

Council, 7 July 2016

Audit of final fitness to practise decisions 1 October 2015 – 31 March 2016

Executive summary and recommendations

Introduction

The attached paper is a report of the audit of final fitness to practise hearing decisions, covering the period 1 October 2015 through 31 March 2016. The purpose of the audit is to review the quality of decisions reached by fitness to practise committee panels.

Decision

The Council is invited to discuss the paper. No specific decision is required.

Background information

- Council, 2 December 2015. Audit of final fitness to practise decisions 1 April 2015 – 31 September 2015.
<http://www.hcpc-uk.co.uk/aboutus/council/councilmeetings/index.asp?id=724>
(enc 12)

Resource implications

None as a result of this paper.

Financial implications

None as a result of this paper.

Appendices

- Appendix 1 – Audit form for final hearing decisions

Date of paper

21 June 2016

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1. Introduction

About the audit

- 1.1 This audit of final hearing decisions is based on the practice note 'Drafting fitness to practise decisions', which provides guidance to panels on the content that should be included in written decisions. Since April 2010, nine audits of final fitness to practise hearing decisions using this format have been carried out by the Policy and Standards Department.
- 1.2 The tenth audit—documented in this paper—was carried out between 1 October 2015 and 31 March 2016, and applies the same process as the previous audits.
- 1.3 The audit assesses Fitness to Practise panel adherence to the applicable law and to HCPC policy in particular areas. The focus of the audit is on monitoring whether panels have followed correct process and procedure including whether sufficient reasons have been given for decisions made.
- 1.4 The audit flags areas where further policy development or consideration is required, but does not go as far as to question the decisions of the panel, as this would jeopardise the independence of panels, which operate at arm's length from the Council and the Executive.
- 1.5 The learning points from the audit will be fed back into operational policy development and into training and appraisal processes.

About this document

- 1.6 This document summarises the results of the tenth audit. The document is divided into the following sections:
 - **Section 2** explains the audit process, how the data from each decision has been handled and analysed, and provides the statistics for each question of the audit.
 - **Section 3** provides a summary of emerging themes identified in the results and notes areas of change or improvement since the last audit.
 - **Section 4** outlines the Fitness to Practise Department's response to the learning points from the audit and makes some recommendations for future action.
 - **Appendix 1** contains the full set of questions each decision was audited against.

2. Analysing the decisions

Method of recording and analysis

- 2.1 The audit process and analysis was carried out by two Policy Officers in the Policy and Standards Department. The auditors' understanding of the HCPC fitness to practise procedures is based on the relevant practice notes and policy summaries.
- 2.2 This analysis includes final hearings, restoration hearings, cases of fraudulent entry to the register, full discontinuance hearings, and Article 30 review cases. Interim order cases and cases which were adjourned and did not reach a final decision during the audit period do not fall within the scope of the audit.

Statistical analysis

- 2.3 A total of 147 decisions were analysed as part of the audit, of which 95 (65 per cent) were final hearing cases, and 52 (35 per cent) were Article 30 reviews. 135 (cases 92 per cent) were considered by conduct and competence panels and 11 cases (8 per cent) were considered by health panels. One case was considered by an investigating committee panel which related to an incorrect / fraudulent entry to the register.
- 2.5 This section provides indicative statistics for the answers to the audit questions. The percentages calculated are rounded to the nearest whole number so may not always add up to 100 per cent.
- 2.6 These statistics do not include individual case details but where necessary contextual explanation has been provided to clarify the way the audit question was interpreted by the auditors and the reason for particular results.

Procedural issues

If the registrant was not there and unrepresented, did the panel consider the issue of proceeding in absence?

Yes	No	Not applicable
53 (36%)	0 (0%)	94 (64%)

- 2.7 During the audit period, there were 94 instances where the registrant was present at the hearing or represented. There were 53 hearings where the registrant did not attend or was not represented. In each of these cases, the panel considered appropriately proceeding in the absence and / or referred to the relevant practice note.

Did any other procedural issues arise?

Yes	No
94 (64%)	53 (36%)

2.8 Procedural issues noted by the auditors included amendments to, or withdrawals of allegations; applications for hearings to be heard in private; submissions of 'no case to answer'; admission and admissibility of further evidence; applications for adjournment; discontinuance; actual or perceived bias of panel members; and disposal via consent. Further discussion of emerging issues from this question is provided in section 3.

