

Audit Committee 9 December 2009

Fitness to Practise Audit Report(s)

### **Introduction**

In accordance with the proposals agreed by the June 2009 meeting of the Audit Committee, PKF (HPC's Internal Auditors) have been undertaking a series of reviews in relation to the work of the fitness to practise department. The first of those reviews focused on the management of the key risks managed by the department and was considered by the Committee in September. The second and third of those reviews focused on cases that were not referred to a final hearing and on procedural compliance.

PKF have raised two recommendations in the course of their audit which are as follows:

- (a) A report should be provided to the Fitness to Practise Committee explaining the reasons why the date set for a review of a suspension order fell after the date that the order expired. The report should also set out the actions that have already been taken by management to address this matter.
- (b) The HPC should consider whether it would be beneficial to specify the types of complaints where legal advice should always be sought by the Fitness to Practise department.

The first recommendation suggests that a report should be provided to the Fitness to Practise Committee on why the case was listed after the date the order expired. In order for the Audit Committee to understand the reasons for this issue, the Executive has provided more detail on the circumstances of this case and the steps taken to ensure that the issue doesn't occur again, below.

Article 30(1) of the Health Professions Order 2001 provides that:

'Before the expiry of an order made under Article 29(5)(b) or (c) by the Conduct and Competence Committee or the Health Committee, the Committee which made the order or, if the matter has been referred to the other Committee, that Committee, shall review the order and may subject to paragraph (5) –

- (a) with effect from the date on which the order would, but for this provision, have expired, extend or further extend the period for which the order has effect;
- (b) with effect from the expiry of the order, make an order which it could have made at the time it made the order being reviewed;

- (c) with effect from the expiry of a suspension order, make a conditions of practice order with which the practitioner must comply if he resumes the practice of his registered profession after the end of his period of suspension.

In effect, this provision provides that in cases where a panel has imposed a suspension or conditions of practice order, the order must be reviewed before it expires in order for the panel to determine whether any further action is required.

In the case referred to by PKF, a panel of the Conduct and Competence Committee determined that the allegation was well founded and as a result directed the registrar to impose a suspension order. Taking into consideration the relevant appeal a period, the order did not come into force until 31 December 2007 and was due to be reviewed before Wednesday 31 December 2008 (New Years Eve). As a result, the order was due to be reviewed before this date. The panel convened to consider this case was listed for Tuesday 6 January 2009 and it was subsequently determined by that panel that they had no jurisdiction to carry out the review. In reaching their decision, the panel also noted that there had been significant improvement in the performance of the registrant which meant that she now met the relevant standards of proficiency. They also noted that even if the existing order had not lapsed it is likely that the panel would have reached the conclusion that the order made by the earlier panel should not be extended.

An error was made in the listing of this case which meant that the hearing was listed after the order expired. The error was picked up when the presentation of the case was being prepared for hearing; however this was less than 28 days before the date listed for the hearing which meant that another hearing could not be scheduled before the expiry of the order. As a result of this error, a review of the processes used to schedule review hearings was undertaken. The outcome of that review is listed below:

- All expiry dates of conditions of practice and suspension orders were checked and a new spreadsheet set up to track the expiry of orders.
- Review spreadsheet to be reviewed by Scheduling officer and Head of Adjudication every month to check expiry dates of orders.
- Head of Case Management to check the review cases every four weeks to monitor the workload of the case management team.
- Review cases to be listed three months in advance of the expiry date to allow more time for presenting officers to prepare the case.
- A quarterly audit of orders undertaken to ensure that the cases are listed within the appropriate timeframe.
- The practice note 'Drafting fitness to practise decisions' provides guidance to panels on setting out in determinations the date from which an order takes effect.

Effective mechanisms to track orders are a key functional requirement in the development of the electronic case management solution.

**Decision**

The Committee is asked to discuss the attached audit reports.

