

**Health Professions Council
Fitness to Practise Committees
Fitness to Practise Planning**

Executive Summary and Recommendations

Introduction

This paper sets out the priorities for the fitness to practise department in the next financial year. This document is currently in draft format, however the Committees are asked to consider the work plan and the priorities, projects and principles outlined.

Decision

The Committee is asked to:

- Discuss the work plan attached to this paper; and
- Agree the priorities, projects and principles outlined.

Background information

This document is intended to supplement HPC strategy, and sits alongside other departmental level strategy documents such as the IT strategy, HR strategy, Policy and Standards strategy and others.

Resource implications

This is included within the document.

Financial implications

As above

Appendices

- Council Paper - Provision of Legal Services
- Management reports
- Current workload – end of August
- Forecast for 2007/2008
- Five Year Plan
- 2006 Annual Report
- Home Office Circular 6/2006
- Case Management Strategy Document February 2005
- How to make a complaint about a health professional
- What happens if a complaint is made against me

Date of paper

29th August 2006

Fitness to Practise Department 2006

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1. Introduction

(a) The Fitness to Practise Department

The Fitness to Practise Department has been in existence since HPC was first established. However, the past year has seen a number of significant changes in the Department's functions as a range of best practice procedures have been adopted and processes implemented and maintained.

This document explains the updated priorities for rest of the financial year and for the years ahead. It also explains where we are, what we do and what needs to be done.

The Fitness to Practise department, due to the nature of its work, will also have to manage high profile cases which attract media interest and allegations which may require an immediate interim order. There is a need to implement risk profiling to ensure high risk cases are dealt with appropriately. It is important that departmental planning allows for timely responses to unpredictable situations when they arise.

The document also details how the department will grow and continue working to ensure that all operational and strategic demands are met and to ensure that cases are investigated properly, complainants and registrants are kept informed and that cases are brought to panel quickly and that resources are used to their best effect.

The focus to date in the fitness to practise department has been on the visible end of the fitness to practise process, in line with Council's policy to design a non confrontational process. Fine tuning continues, particularly in the area of decision making, but it is now intended to put more emphasis on the behind the scenes aspects of the department.

(i) Responsibilities

The Fitness to Practise department is responsible for the following functions at the Health Professions Council:

- Registration Appeals;
- Management of the fitness to practise process - including the investigation of allegations and arranging panels to hear cases;
- Health and Character Declarations - including declarations on admission, readmission and renewal to the register and
- Prosecution of Offences - the offences that can be prosecuted are set out in Article 39 of the Health Professions Order 2001 and include:
 - Misuse of title
 - Fraudulently procuring an entry in to the register
 - Failure to provide documents or attend a hearing

(ii) Resources

The Team

The fitness to practise budget for 2006/2007 currently assumes a team of 13 individuals. The team is made up as follows:

Name	Job Title
Kelly Johnson	Director of Fitness to Practise
Eve Seall	Fitness to Practise Manager
Sabrina Adams	Case Manager
Mick Calligy	Case Manager
Nick Grassby	Case Manager
Zoe Maguire	Case Manager
Emma Pearce	Case Officer
Simon Thompson	Case Officer
James Bryant	Hearings Officer
Gemma Lee	Hearings Officer
Emma Bowman	Team Administrator
Merle McKinley McNair	PA to the Director of Fitness to Practise

The FTP Manager is responsible for the day-to-day running of the department which includes case and hearing allocation, case tracking, weekly planning and reviewing standards.

Each Case Manager has a case load for which they are responsible for the investigation of allegations (including the taking of witness statements as necessary, preparing a case for investigating panels (including the particularisation of an allegation) and presentation of those cases to investigating panels, presentation of interim orders and interim order reviews where appropriate. The majority of interim orders are now presented by the team in their capacity as presenting officers. They are also responsible for post investigating panel cases, which includes instructing lawyers, communicating with witnesses and tracking suspension orders and conditions of practice orders. The case managers deal with a 'live' case load of approximately 40 investigating panel cases and 30 post investigating panel cases

One case manager is also responsible for the management of the registration appeals process which currently consists of approximately 50 live registration appeals.

Case Officers are responsible for investigating complaints about the misuse of title, preparing cases for registration panels and a fitness to practise case –load of approximately 10-15 cases. The Case Officer FTP case load generally consists of conviction cases, simple misconduct and incorrect entries. They are also currently assisting in setting a number of fitness to practise hearings.