Was Legal Assessor advice disregarded?

Yes	No	Not recorded
0 (0%)	137 (93%)	10 (7%)

2.9 The vast majority of cases considered during the audit period had due regard to the advice of the relevant legal assessor. There were a number of decisions which made no mention of any advice received from the legal assessor, which is discussed further in section three.

Was the three-stage test applied?

Yes	No	Not applicable
70 (48%)	0 (0%)	77 (52%)

2.10 The auditors interpreted this question to mean cases where the three-stage test was applied explicitly.

2.11 There are a number of decisions where the three-stage test does not need to be applied. These cases include review hearings and consent order cases where findings of facts, grounds and impairment have been proven either in a previous hearing or through consent. In practice some review and consent order decisions demonstrated that the three stage test had been applied but for the purposes of this audit have not been considered in this section.

2.12 The table below breaks down the number of cases where the three-stage test was not applicable by the type of decision hearing.

Type of decision hearing	Number of cases (from 77)
Review hearings	52

Consent orders	17
Other	8

2.13 The 'other' category refers to cases where alternative orders were made outside the range of usual sanctions. Seven of the cases referred to above resulted in the hearings and / or allegations being discontinued; while the remaining case referred to an incorrect / fraudulent entry to the Register.

Evidence by way of mitigation considered?

Yes	No
72 (49%)	75 (51%)

2.14 All of the decisions which recorded that mitigating evidence was presented demonstrated that it was appropriately considered by the panels. Evidence by way of mitigation was not considered in 75 cases (51%).

2.15 These cases included the 17 consent order cases where the allegations had been accepted by the registrant and seven discontinuance cases.¹ In the remaining 51 cases, the registrant in question had not engaged with the fitness to practise process and / or had not provided any mitigating evidence for the panel to consider, as far as the auditors could determine from the written records of these decisions.

2.16 However, in some instances the panel did consider some mitigating factors or circumstances which led to an allegation being raised against a registrant but not formal evidence per se. In other decisions, the allegation was not well founded and / or a half-time submission of no case to answer succeeded; and the panel subsequently did not need to consider any mitigating evidence.

Drafting

Is the decision written in clear and unambiguous terms (does it avoid jargon, technical, or esoteric language)?

Yes	No
146 (99%)	1 (1%)

2.17 The auditors interpreted this question to mean that the language used in the decision was appropriate to the context. In some decisions, there were occasional instances of unclear wording or terms. These included use of esoteric language or examples of technical and profession-specific language and terminology which required additional explanation for a more general audience.

¹ This figure excludes VRA hearings which also discontinued the allegations in question.

2.18 However, one decision referred to a medical procedure acronym a number of times within the decision before this being explained to a more general reader.

Is it written in short sentences?

Yes	No
144 (98%)	3 (2%)

2.19 The auditors interpreted the phrase to mean that the sentence length was appropriate to the subject. The vast majority of decisions during the audit period demonstrated appropriate sentence length for the subjects being discussed. This means that though the sentences in some decisions were not necessarily short, they were appropriate to the concepts discussed in the decisions which required a more complex sentence structure. However, the auditors concluded that in a small minority of instances, long sentences were frequently used which could have been broken down further to aid comprehension.

2.20 The auditors have continued to note improvement in this area. In the audit period 1 September 2014 – 31 March 2015, the auditors recorded 17 per cent of decisions containing long sentences. However, for the last audit period this figure had dropped to 8 per cent of decisions.

Is it written for the target audience?

Yes	No
147 (100%)	0 (0%)

2.21 The auditors interpreted the phrase ‘target audience’ to mean members of the public and profession. This question refers to the previous two questions about the language and construction of the written decision. All decisions in the review process were aimed appropriately at the target audience.

Was the factual background of the case included in the decision?

Yes	No
145 (99%)	2 (1%)

2.22 A very small number of decisions did not include strong enough reference to the factual background of the case. This included one review hearing where the facts had been previously established. The remaining case referred to a discontinuance hearing where the background information provided in the decision was limited.

If a review hearing, does the decision make reference to previous facts?

Review hearing	Not a review hearing
52 (35%)	95 (65%)

Review hearings	
Reference to facts	No reference to facts
52 (100%)	0 (0%)

2.23 The auditors concluded that all of the review hearings made adequate reference to the previous facts established at final hearing. Some review hearings could have included a stronger reference to the previous facts established at a final hearing. In many instances this involved the omission of some background information including the previous allegations.

