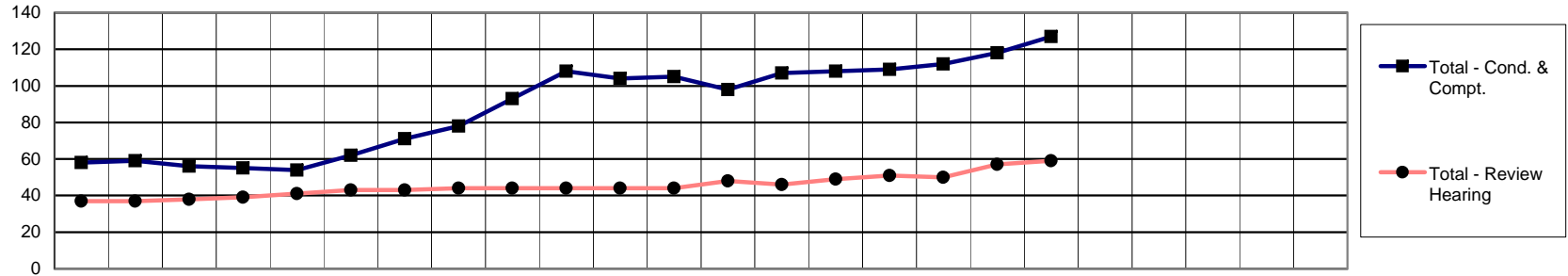


	2005										2006										2007			2005/6	2006/7		
	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	FYE	YTD	
<b>Investigating Panel</b>																											
Arts Therapists	0	0	0	0	0	0	0	2	2	2	2	2	2	3	4	4	4	4	6							2	4
Biomedical Scientists	3	1	5	7	8	7	10	9	6	7	5	5	6	6	6	8	9	8	8							5	8
Chiropodists & Podiatrists	17	13	16	17	25	23	21	16	17	16	18	24	25	26	25	19	20	20	22							24	20
Clinical Scientists	0	0	0	1	2	2	3	3	3	3	3	3	3	3	2	3	4	4	4							3	4
Dietitians	3	2	1	3	4	3	2	2	2	2	2	1	2	2	2	2	2	2	3							1	2
ODPs	7	7	10	7	9	8	9	10	10	12	11	14	13	12	13	14	16	16	16							14	16
Occupational Therapists	7	10	8	12	12	12	13	14	12	12	9	14	18	18	19	19	21	22	22							14	22
Orthoptists	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0							0	0
Paramedics	15	19	24	25	25	23	19	19	18	15	20	19	21	24	25	30	45	41	42							19	41
Prosthetists & Orthotists	1	1	2	3	2	1	1	1	1	1	2	2	2	0	0	0	0	0	0							2	0
Physiotherapists	9	9	11	16	23	22	21	33	34	38	60	50	46	49	49	45	49	46	43							50	46
Radiographers	5	2	4	5	11	11	9	10	10	11	15	18	6	13	19	21	21	21	21							18	21
SLTs	2	1	3	3	4	3	6	5	4	4	4	6	3	7	7	6	7	8	8							6	8
<b>Total - Investigating</b>	69	65	84	99	125	115	114	124	119	123	149	158	147	163	171	171	198	192	195							158	192
<b>Health Panel</b>																											
Arts Therapists	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0							0	0
Biomedical Scientists	0	0	0	0	0	1	1	1	1	1	1	2	2	2	2	1	1	0	0							2	0
Chiropodists & Podiatrists	1	1	1	1	1	1	1	1	1	1	0	0	0	0	0	0	0	0	0							0	0
Clinical Scientists	1	1	1	1	1	1	1	1	0	0	0	0	0	0	0	0	0	0	0							0	0
Dietitians	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0							0	0
ODPs	1	2	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	2							1	1
Occupational Therapists	1	1	1	0	0	0	0	0	1	1	2	2	3	3	3	3	3	3	3							2	3
Orthoptists	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0							0	0
Paramedics	0	1	1	1	1	1	1	1	1	0	0	0	0	0	0	0	1	1							0	1	
Prosthetists & Orthotists	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0							0	0
Physiotherapists	1	1	1	1	1	1	2	2	2	2	2	2	2	2	2	2	2	2	2							2	2
Radiographers	1	0	1	1	1	1	1	1	1	1	1	1	1	0	0	0	0	0	0							1	0
SLTs	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0							0	0
<b>Total - Health</b>	6	7	7	6	6	7	8	8	8	7	7	8	8	8	8	7	7	7	8							8	7