Hearings Officers are responsible for arranging all fitness to practise hearings including reviews of orders and interim orders. They also act as clerk to the tribunal. They undertake all follow-up work after a hearing and some elements of HPC's witness support provisions. It is anticipated that there will be approximately 250 days of hearings in 2006-2007 where approximately 350 cases will be considered. At the end of July 70 full FTP cases were ready for hearing and required a date for hearing. There is also an ongoing necessity to schedule interim orders, interim order reviews and review hearings.

The Team Administrator is responsible for arranging travel for witnesses and employees, some elements of the witness support provisions (including seeking available dates for panels and collation of the witness provisions questionnaire), all hearing preparation, transcripts and maintenance of the HPC alerts database. The team administrator is also responsible for the logging and tracking of all invoices to ensure that the particular cost was incurred. This information assists in the budget forecasting and the cost analysis of fitness to practise cases.

It is envisaged that a further fitness to practise manager will be appointed if as expected, the work load for the fitness to practise department increases. One fitness to practise manager will be responsible for the investigative process, the other for the administrative process (including hearings management, registration appeals and witness management). Further case managers and hearings officers will be appointed in 2007/2008.

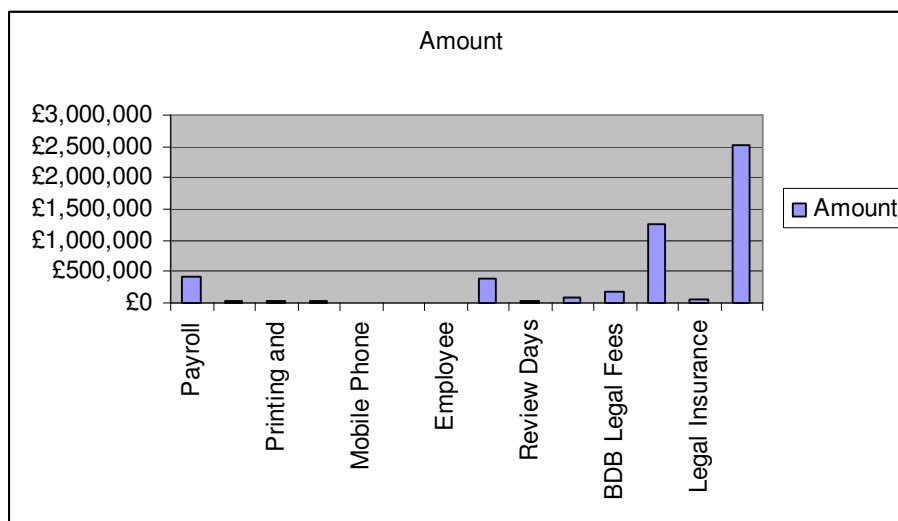
It is envisaged that this structure will be in place by June 2007.

Attached as an appendix to this document are:

- Management reports
- Current workload – as at end of August
- Forecast for 2007/2008
- Numbers from the five year plan

Financial

The current fitness to practise budget is around £2.6 million. This is approximately 25% of the total HPC budget for 2006/2007.



The budget is broken down in the following way:

Budget Line	Total
Payroll (including basic pay, national insurance cost and recruitment)	£421,251
Employee travel and subsistence	£16,860
Printing and stationary (including photocopying, files and headed paper)	£29,792
Room Hire (venues outside of park house)	£29,010
Mobile Phone	£720
Communications (Brochures and FTP Annual report)	£13,000
Employee Training	£11,000
Hearing Costs (including panels, legal assessors and catering costs)	£403,940
Review Days	£23,168
Shorthand Writers	£90,250
BDB Legal Fees ¹	£188,220
Kingsley Napley Costs	£1,254,000
Legal Insurance	£46,200

Ensuring that fitness to practise has the resources (financial, employee and IT systems) is key to the planning for 2007/2008 and for the years ahead.

(b) Priorities 2006 - 2007

(i) Employee Development and Training

It is important to ensure that all members of the department have the appropriate understanding of the legislation surrounding the work that they do – including the Health Professions Order and the rules made under it, the Human Rights Act, the Data Protection Act and the Freedom of Information Act. The team also require regular training in the following areas:

- The investigative process
- Offences under the 2001 Order

¹ Including presenting registration appeals and CHRE costs

- Report writing
- Witness statements
- Witness interviews
- Requiring the disclosure of information
- Witness management
- Evidence management
- Interviews under caution
- The decision to prosecute
- Human rights
- Disclosure in criminal cases.

The team also deal with cases of a highly sensitive and difficult nature and often deal with upset/vulnerable witnesses and aggressive registrants. To this end, it is important that they receive training on how to deal with difficult people, responding to suicidal callers and conflict avoidance. Due to the disturbing nature of the cases they deal with, it is also important that the team work well together as a team and provide each other with appropriate levels of support and understanding.