**Background information**

None

**Resource implications**

None

**Financial implications**

Accounted for in the 2009/10 budget

**Appendices**

PKF audit report – Closed cases quality assurance

PKF audit report – Procedural compliance

**Date of paper**

27 November 2009



**Health Professions Council**

**Fitness to Practise Review**

**Closed cases quality assurance**

**2009/10**

Final November 2009

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Accountants &  
business advisers

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### Project timescales

Date project commenced	20/10/09
Date field work completed	22/10/09
Date draft report issued	16/11/09
Date final management comments received	26/11/09
Date final report issued	26/11/09

# 1 Introduction and scope

- 1.1 In accordance with our proposals agreed by the June 2009 Audit Committee of the Health Professions Council (“HPC”), we have undertaken a quality assurance review of a sample of closed fitness to practise cases that had not been referred to a full hearing.
- 1.2 The HPC needs to be satisfied that the process controls in relation to this area are operating effectively in order to ensure and be able to demonstrate that the public or service users have been protected.
- 1.3 To provide robust quality assurance to the HPC that this is the case, we therefore selected a sample of cases or allegations in order to assess compliance with documented procedures. The cases were selected from 2008/09 and 2009/10.
- 1.4 We selected ten cases where the case had been closed because an HPC registrant was not involved or the allegation did not meet the HPC’s standard of acceptance for allegations and to assess whether the process controls were operating effectively.
- 1.5 We also selected a further sample of ten cases where the Investigating Committee concluded that there was no case to answer and to review these in detail to assess whether the necessary checks and process steps had indeed been undertaken and were clearly evidenced. The audit fieldwork was undertaken in September and October 2009.
- 1.6 This report has been prepared as part of the internal audit of the Health Professions Council under the terms of our engagement letter for internal audit services. It has been prepared for the Health Professions Council and we neither accept nor assume any responsibility or duty of care to any third party in relation to it.
- 1.7 The conclusions and recommendations are based on the results of audit work carried out and are reported in good faith. However, our methodology is dependent upon explanations by managers and sample testing and management should satisfy itself of the validity of any recommendations before acting upon them.

## 2 Executive summary

2.1 This report summarises the work undertaken by PKF within the agreed scope of our quality assurance review of a sample of closed fitness to practise cases that have not been referred to a substantive hearing. The work was performed in accordance with our proposals agreed by the June 2009 Audit Committee.

### Background

2.2 Management estimates that over 1,000 fitness to practise cases will be managed by the HPC during 2009/10. As at the end of September 2009 the Fitness to Practise Department reported that there were 361 open cases which were at the pre Investigating Committee/Case to Answer stage. This included 90 cases that had not yet met the standard of acceptance for allegations.

2.3 The average case to answer referral rate for the period April-September 2009 was 60%.

2.4 There are two key decision points where a case can be closed. The first point is where following investigation the Fitness to Practise Department has concluded that the HPC's standard of acceptance has not been met.

2.5 The principal point where "no case to answer" rulings are made is the Investigating Committee Panel. In deciding whether there is a case to answer, the test to be applied by the panel is whether, based upon the evidence before it, there is a "realistic prospect" that the HPC (which has the burden of proof) will be able to establish at a hearing that the registrant's fitness to practise is impaired.

2.6 At the request of management we agreed to undertake a quality assurance review of a sample of cases to assess whether the HPC's procedures were being followed in relation to these decisions.

### Our assessment

2.7 Based on our sample testing, we concluded that the HPC's procedures for documenting decisions for closed cases that have not been referred to a full fitness to practise hearing were sound and were operating effectively at the time of our review.

2.8 However, we note that the Council for Healthcare Regulatory Excellence ("CHRE") will be undertaking its own review of each health regulator's procedures for dealing with similar cases, which will include an audit of the HPC. We understand that the CHRE's review is to focus on 2008/09 cases.

- 2.9 In conducting our work, we were obliged to follow Government Internal Audit Standards. The CHRE do not have this obligation although they have their own clearly defined procedures that they will follow during their review. The sample selected will also differ. Therefore there is a possibility therefore that the conclusions of the CHRE audit may differ from those set out in this report.

### **Principal findings**

- 2.10 For all the cases investigated by the Fitness to Practise Department included within our sample, we concluded that the HPC's procedures were being followed.
- 2.11 However, in one case we noted that legal advice had been sought by the Fitness to Practise Department, before concluding that the HPC's standard of acceptance had not been met.
- 2.12 We understand that the decision to seek legal advice is based upon the judgement of the Fitness to Practise Department on a case by case basis, although there is operating guidance to for the team on providing instruction and seeking advice.
- 2.13 Nevertheless, we believe that the HPC should consider whether a more prescriptive approach to seeking legal advice would be beneficial in some cases before concluding whether the standard of acceptance has been met. We have therefore raised a recommendation in relation to this matter.
- 2.14 We also concluded that based on the results of the sample testing that we undertook that the Investigating Committee Panels were following the procedures and guidance of the HPC in considering evidence and determining whether there was a case to answer. We did not therefore raise any recommendations in relation to this area.
- 2.15 We wish to thank all members of staff for their availability, co-operation and assistance during the course of our review.