Health Professions Council

Cases Pending - Conduct and Competence Panel & Review Hearing

Fitness to Practise Department



	2005										2006										2007			2005/6 FYE	2006/7 YTD		
	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb			Mar	
<b>Cond. &amp; Compt. Panel</b>																											
Arts Therapists	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Biomedical Scientists	4	4	3	4	3	4	4	5	7	8	8	7	5	6	7	7	8	11	10							7	11
Chiropodists & Podiatrists	5	9	8	8	8	8	11	12	13	13	14	13	12	12	10	12	13	12	14							13	12
Clinical Scientists	1	0	0	0	0	0	0	0	1	1	1	1	1	1	1	1	1	1	1	1						1	1
Dietitians	2	2	3	3	3	4	2	2	2	2	2	3	2	2	2	2	2	2	1							3	2
ODPs	10	8	7	6	6	6	5	5	6	9	8	8	8	13	10	10	10	10	9							8	10
Occupational Therapists	6	5	8	7	6	8	10	12	13	14	13	12	13	12	15	17	17	19	20							12	19
Orthoptists	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0							0	0
Paramedics	8	10	9	9	9	10	16	17	22	29	28	29	28	29	31	28	28	28	33							29	28
Prosthetists & Orthotists	2	2	2	2	3	4	4	4	4	4	4	4	4	4	3	3	3	3	3							4	3
Physiotherapists	13	13	10	10	9	9	8	8	9	12	12	14	16	17	18	19	19	20	22							14	20
Radiographers	5	4	4	4	5	5	8	8	8	8	7	7	4	5	5	5	6	7	8							7	7
SLTs	2	2	2	2	2	4	3	5	8	8	7	7	5	6	6	5	5	5	6							7	5
<b>Total - Cond. &amp; Compt.</b>	58	59	56	55	54	62	71	78	93	108	104	105	98	107	108	109	112	118	127							105	118
<b>Review Hearing</b>																											
Arts Therapists	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0						0	0
Biomedical Scientists	4	4	4	4	5	5	4	4	4	4	4	5	6	6	6	6	5	5	6							5	5
Chiropodists & Podiatrists	4	3	4	3	3	3	3	3	3	3	3	3	3	2	2	3	3	4	4							3	4
Clinical Scientists	0	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1							1	1
Dietitians	1	1	1	1	1	2	2	2	2	2	2	2	3	3	3	3	3	3	4							2	3
ODPs	0	0	1	1	1	1	1	2	1	1	1	1	1	1	2	3	3	4	3							1	4
Occupational Therapists	2	2	2	4	4	4	4	4	4	4	5	5	5	5	5	5	5	7	7							5	7
Orthoptists	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0							0	0
Paramedics	4	4	4	4	4	4	4	4	4	4	4	4	5	5	6	7	6	6	6							4	6
Prosthetists & Orthotists	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	1	1	1	1							0	1
Physiotherapists	16	16	16	16	17	18	20	21	21	21	18	18	18	18	18	17	18	21	22							18	21
Radiographers	3	3	2	2	2	2	1	1	2	2	3	2	3	2	2	2	2	2	2							2	2
SLTs	3	3	3	3	3	3	3	2	2	2	3	3	3	3	3	3	3	3	3							3	3
<b>Total - Review Hearing</b>	37	37	38	39	41	43	43	44	44	44	44	44	48	46	49	51	50	57	59							44	57

What is referred - April 06-October 06

	Case to Answer	No Case to An	Further Information
<b>Allegation made by</b>			
Employer	54	10	0
Police	6	14	4
Public	8	11	0
Article 22(6)	33	3	0
Registrant/Professional	4	6	0
<b>Total - 2006/2007 YTD</b>	<b>105</b>	<b>44</b>	<b>4</b>
<b>Total 2005/2006 FYE</b>	<b>101</b>	<b>70</b>	<b>7</b>

2006/2007 YTD
64
24
19
36
10
153



2005/2006 FYE
79
23
33
33
10
178

**Outcome of Investigating Panels - Sept 2006**

	Heard	FFI	C&C	ICP	HCP	No Case
<b>Profession</b>						
Arts Therapists	0	0	0	0	0	0
Biomedical Scientists	3	0	5	0	0	0
Chiropractors & Podiatrists	14	0	7	0	0	6
Clinical Scientists	0	0	0	0	0	0
Dietitians	0	0	0	0	0	0
ODPs	12	0	10	1	1	1
Occupational Therapists	15	0	12	1	1	5
Orthoptists	0	0	0	0	0	0
Paramedics	15	0	13	1	1	5
Prosthetists & Orthotists	2	0	1	0	0	1
Physiotherapists	38	2	12	19	0	9
Radiographers	10	0	4	0	0	6
SLTs	4	1	1	0	0	2
<b>Total - 2006/2007 YTD</b>	<b>113</b>	<b>3</b>	<b>65</b>	<b>22</b>	<b>3</b>	<b>35</b>
<b>Total 2005/2006 FYE</b>	<b>178</b>	<b>6</b>	<b>91</b>	<b>7</b>	<b>6</b>	<b>68</b>