Is it a stand alone decision?

Yes	No
137 (93%)	10 (7%)

2.24 The vast majority of decisions made during the audit period could be reasonably considered as ‘stand alone’ decisions. This means the decision stands alone as a document of the hearing and decision-making process; and does not need additional explanatory material to be understood or to explain the outcomes or sanction imposed. There were 10 decisions that the auditors felt could not be considered stand alone.

2.25 In the majority of instances the cases in question were reviews or consent orders (including voluntary removal agreements). These decisions either did not adequately reference the allegation, did not provide adequate background information or referred to information contained in other documents (including the voluntary removal agreement itself) which was not evident in the decision.

2.26 One final hearing decision was not considered a ‘stand alone’ decision by the auditors. The allegation was not well founded by the panel, but the decision did not provide adequate information on the amended allegation.

Are there adequate reasons for the decision?

Yes	No
145 (99%)	2 (1%)

2.27 In interpreting this question the auditors assessed whether the reasoning process shown in the decision was adequate given the conclusion the panel

reached. In doing so the auditors did not seek to go behind the decision of the panel.

- 2.28 In this instance, the auditors were concerned about the panels in question approving two voluntary removal agreements (VRAs) which they were not in actual receipt of. This issue is discussed in more detail in section three.

Conclusions on submissions (adjourned, facts, admissibility)?

Yes	No
138 (94%)	9 (6%)

- 2.29 The vast majority of decisions reviewed during the audit period made adequate conclusions on the information presented during the hearing. However, nine decisions (6 per cent) did not refer specifically to any submissions made in the hearing although these may have occurred anyway.
- 2.30 The previous audit only recorded one per cent of decisions where submissions were not explicitly referred to in the document.

Does it clearly set out the finding of facts (including disputed and undisputed facts and if disputed, why the decision was made)?

Yes	No
127 (86%)	20 (14%)

- 2.31 Most audited decisions set out findings of fact. The 20 exceptions included 17 consent orders. Consent orders do not usually include findings of fact as they have been admitted in total by the registrant in question.
- 2.32 The three other remaining decisions could have more clearly set out the findings of fact. Two of these decisions were review hearings. The remaining decision was a final hearing decision which resulted in a caution being imposed. However, the auditors considered that the panel in question focused more on the imposition of an appropriate sanction rather than finding current impairment.

What standards were referred to?

- 2.33 52 (35%) of decisions referenced standards and the following table sets out which standards were referred to in this audit period. 23 decisions referred to more than one set of standards; therefore the total number of references is greater than the number of decisions in this category.

Standards referred to	Number of decisions where standards were referred to
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Standards of conduct, performance, and ethics	46
Standards of proficiency	23
Standards of another organisation (professional body etc)	10

2.34 Other standards or regulations referred to by panels included:

- General Social Care Council's (GSCC) Code of Conduct or standards for social workers (4)
- HCPC's returning to practice requirements (1)
- NHS Greater Glasgow and Clyde Financial Instructions (1)
- NHS Greater Glasgow and Clyde Key Principles of Business Conduct (1)
- Camden Housing and Adult Social Care Policy and Practice Guidance (3rd edition) (1)
- Chartered Society of Physiotherapy's (CSP) core standards of physiotherapy practice (1)
- JRCALC UK Ambulance Services Clinical Guidelines (1)

Did a panel impose a sanction which required reference to standards?

Yes	No
83 (56%)	64 (44%)

2.35 There are a number of decisions where the auditors concluded that it would not be necessary for the panel or decision to refer to a particular set of standards. These include: discontinuing an allegation; allegations which are not well founded; the panel not issuing another sanction or revoking an existing sanction at review stage. However, there is no explicit requirement in the relevant practice note 'Drafting fitness to practise decisions' which requires reference to our various standards in the decision document.

Did all decisions with a relevant sanction refer to the standards?

Yes	No
38 (46%)	45 (54%)

2.36 A slight majority of decisions with a relevant sanction did not refer to our standards. These included a range of sanctions such as caution, conditions, suspension and strike-off orders. The majority of consent orders (16) did not refer to any standards in the decision document.

Order

What was the panel's decision?