**PKF (UK) LLP**  
**November 2009**



## 3 Detailed findings

### Process outline

- 3.1 A key function of the HPC's Fitness to Practise Department is the investigation of allegations to the effect that a registrant's fitness to practise is impaired and the management of cases through to their conclusion. Management estimates that in total over 1,000 cases will be managed by the HPC during 2009/10.
- 3.2 All complaints received by the HPC are assigned initially to a case manager after initial review and assessment by a lead case manager. The lead case manager determines whether the complaint relates to an HPC registrant and whether the complaint meets the HPC's standard of acceptance for allegations. Process controls at this stage therefore need to evidence that the individual who is the subject of the complaint has been checked as not being listed on the HPC register before the case can be closed. If appropriate, the matter is referred to another regulator or the police.
- 3.3 Where a complaint against an HPC registrant has not been investigated on the grounds that the allegation does not meet the HPC's standard of acceptance for allegations, this needs to be carefully documented and checked to ensure that the HPC is complying with its statutory responsibilities.
- 3.4 The point where "no case to answer" rulings are made is the Investigating Committee Panel. In deciding whether there is a case to answer, the test to be applied by the Panel is whether, based upon the evidence before it, there is a "realistic prospect" that the HPC (which has the burden of proof) will be able to establish at a hearing that the registrant's fitness to practise is impaired.
- 3.5 The Practice Note 'Case to Answer' provides that a presumption of impairment (and that there is a case to answer) should be made by panels in cases where the evidence, if proven, would establish:
- serious or persistent lapses in the standard of professional services;
  - incidents involving: harm or the risk of harm; reckless or deliberate acts; concealment of acts or omissions, the obstruction of their investigation, or attempts to do either;
  - sexual misconduct or indecency (including any involvement in child pornography);
  - improper relationships with, or failure to respect the autonomy of, service users;
  - violence or threatening behaviour;
  - dishonesty, fraud or an abuse of trust;

- exploitation of a vulnerable person;
  - substance abuse or misuse;
  - health problems which the registrant has but has not addressed, and which may compromise the safety of service users; or
  - other equally serious, activities which undermine public confidence in the relevant profession.
- 3.6 Process controls at this stage therefore need to ensure that where the decision of the panel is that there is no case to answer:
- All relevant evidence has been sought and considered by the panel; and
  - that the realistic prospect test has been applied.
- 3.7 The HPC needs to be satisfied that the process controls above are operating effectively in order to ensure and be able to demonstrate that patients have been protected. We therefore agreed to undertake a quality assurance review of a sample of cases to assess whether the controls were indeed operating effectively.
- 3.8 We selected ten cases where the case had been closed by the Fitness to Practise Department because an HPC registrant was not involved or the allegation did not meet the HPC's standard of acceptance for allegations and to assess whether the process controls were operating effectively.
- 3.9 We also selected a further sample of ten cases where an investigating committee concluded that there was no case to answer and to review these in detail to assess whether the necessary checks and process steps had indeed been undertaken and were clearly evidenced.
- 3.10 The cases were selected from 2008/09 and 2009/10.
- 3.11 The findings of our work are set out below.

## Findings

### Cases where the standard of acceptance was not met

- 3.12 We noted that the initial complaints about registrants were received through a variety of media, including telephone calls (which are followed up in writing in order for HPC to be able to take any action), formal notifications of criminal proceedings from the police, letters or the completion of an HPC "reporting a concern" form.