**Health Professions Council**

**INVESTIGATING COMMITTEE HEARING**

**Notice of Decision and Order**

Date of Hearing: Wednesday 1<sup>st</sup> November 2006

Name of Registrant: Vickie Garbett

Registration No.: ODP20313

Panel: Martin Ryder – Chair  
Anthony D Caplin - Lay Partner  
Colin Keiley – Operating Department Practitioner

Legal Assessor: Simon Russen

Hearing Officer: Gemma Lee

Representation: The Council was represented by Emily Carter of Kingsley Napley Solicitors  
The registrant was present and represented by Sonia Burgher from Unison

**ALLEGATION:**

**Your entry to the Register has been fraudulently procured or incorrectly made in that you failed to disclose upon admission to the Register a matter relevant to your application.**

**DECISION:**

1. The issue underlying the allegation made against Miss Garbett (then Mrs Darnley) is the contention that she should have disclosed the imposition of a conditional discharge when she admitted an offence of dishonesty at the Birmingham Magistrates' Court on 26<sup>th</sup> August 2004.
2. Miss Garbett completed her application to be registered with the HPC on 15<sup>th</sup> December 2004. There is no issue but that she did not disclose the conditional discharge.

3. She informed the Panel, and the Panel accepts her evidence in this regard, that she did not consider that she was required to disclose this matter. The acceptance by the Panel of this evidence is sufficient to dispose of the first limb of the allegation, namely that she fraudulently procured her entry to the register.
4. The Panel has not found the remaining issue, namely whether notwithstanding the absence of fraud that the entry was incorrectly made, an easy one to determine.
5. The difficulty starts with section 14 of Powers of Criminal Courts (Sentencing) Act 2000 which provides that for these purposes proceedings concluding in a conditional discharge are not a "conviction".
6. The Panel finds that the specific questions on the application form, and the matters to which attention is specifically drawn by the related guidance notes, refer to "convictions" and therefore do not require disclosure of conditional discharges. In this regard the Panel finds that the relevant matter was not required to be disclosed in reply to the questions in section 3 of the application form.
7. However, registration of a health professional implies and requires a certain standard of behaviour and conduct. The HPC is entitled as a pre-requisite to registration to expect an applicant to disclose relevant information regarding their character. This is required by standard 4 of the Standards of conduct, performance and ethics, "... you must .... tell us .... if you have any important information about your conduct ....".
8. The offence leading to the imposition of the conditional discharge was, in the view of the Panel, clearly an important matter falling within the category of information required to be disclosed to the HPC. Although the registration form itself was not in the Panel's view sufficiently prescriptive on such matters, nevertheless it follows from the Panel's view set out in the preceding paragraph that Miss Garbett should have ensured that the information was available to the HPC when her application for registration was considered.
9. As the conditional discharge was not disclosed, the HPC was not able to consider the matter when deciding upon her application for admission to the register. It follows that her admission to the register on 21<sup>st</sup> December 2004 was incorrectly made. It follows that the allegation to this extent is well founded.
10. Having regard to all the evidence and having heard submissions from your representative in mitigation the Panel has decided that it will not make an order requiring the Registrar to remove Ms Garbett's name from the register.

**ORDER:**

**The Panel makes no order.**

## RIGHT OF APPEAL

You may appeal against the panel's decision and the order it has made against you.

Order 38(1)(b) of the Health Professions Order 2001 provides that you have 28 days from the date that this notice was served on you to make such an appeal to the appropriate court. In this case the appropriate court is the County Court. The order set out above will not take effect until that appeal period has expired or, if you appeal during that period, until that appeal is withdrawn or disposed of.



1. November 2006

**Health Professions Council  
Fitness to Practise Committees**

**Legal Assessor and Panel Chair Report**

**Introduction**

Twice a year, a review day for the legal assessors and panel chairs takes place. This report is intended to update the committee on the discussions that took place at the most recent review day. This review day took place on 11<sup>th</sup> October 2006.