To date, the team has received in-house training from the Director of Fitness to Practise and Jonathan Bracken. It is now necessary to ensure that we move to the next phase of training to ensure that the fitness to practise team meet increasing operational and strategic demands. They have also received media training, presentation skills training, plain English training and training on how to deal with difficult telephone calls. The next year will see a more structured training programme organised for the team. This will also assist in moving the department forward to a point where they are able to undertake functions that have been historically undertaken by lawyers and reduce the heavy reliance on external lawyers.

The Council agreed in May 2006 that an invitation to tender paper be prepared and issued seeking the provisions of a Parliamentary Agent and for the provision of legal services associated with HPC's fitness to practise process. This document is attached as an appendix.

The training programme will take a year to complete and a similar programme will be provided for all new recruits to the department.

The training programme uses a variety of training providers and provides both practical and theoretical skills. There will be a mixture of in-house training and use of external lawyers

The theoretical elements of the programme will enable all of the fitness to practise team (excluding DFTP and PA) achieve the award of the BTEC Level 5 Advanced Professional Certificate in Investigative Practice from Edexcel, the National Awarding Body. This training is will be provided by Bond Solon, a legal training consultancy. The training will consist of modules in the following:

- Law, Evidence Procedure and Best Practice – this component of the qualification is intended to provide the FTP team with a practical knowledge of relevant legislation, procedures and rules of evidence

- Advanced Statement/ Report Writing and Giving Evidence – this component of the course provides the FTP with an ability to write written evidence to best practice standards. The ‘Giving Evidence provisions of this component of the course will assist the department in reviewing its witness support provisions
- Advanced Investigative Interviewing
- Conflict Management – this will assist the team in dealing with difficult registrants and unhappy witnesses.

Each component of the course will take two days to complete and will be formally assessed.

In-house training

A programme of training will be provided at each Fitness to Practise team meeting. This training will cover elements such as decision making, the registration appeals process, use of Article 25 powers, summoning powers and the prosecutions policy. The team will also be receiving further training from Jonathan Bracken on the Health Professions Order 2001 and the rules made under it.

Team Building

An event is currently being organised to foster appropriate levels of support and team building in the department.

Other training

A number of the fitness to practise team are currently undertaking distance learning and evening courses which include counselling skills, law and psychology.

(ii) Information Technology

As the number of cases dealt with by the HPC increases, there is a need to ensure all cases are logged and tracked appropriately and to produce reports and statistics to aid in the running of the fitness to practise department.

In June 2004, the FTP team developed with the HPC IT department the requirements for the fitness to practise tracking system (APU). As an interim measure, an access solution was designed by Eve Seall to record cases and produce statistics.

APU is a lotus notes database and has been designed in-house by the IT department. The database is designed to log, record and track all fitness to practise cases and store all information relating to fitness to practise case work (this includes all case documentation and correspondence. Report requirements have been identified and it is possible to generate a

range of reports from the system. APU is also used for creating panels for fitness to practise cases. The database keeps a record of all partners that are used for fitness to practise panels and ensures that panel members are not used for the same case twice.

Following a period of testing, all case data and documentation now needs to be loaded into the database.

The functionality of APU includes:

- Linkage to LISA (registration system) and Partners database
- Random electronic selection of fitness to practise panels
- Reports
- Reminder and notes facilities (email reminders to relevant case manager)
- Checklist reminders for fitness to practise team
- Storage facility for all FTP case documentation and correspondence.
- Tracking system for interim orders and orders imposed at final hearing stage.

It will also be used to store and monitor details regarding registrant and complainant ethnicity details.

Currently, all case documentation is kept in hard copy files, APU means that we have back-up electronic copies of all hard copy documentation.

Timetable

The timetable for the APU system dependent on internal (IT availability) factors, for the relevant reports to be written and on fitness to practise time for the information to be loaded into the database. The information and documentation relating to approximately 900 fitness to practise cases needs to be loaded into the database (this includes historic and closed cases). All new cases received since June 2006 are correctly loaded on to the system. Attention is now focused on loading all documentation and information relating to cases that are ready to be or have been fixed for hearing and on cases where a suspension, conditions of practice or interim order has been imposed and on cases which are at the case to answer stage of the process. This is approximately 250 cases. Focus will then move to inputting all archived and historic cases. It is anticipated that the database will be fully operational by the end of November 2006.