- 3.13 For telephone calls a file note was prepared by the relevant case manager to document the discussions with the complainant and the agreed action to be taken.
- 3.14 For all of the ten cases we sampled, detailed evidence had been collected by the case manager in the Fitness to Practise Department conducting the initial investigation. For each case sampled a case assessment form had been completed as required by procedures.
- 3.15 For one of the cases sampled, correspondence and telephone discussions confirmed that the individual contacting the HPC did not wish to raise a complaint but simply wished to raise general concerns about the wider consequences of a type of treatment. This was clearly documented supporting the conclusion that the HPC's standard of acceptance had not been met. For the other nine cases sampled, a complaint against the registrant was raised.
- 3.16 In two of these cases, the HPC had been contacted by the police who in some circumstances notify the HPC when they charge a registrant with a criminal offence.
- 3.17 In both cases progress with the criminal proceedings was logged and monitored by the case manager who requested regular updates from the police as to the progress of the case. The criminal proceedings were ultimately terminated in the absence of evidence to support the charge and the HPC's investigation did not identify any other matters. This was clearly documented to support the conclusion that the HPC's standard of acceptance had not been met.
- 3.18 Six cases included in our sample related to allegations regarding professional competence. We noted that in all of these cases, the details of the allegation had been clearly logged, a case assessment form completed and the investigation undertaken had been thoroughly documented, including the reasons why the HPC's standard of acceptance had not been met.
- 3.19 For all the cases investigated by the Fitness to Practise Department included within our sample, we concluded that the HPC's procedures were being followed.
- 3.20 However, in one case we noted that legal advice had been sought by the Fitness to Practise Department, before concluding that the HPC's standard of acceptance had not been met.
- 3.21 We understand that the decision to seek legal advice is based upon the judgement of the Fitness to Practise Department on a case by case basis, although there is operating guidance to for the team on providing instruction and seeking advice.
- 3.22 Nevertheless, we believe that the HPC should consider whether a more prescriptive approach to seeking legal advice would be beneficial in some cases before concluding whether the standard of acceptance has been met. We have therefore raised the following recommendation.

## Recommendation

**R1. The HPC should consider whether it would be beneficial to specify the types of complaints where legal advice should always be sought by the Fitness to Practise Department.**

### Cases referred to an investigating committee panel

- 3.23 For all of the ten cases we sampled, detailed evidence had been collected in advance of the Investigating Committee Panel, which had been assessed by the Fitness to Practise Department as meeting the HPC's standard of acceptance. None of the cases included in our sample had been assessed by the Fitness to Practise Department (following investigation by a case manager) requiring an application to be made for an interim order.
- 3.24 The current guidance provided by the HPC to Investigating Committee Panels is set out in Practice Note "Case to answer" determinations, published in April 2009. In reaching its decision a Panel:
- Should recognise that it is conducting a limited paper-based, exercise and not seek to make findings of fact on the substantive issues; and
  - May assess the overall weight of the evidence but should not seek to resolve substantial conflicts in that evidence. The assessment of the relative strengths of competing evidence can only be assessed by a full hearing.
- 3.25 In determining whether there is a case to answer, the Panel must decide whether, in its opinion, there is a "realistic prospect" that the HPC (which has the burden of proof) will be able to establish that the registrant's fitness to practise is impaired. The test does not call for substantial inquiry or require the investigating committee panel to be satisfied on the balance of probabilities. The case to answer practice note provides that the Investigating Committee Panel only needs to be satisfied that there is a realistic or genuine possibility (as opposed to a remote or fanciful one) that the HPC will be able to establish its case.
- 3.26 We noted that in all cases included in our sample, it was clearly documented that the Investigating Committee Panel had reviewed the evidence in detail and drew upon this evidence in arriving at its conclusion. For one case, the Investigating Committee Panel requested additional information before reconvening and considering the case with all the available evidence.
- 3.27 Our review also indicated that the conclusions of the Investigating Committee Panels were clearly documented and set out within the context of whether there was a realistic prospect of the HPC proving its case, including the reasons why, for example there was insufficient evidence to substantiate the specific allegation.

- 3.28 We noted that the overall balance of the evidence was considered in the documented conclusions of the Panel, although in none of the cases sampled was there an indication of competing evidence that required referral to a substantive hearing for consideration.
- 3.29 We therefore concluded that based on the results of the sample testing that we undertook that the Investigating Committee Panels were following the procedures and guidance of the HPC in considering evidence and determining whether there was a case to answer. We have not therefore raised any recommendations in relation to this area.