The agenda for the panel chairs was as follows:

- Fitness to Practise update – workplan, employees and numbers
- CHRE update – Mike Andrews, CHRE
- SCPE Review, Managing your fitness to practise and a Disabled persons guide to being a health professions – Michael Guthrie, Policy Officer
- Decision Making – Health and Character, Self Referrals and Investigating Panels
- CHRE Learning Points
- Sanctions

The Legal Assessors discussed the process of decision making, CHRE learning points and were provided with a case law update.

Approximately twice a year, a learning points meeting take place between CHRE and HPC. These meetings are an opportunity to identify areas of improvement. This information is then disseminated to the legal assessors and panel chairs.

At the most recent meeting, CHRE raised their concern about the lack of reasoning and detail in determination in several cases. They felt that HPC did not include in the determination an explanation of the facts of the case to explain what had happened. They explained that a determination should be worded so that any person reading it - including the registrant, complainant, CHRE and a member of the public, can fully understand the case and decision without requesting further information.

In a different case, it was pointed out that a panel had determined that the registrant's actions did not affect patient care and was unlikely to occur again. However, the determination did not provide any evidence of how the actions had not affected patient care and why it was unlikely to occur again.

In a different case CHRE raised its concern about the lack of explanation regarding the decision on sanction. They felt that the panel did not explain why they imposed one sanction over another.

CHRE also pointed out that one determination had stated that the registrant had received a caution for a large quantity of drugs. However, the panel did not explain what the drugs were, what a large quantity was and the mitigating factors in the case.

CHRE also raised the issue that in some cases the panel had not provided any information as to what the registrant should provide at a review hearing. This was particularly relevant in cases where a suspension order was imposed. The sanctions practice note was updated to this effect in May 2006.

It should be noted that none of the cases identified by CHRE (of which there were approximately 10 – including reviews), merited a referral under CHRE’s Section 29 powers.

The following High Court cases and their relevance to the HPC were discussed at the meeting:

CHRP and (1) GDC, (2) Ian Marshall - [2006] EWHC 1870 (Admin)  
The Queen on the Application of Toth v GMC [2003] EWHC 1675 Admin  
Meadow and GMC [2006] EWHC 146 (Admin)  
Elizabeth Morag Crabbie v GMC [2002- UKPC 45  
The Law Society and Claire Louise Wilson [2006] EWHC 1022 (Admin)  
The Queen on the Application of Fatnani v General Medical Council  
[2006] EWHC 1573 (Admin)  
Singleton v The Law Society [2005] EWHC 2915 (Admin)  
CHRP and (1) HPC, (2) Simon Harrison

Further discussions took place around the difficulties in Articles 29 and 30 of the Health Professions Order regarding review hearings. It is hoped that a solution to resolve the interpretation of Article 30 will be in place shortly.

## **Decision**

This document is for noting only. No decision is required

## **Background information**

In December 2004, Council approved a policy stating that Council Members would no longer be used to chair fitness to practise panels. In April 2005 13 individuals were appointed to act as fitness to practise panel chairs. They have been chairing panels since July 2005.

Legal Assessors give advice on law and procedure to all fitness to practise panels (excluding the “case to answer” phase of the investigating panel) and registration appeals.

## **Resource implications**

The FTP Team Administrator organises the review day twice a year.

The Director of Fitness to Practise leads the review day(s)

## **Financial implications**

Date	Ver.	Dept/Cmte	Doc Type	Title	Status	Int. Aud.
2006-11-06	a	F2P	AGD	Legal assessor and panel chair report	Final DD: None	Public RD: None

Legal Assessors receive an attendance allowance of £530 plus expenses.  
Panel Chairs receive an attendance allowance of £260 plus expenses.

Jonathan Bracken attends the review day to provide the regulatory law update and assist in leading the training

## **Appendices**

Presentation – CHRE Update, Mike Andrews CHRE

## **Date of paper**

6<sup>th</sup> November 2006





**MIKE ANDREWS**  
**CHRE, Head of Fitness to Practise**

**HPC Training Day**  
**11 October 2006**



## **CHRE's ROLE IN CURRENT REGULATORY ENVIRONMENT**

- CHRE does not regulate professionals
- CHRE oversees bodies who regulate
- CHRE is made up of the nine presidents and ten lay members (incl. lay chair)
- CHRE works in partnership with the regulators and other stakeholders



## CHRE FUNCTIONS

- To promote the interests of patients and other members of the public in the performance of their functions by regulators
- To promote best practice in regulation
- To promote principles of good professionally led-regulation
- To promote co-operation between the regulatory bodies and between them and bodies performing corresponding functions



## **BODIES OVERSEEN BY CHRE**

GMC

GDC

GOC

GOsC

GCC

HPC

NMC

PSNI

RPSGB



## **CHRE'S STATUTORY SCHEME**

- S 25 General functions
- S 26 Powers
- S 27 Requirement for regulators to make or change rules
- S 28 Complaints (not in force)
- S 29 Referral of FTP cases to High Court