(c) Preparation for Internal Audit

The Fitness to Practise department is due to be reviewed by the internal auditors in the second quarter of 2006/2007, the audit is scheduled to take six days and will look at the following risk areas:

- Legal cost over-runs
- Legal challenge to HPC operations
- Exceptional tribunal costs
- Witness non-attendance
- Losing FTP Cases
- Employee/Partner physical assault by hearing attendees

- Registration Appeals

The audit will look at mitigation for each risk. It is important that the department is fully prepared for an audit, and can ensure that outside of the audit, the processes in place are still up to the standard required for audit.

(d) Communication

A key area of work for the fitness to practise department is in ensuring that its policies and procedures are communicated effectively and in a clear, open and transparent fashion. The Fitness to Practise annual report aids in this process, however, all aspects of how the department communicates with stakeholders will be reviewed over the next year. It is also vital to ensure that the fitness to practise process is accessible to all who have cause to interact with it.

Fitness to Practise Annual Report

Article 44(1) of the Health Professions Order states that ‘The Council shall publish at least once in each calendar year a statistical report which indicates the efficiency of the arrangements it has put in place to protect the public from persons whose fitness to practise is impaired, together with the Council’s observations on the report. Furthermore the Practice Committee Constitution Rules states that at least once in every calendar year a Practice Committee shall review the allegations heard by the Committee during the previous 12 months. The Fitness to Practise annual report also serves to meet this purpose. To date, this report has been published every year since 2004, increasing in size every year. The 2006 annual report is provided in the appendix.

Timetable

Every month, the Fitness to Practise Manager produces monthly statistics required for the operational running of the department. Some of these statistics are also used for the Fitness to Practise Annual report. Non-operational statistics are produced for the three fitness to practise committees four times a year and all statistics for the annual report are collated at the time of writing the report. In January 2007 the Committees will review the 2006 annual report. In February 2007 the meeting of the chairmen and vice chairmen of the practice committees will consider a draft outline and structure of the report and the full report will be considered by the practice committees in April 2007.

Improved Communication

It is also important to review how information is communicated to stakeholders, registrants, complainants and witnesses. This will include the implementation of service level standards, building relationships with other organisations (including, but not limited to – employers of registrants, police forces, CHRE, other regulatory bodies and complaints organisations). A

number of meetings have taken place with ambulance trusts to begin this process and in 2005 a circular was sent to police forces and employers of registrants. Following the implementation of Home Office circular 6/2006 (attached in the appendix) it is now necessary to provide an update to the information previously sent. It is also necessary to ensure that when there is a problem, this is communicated to employers and fed into any review of HPC standards.

In July 2005 a protocol was signed between HPC and the Counter Fraud and Security Service. Consideration will now be given as to whether protocols are a suitable mechanism for ensuring the effective exchange of information. Research into the most appropriate organisations to contact to arrange protocols will also take place. Meetings have been arranged with NHS Quality Improvement Scotland and the Healthcare Commission to discuss how to take this work forward. Other regulatory bodies – such as the GMC have signed protocols and memorandums of understanding with a range of organisations including the Association of Chief Police Officers (ACPO) and the Crown Prosecution Service (CPS).

Improved communications also includes reviewing standard documentation and information that is on the website and ensuring that when a registrant has a complaint made against them, they are provided with appropriate information and documentation and that their case is handled in a professional manner by the designated case manager.

The review of information on the website will also include asking the committees to consider whether the amount of information on the website is appropriate – including whether it is appropriate to place transcripts on-line and listing cases prior to a hearing date being fixed.

- (i)
- (ii) Information Provision

It is also important to ensure that information provided to panels, legal assessors, witnesses, registrants and to the fitness to practise team is regularly reviewed and updated. It is necessary to ensure the following is kept under review:

- Regularly updated Practice Notes
- Fitness to Practice Manual
- Regular review days for legal assessors and panel chairs
- Regular case law update
- Dissemination of CHRE Learning points
- Practice notes of the relationship between criminal and fitness to practise proceedings
- Regularly review of the indicative sanctions policy

Timetable

Work continues on the above.

- (iii) *Witness Support Provisions*

As part of the ongoing review of the processes and procedures adopted by the fitness to practise team, it is proposed that there is a review of the provisions that are in place to support complainants and witnesses through the fitness to practise process. Currently in place is the document 'how to make a complaint about a health professional' and a witness pack. Furthermore, the team administrator in the fitness to practise team arranges travel and accommodation for all witnesses that require it and case managers visit witnesses where appropriate. A key element of the review into non-medical regulation was the witness support provisions provided by a number of regulators. It is now necessary to review the provisions provided by the HPC, including brochures, witness material and how witnesses and complainants are communicated too.

This review will be undertaken by a case manager, the hearings officers and the team administrator.