## 4 Action plan

Ref.	Findings	Recommendations	Priority	Management Response <i>Responsible Officer</i>	Due Date
	<b>Cases investigated by the Fitness to Practise Department</b>				
<b>R1</b>	<p>We understand that the decision to seek legal advice is based upon the judgement of the Fitness to Practise Department on a case by case basis and that there is no formal guidance regarding specific types of cases that require such advice to be sought.</p> <p>We therefore believe that the HPC should consider whether a more prescriptive approach to seeking legal advice in some cases would be beneficial before concluding whether the standard of acceptance has been met.</p>	The HPC should consider whether it would be beneficial to specify the types of complaints where legal advice should always be sought by the Fitness to Practise Department.	<b>Low</b>	<p>We propose to update operating guidance to provide further information on seeking advice. We also propose to produce a check list on the issues to consider before seeking advice on closing a case.</p> <p>The Department is also working on 'sifting tools' and a paper on this will be on the agenda for the Fitness to Practise Committee meeting in February 2010.</p> <p><i>Director of Fitness to Practise</i></p>	<b>February 2010</b>

## 5 Assurance definitions

Assurance Level	Definition
<b>Sound</b>	Satisfactory design of internal control that addresses risk and meets best practice and is operating as intended.
<b>Satisfactory</b>	Satisfactory design of internal control that addresses the main risks but falls short of best practice and is operating as intended.
<b>Satisfactory in Most Respects</b>	Generally satisfactory design of internal control that addresses the main risks and is operating as intended but either has control weaknesses or is not operating fully in some significant respect.
<b>Satisfactory Except For.....</b>	Satisfactory design of internal control that addresses the main risks and is operating as intended in most respects but with a major failure in design or operation in the specified area.
<b>Inadequate</b>	Major flaws in design of internal control or significant non operation of controls that leaves significant exposure to risk.



**Health Professions Council**

**Fitness to Practise procedural  
compliance review 2009/10**

Final November 2009

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### Project timescales

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# 1 Introduction and scope

- 1.1 In accordance with our proposals agreed by the June 2009 Audit Committee of the Health Professions Council (“HPC”), we have undertaken a review of the operation of the organisation’s fitness to practise procedures from the receipt of an allegation to its consideration by an HPC fitness to practise panel.
- 1.2 We therefore agreed to select a sample of fifteen recent cases that have progressed to a full fitness to practise hearing and to review these in detail to confirm that the necessary checks and process steps have indeed been undertaken and are clearly evidenced.
- 1.3 The audit fieldwork was undertaken in September and October 2009.
- 1.4 This report has been prepared as part of the internal audit of the Health Professions Council under the terms of our engagement letter for internal audit services. It has been prepared for the Health Professions Council and we neither accept nor assume any responsibility or duty of care to any third party in relation to it.
- 1.5 The conclusions and recommendations are based on the results of audit work carried out and are reported in good faith. However, our methodology is dependent upon explanations by managers and sample testing and management should satisfy itself of the validity of any recommendations before acting upon them.

## 2 Executive summary

- 2.1 This report summarises the work undertaken by PKF within the agreed scope of our review of the HPC's fitness to practise procedures from the receipt of a complaint to its consideration by fitness to practise panel. This work was undertaken in accordance with our proposals agreed by the June 2009 Audit Committee.

### Background

- 2.2 Management estimates that over 1,000 fitness to practise cases will be managed by the HPC during 2009/10. Failure to put into place procedures that are consistent with legal requirements and to comply with these procedures when managing fitness to practise cases may leave the HPC exposed in the event of a legal challenge.

### Our assessment

- 2.3 Based on the results of the sample testing that we undertook of cases selected from 2008/09 and 2009/10 that the HPC's procedures for fitness to practise cases were satisfactory and were operating effectively except for the one case that we noted, where a previous Conduct and Competence Committee had imposed a suspension order of twelve months, the Committee set up to review it was after the order had expired.
- 2.4 We were advised by management that the reasons for this were due an administrative error by the scheduling team when listing the hearing. We understand that measures have been put in place to prevent the issue from occurring again.
- 2.5 Nevertheless, in view of the significance of the error, we believe that the Fitness to Practise Committee should receive more detailed assurance from management that such problems cannot arise again in the future.
- 2.6 We have therefore raised a recommendation in relation to this matter.
- 2.7 We note that the Council for Healthcare Regulatory Excellence ("CHRE") will be undertaking its own review of each health regulator's procedures for dealing with similar cases, which will include an audit of the HPC. We understand that the CHRE's review is to focus on 2008/09 cases.
- 2.8 In conducting our work, we were obliged to follow Government Internal Audit Standards. The CHRE do not have this obligation although they have their own clearly defined procedures that they will follow during their review. The sample selected will also differ.
- 2.9 Therefore there is a possibility therefore that the conclusions of the CHRE audit may differ from those set out in this report.