## SECTION 29 TEST

‘If the Council considers that –

- a) a relevant decision has been **unduly lenient**, whether as to any finding of professional misconduct or fitness to practise on the part of the practitioner concerned (or lack of such a finding), or as to any penalty imposed, or both
- b) a relevant decision **should not have been made**

*and* that it would be **desirable for the protection** of members of the public for the Council to take action under this section, the Council may refer the case to the relevant court

## **CHRE consideration of S29 cases**

- **Section 29 Process and Procedure**
- **Indicative Sanctions Guidance**
- **Risk factors document**
- **Guidance on exercise of discretion**
- **Court judgments**
- **Outcomes of previous case meetings**
- **Lawyers reports**



## TEST POST-RUSCILLO AND TRUSCOTT, COURT OF APPEAL

To demonstrate undue lenience, CHRE must persuade the court that the decision was a decision which a disciplinary tribunal, having regard to the relevant facts and to the object of the disciplinary proceedings, **could not reasonably have imposed** and that it “is **manifestly inappropriate** having regard to the practitioner’s conduct and the interests of the public.”





## ELEMENTS OF UNDUE LENIENCE TEST

- that the decision of a fitness to practise panel was **manifestly inappropriate** having regard to the practitioner's conduct and the interests of the public
- that the decision, whilst taking account of the material facts, failed to have due regard for the **safety of the public** and the **reputation of the profession**
- CHRE is also entitled to identify serious **procedural or other irregularities** in the operation of a fitness to practise proceedings which lead it to believe that the decision as to penalty was inappropriate.



## NUMBERS OF CASES

- Just over 2,000 determinations considered
- 27 referred to Court
- 17 appeals upheld/settled by agreement
- 2 appeals dismissed
- 4 withdrawn
- 4 appeals waiting to be heard



## HPC cases

- Approx 10% of CHRE cases
- 20% requests for further information (av. 14.6%)
- 1.6% went to case meetings (av. 3.7%)
- 1% referred to Court (1.1%)

- *Dr Solanke* – CHRE’s appeal to the High Court was dismissed. However, the judgment provided useful clarification on the meaning of undue lenience in Section 29. For a decision to be unduly lenient it had to be “outside the range of sanctions that the relevant disciplinary panel, applying its mind to all the factors relevant to its jurisdiction, could reasonably consider appropriate”.

- *Dr Brennan* and *Dr Urquhart* – these two appeals were settled by agreement prior to an uncontested hearing on the basis that the doctors agreed to give a formal undertaking to the Court not to undertake certain types of work. The undertaking would be added to their GMC registration and be discloseable to any enquirer including employers.



- *Dr Leeper* - CHRE's appeal to the High Court was upheld. However, judge decided that the suspension should not come into effect in light of the time which had elapsed since the GMC hearing during which the doctor had been unable to work.



- *Dr Mulhem* - CHRE's appeal to the High Court was upheld in an uncontested hearing.

*Dr Basiouny –*

- i) CHRE does have the power under Section 29 to review findings of fact, although the High Court would only interfere with such findings in exceptional cases
- ii) the committee/panel is obliged to give reasons for its decisions
- iii) a failure to direct a resumed hearing in a case of suspension
  - could mean that a decision is unduly lenient
- iv) the regulatory body and not the committee/panel is the correct first respondent in a Section 29 appeal.





*Mr Fleischmann –*

The judge also said that in such cases it would never be appropriate for a regulatory body's sanction to cease before the end of the criminal court's sanction.



- *Mr Jellett* –
- The judgment clarified that undue leniency can apply to a decision to restore a practitioner to the register and that deterrence has little relevance in considering applications for restoration. In addition, in cases where CHRE is offered a settlement before a hearing, they should not reject it unless they are confident that they will achieve a substantially different outcome from the one that is offered.



*Professor Southall*

Importance of mitigation

Public interest in allowing a practitioner to continue to practise

Erasure only if essential



Dr Rajeshwar and Dr Biswas

Failures of process can amount to undue lenience if they could have affected the outcome.



## **S 29 Learning points**

- Face to face learning points meetings
- Agreement of Action points
- Dissemination of learning
- Review of progress on action points through performance review



# What makes a good determination

## Reasons

description of facts and their seriousness

why charges found/not found

why this does/does not amount to  
misconduct/impairment

why sanction was/was not imposed



What makes a good determination

Resumed hearings – Need to explain expectations for the next hearing



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