Timetable

It is initially proposed that a questionnaire is given to those who act as witnesses in HPC hearings. This will assist us in assessing the witness provisions that are already in place and what further provisions are required. Furthermore, it is proposed that HPC publish service standards which explain when registrants, complainants and witnesses should expect to hear from the FTP team. This information will be incorporated into the review of the standard documentation and brochures which should be complete before April 2007.

(e) Accessibility

A key area of work in the fitness to practise department, is in ensuring that the process is as accessible as possible. It is felt that the area of the process which is initially likely to have the most impact, is in the initial reception of complaints or concerns about health professionals. The current system only allows for written complaints. This system favours complainants who are articulate and is a disadvantage for those complainants whose first language is not English. In January 2006, the Investigating Committee approved the principal of a complaints form and for taking complaints over the telephone. However, before such a process can be implemented a number of steps need to be taken. Article 22(5) of the Health Professions Order 2001 makes particular reference to an allegation being in the 'form required by Council.' Currently, that form includes being made in writing. Appropriate training needs to be provided to the fitness to practise department.

Furthermore, it is necessary to review the fitness to practise department to ensure that its processes and policies are accessible and continually improved.

Timetable

The process to review all fitness to practise policies and procedures will begin in October/November 2006 and continue for the rest of the financial year. This review will include a review of all fitness to practise practice notes including Equal Treatment. Michael Guthrie, a policy officer in the Policy and Standards team is currently writing a practice note for panels on disability.

A proposal will be provided to Council in October on the form in which an allegation should be made.

The process of capturing information about ethnicity will begin in the new year.

Training the fitness to practise department will take place as set out above.

(f) Managing a Case Load

HPC needs to ensure that it properly manages its case load, ensuring that cases are allocated to the appropriate case manager and undergo risk profiling before allocation. It also needs to ensure that effective forecasting of numbers takes place to accurately predict financial and people requirements for the years ahead.

Furthermore, the following areas will be reviewed/implemented to ensure that the case load is managed properly:

- Implementation of Case Directions with effect from October 2006
- Risk profiling
- Costs per case
- Model of Investigation – including ensuring complainants understand the process and a better explanation of the types of cases HPC can deal with and ensuring that cases are investigated properly. This includes contacting relevant parties to verify facts
- Ensuring consistency in decision making
- Particulars – ensuring that the registrant understands in sufficient detail the allegation so as to mount a credible defence.
- Identifying when an employer is looking for guidance and when it is appropriate to make an allegation
- Operational Forecasting
- Review of Service Level Agreement with Kingsley Napley,

(g) *This area is the largest area of work for the remainder of 2006/2007*

(h) Review of Prosecutions Policy and Procedure

In May 2005 Council approved the prosecutions policy for offences under Article 39 of the Health Professions Order 2001. To ensure the best use of resources, the focus of HPC's enforcement activities in relation to protection of title was directed at preventing misuse of titles and encouraging continued compliance with the law rather than isolated prosecution. To date, HPC has not prosecuted anybody for committing an offence under Article 39.

Between July 2005 and March 2006, 369 complaints about the use of title were received. Since April 2006 a further 99 complaints have been received. There has also been an increase in questions about when HPC will prosecute an individual for a protection of title offence. A review of the policy has been undertaken and a new proposal for the prosecution of offences will be provided to Council in October 2006.

Timetable

A proposal will be provided to Council in October 2006

- (i) The Data Protection and Freedom of Information Acts

To date there has been an ad-hoc approach to requests made under the data protection and freedom of information act to the fitness to practise department

In order to ensure that the department is fully compliant with the act(s) and can provide appropriate responses to complainants, a review of this area will take place in the next financial year.

Timetable

Work to begin in April 2007

- (j)
- (k)
- (l) Bichard

Council will be asked in 2007 to consider the recommendations of the Bichard Inquiry and what impact the Safeguarding Vulnerable Groups Bill will have on the HPC. This work will include providing appropriate advice to panels and ensuring access to the information held by the Independent Barring Board.

- (m) Other Issues for Consideration
 - Costs of High Court Cases and CHRE Referrals
 - Review of Health and Character process
- (n) Appendix
 - Management reports
 - Current workload – as at end of August
 - Forecast for 2007/2008
 - Numbers from the five year plan
 - 2006 Annual Report
 - Home Office Circular 6/2006
 - Case Management Strategy Document February 2005
 - How to make a complaint about a health professional
 - Provision of legal services

Date	Ver.	Dept/Cmte	Doc Type	Title	Status	Int. Aud.
2006-08-29	a	F2P	PPR	Fitness to Practise Planning	Final DD: None	Public RD: None