- 2.10 We wish to thank all members of staff for their availability, co-operation and assistance during the course of our review.

**PKF (UK) LLP**  
**November 2009**

## 3 Detailed findings

### Process outline

- 3.1 When an allegation is received it passes through various stages of investigation and hearing which can culminate in determining whether the registrants' fitness to practise is impaired.
- 3.2 The first stage of the investigation is undertaken by a case manager, who seeks to collect together all the relevant documentation, which may involve contacting the registrant's employers or the police (in the event of a conviction).
- 3.3 Key decisions to be taken at this stage include:
- Confirming that the individual is an HPC registrant;
  - Whether the complaint meets the HPC's standards for acceptance of allegations; and
  - Determining whether an interim order is required to place immediate limitations on the individual's registration.
- 3.4 When the case manager has collected together all the details of an allegation the registrant is notified in writing of the nature of the allegation and provided with copies of all the documents that have been collected.
- 3.5 Once the registrant has had the opportunity to respond, the material is then considered by the Investigating Committee Panel.
- 3.6 Key decisions to be taken by the Investigating Committee Panel include:
- Deciding whether there is a "case to answer" i.e. there is a "realistic prospect" that the HPC (which has the burden of proof) will be able to establish at a hearing that the registrant's fitness to practise is impaired or that the entry in the register has been incorrectly made or fraudulently procured.
  - Selecting the appropriate fitness to practise committee for the hearing.
- 3.7 If the panel decides that there is a case to answer the matter is referred to:
- the Conduct and Competence Committee for cases about misconduct, lack of competence, convictions and cautions, and determinations by other regulators responsible for health or social care.
  - the Health Committee for cases where the health of the registrant may be affecting their ability to practise; or

- another panel of the Investigating Committee for cases where an entry to the Register may have been made fraudulently or incorrectly.
- 3.8 The HPC then instructs solicitors to prepare and present the case at a final hearing. Although the legislation provides that the registrant is provided 28 days notice of the date of the hearing, the HPC aims to provide at least 60 days notice of the hearing date to the registrant and to provide the material that it plans to rely on at the hearing 42 days before the hearing.
- 3.9 The key decisions to be taken by the hearing include:
- Deciding whether the complaint is “well founded” i.e. whether the facts as alleged occurred, that this amounts to one of the grounds set out in Article 22 of the Health Professions Order 2001 and whether that amounts to the registrants’ fitness to practise being impaired.
  - Determining the appropriate sanction, which range from taking no further action to striking off.
- 3.10 Registrants can appeal against the panel’s decision if they think it was wrong or the sanction was unfair. Appeals are made to the High Court (or to the Court of Session if the registrant is in Scotland). The CHRE may also refer a regulator’s final decision on a fitness to practise case to the High Court (or its equivalent throughout the UK. They will do this if they feel that a decision made by the regulatory body is unduly lenient
- 3.11 At each of the various stages of the process the HPC has established checks and controls that it relies upon to ensure that the correct action is taken that are documented in guidance and training notes. Panels are also provided with guidance in the form of various Practice Notes.
- 3.12 The HPC needs to be satisfied and be able to demonstrate that these are operating effectively in order to ensure that registrants are given a fair hearing and the public is protected. We therefore agreed to undertake a review of a sample of fifteen cases that had been considered by a full fitness to practise hearing to assess whether the controls were indeed operating effectively.
- 3.13 The findings of our work are set out below.

## Findings

- 3.14 For all of the fifteen cases we sampled, detailed evidence had been collected in advance of the Investigating Committee Panel, which had been assessed by the Fitness to Practise Department as meeting the HPC’s standard of acceptance.

- 3.15 In determining whether there is a case to answer, the Investigating Committee Panel must decide whether, in its opinion, there is a “realistic prospect” that the HPC (which has the burden of proof) will be able to establish that the registrant’s fitness to practise is impaired.
- 3.16 The test does not call for substantial inquiry or require the investigating committee panel to be satisfied on the balance of probabilities. The Investigating Committee Panel only needs to be satisfied that there is a realistic or genuine possibility (as opposed to remote or fanciful one) that the HPC will be able to establish its case.
- 3.17 We noted that these considerations were clearly documented in the papers of the Investigating Committee Panel for each of the fifteen cases that were included in our sample. In two cases, the Panel determined that there was a case to answer for two counts of the allegation but no case to answer for one count. The reasons for this were also clearly documented.
- 3.18 We reviewed the case evidence and documented conclusions of the Conduct and Competence Committees that were called to consider each of the fifteen cases selected.
- 3.19 Our review indicated that in all cases the registrant was provided with at least sixty days notice of the hearing and in two cases adjournments were granted by the panel. The requirements for the provision of evidence to the registrant and the hearing were also complied with in all of the cases sampled.
- 3.20 From reviewing the transcripts of the various cases, we noted that in each case the HPC’s procedures were being followed at the hearing. In particular, a decision as to whether the allegation was well founded was arrived at, before any consideration of potential sanctions.
- 3.21 In four of the cases included in our sample, the Conduct and Competence Committee concluded that the allegations were not well founded. The reasons for these decisions were clearly set out in the Committee documentation.
- 3.22 Where there were several potential sanctions that could be considered, we noted that the panel had documented its deliberations clearly in respect of each of these, before arriving at its final decision on the most appropriate sanction.
- 3.23 We therefore concluded that based on the results of the sample testing that we undertook that the HPC’s procedures for fitness to practise cases were being followed.
- 3.24 However, our review indicated that for one case, where a previous Conduct and Competence Committee had imposed a suspension order of twelve months, the Committee set up to review it was after the order had expired. The Committee therefore concluded that a further suspension order could not be made.

- 3.25 We were advised by management that the reasons for this were human error and mechanisms had been put in place to prevent such an issue arising again. Nevertheless, in view of the significance of the error, we believe that the Fitness to Practise Committee should receive more detailed assurance from management that such problems cannot arise again in the future.
- 3.26 We have therefore raised the following recommendation.

**Recommendation**

**R1. A report should be provided to the Fitness to Practise Committee explaining the reasons why the date set for a review of a suspension order fell after the date that the order expired. The report should also set out the actions that have already been taken by management to address this matter.**



## 4 Action plan

Ref.	Findings	Recommendations	Priority	Management Response <i>Responsible Officer</i>	Due Date
	<b>Fitness to practise procedures</b>				
<b>R1</b>	<p>Our review indicated that for one case, where a previous Conduct and Competence Committee had imposed a suspension order of twelve months, the Committee set up to review it was after the order had expired. The Committee therefore concluded that a further suspension order could not be made.</p> <p>We were advised by management that the reasons for this were human error, which have now been resolved. Nevertheless, in view of the significance of the error, we believe that the Fitness to Practise Committee should receive more detailed assurance from management that such problems cannot arise again in the future.</p>	<p>A report should be provided to the Fitness to Practise Committee explaining the reasons why the date set for a review of a supervision order fell after the date that the order expired. The report should also set out the actions that have already been taken by management to address this matter.</p>	<b>High</b>	<p>More detail on the mechanisms put in place to address this error has been provided to the Audit Committee. An update will also be provided to the Fitness to Practise committee at its February 2010 meeting.</p> <p><i>Director of Fitness to Practise</i></p>	<b>February 2010</b>

## 5 Assurance definitions

Assurance Level	Definition
<b>Sound</b>	Satisfactory design of internal control that addresses risk and meets best practice and is operating as intended.
<b>Satisfactory</b>	Satisfactory design of internal control that addresses the main risks but falls short of best practice and is operating as intended.
<b>Satisfactory in Most Respects</b>	Generally satisfactory design of internal control that addresses the main risks and is operating as intended but either has control weaknesses or is not operating fully in some significant respect.
<b>Satisfactory Except For.....</b>	Satisfactory design of internal control that addresses the main risks and is operating as intended in most respects but with a major failure in design or operation in the specified area.
<b>Inadequate</b>	Major flaws in design of internal control or significant non operation of controls that leaves significant exposure to risk.