Sanction	Number of orders made (from 147)
Striking off	15 (10%)
Suspension	15 ² (10%)
Conditions	19 (13%)
Caution	14 ³ (10%)
Mediation	0 (0%)
Not well founded	32 ⁴ (22%)
No further action	3 (2%)
Consent order	17 ⁵ (12%)
Discontinuance in full	6 (4%)
Other	26 (18%)

2.37 Almost all of the consent orders audited in this period resulted in removal from the Register. However, one consent order imposed a caution and one imposed a suspension order on the registrants in question.

2.38 The 'other' category refers to cases where alternative orders were made outside the range of the usual sanctions. These included hearing panels which either revoked an existing order or made no further order upon the expiry of the current order. In one of these decisions the panel instructed that an incorrect / fraudulent entry be removed from the register.

How long was the sanction imposed for?

2.39 This question applies only to suspension, condition of practice, and caution orders. This section sets out the lengths of these sanctions in this period, relevant to the type of sanction order made.

2.40 As the length of sanction that can be imposed varies between the different types of sanctions, the relevant sections of the indicative sanctions policy has been included alongside the relevant statistics.

² This figure excludes one consent order which imposed a suspension order on a registrant

³ This figure excludes one consent order which imposed a caution order on a registrant.

⁴ This figure includes one case where the panel also formally discontinued the hearing.

⁵ This figure includes one caution and one suspension order imposed on a registrant by a panel through consent. The remaining 15 consent orders relate to successful VRA applications.

➤ Suspension

2.41 The indicative sanctions policy states:

“A suspension order must be for a specified period not exceeding one year. Suspension completely prohibits a registrant from practising their profession [...] Suspension should be considered where the panel considers that a caution or conditions of practice [order] would provide insufficient public protection or where the allegation is of a serious nature but unlikely to be repeated and, thus, striking off is not merited [...] Panels need to be aware that suspension for short periods of time (i.e. less than a year) may have long term consequences for the registrant, including being dismissed from his or her current employment. However, short term suspension may be appropriate...[under certain circumstances]...”

Length of suspension	Number of orders (total 16) ⁶
3 months	1
4 months	3
6 months	4
12 months/1 year	8

2.42 There was an even split between the number of suspension orders imposed for a year or less than a year. The 8 cases where the panel imposed a period of suspension shorter than a year seems generally consistent with the guidance, as panels only imposed such orders where they had a specific reason to do so.

- The three-month suspension order was made at a final hearing and the reason for the shorter suspension period was adequately addressed in the decision, i.e. the panel found impairment only on the public interest grounds.
- The three four-month suspension orders were made at review hearings and the reasons for the shorter suspension period were adequately addressed in these decisions. This usually involved the provision of extra time to allow the registrants in question to provide further evidence that their fitness to practise was no longer impaired at the subsequent review hearing.
- Three of the six-month suspension orders were made at review hearings and the reasons for the shorter suspension periods were adequately addressed in these decisions. This included allowing further time for the registrants in question to provide additional evidence that their fitness to practise was no longer impaired at the subsequent review hearing.

⁶ This figure includes one consent order in which a suspension order was decided by the panel through consent.

However, in one instance the panel required evidence that the registrant's health had improved or indicated that at a later review hearing it may be time to consider seeking a VRA. One case referred to above was a final hearing and related to a conviction and caution allegation, the period of suspension matched the remaining sentence imposed on a registrant by a court.

➤ **Conditions of practice**

2.43 The indicative sanctions policy states:

“A conditions of practice order must be for a specified period not exceeding three years. [...] Equally, in some cases it will be appropriate to impose a single condition for a relatively short period of time to address a specific concern...”

Length of conditions order	Number of orders (total 19)
6 months	4
9 months	1
12 months/1 year	5
15 months	1
18 months	5
2 years	1
3 years	2

2.44 The length of conditions of practice orders imposed seemed to be consistent with the guidance in the indicative sanctions policy. The longer conditions of practice orders were imposed on registrants with a greater need for support to reach full competence, and shorter periods were imposed where there were fewer issues to be addressed.

2.45 Three of the six-month conditions orders were imposed at review hearings. Furthermore, one of the six-month and one of the 12-month conditions orders replaced existing suspension orders. This allowed the registrants in question to continue to work towards returning to safe and effective practice.

➤ **Caution**

2.46 The indicative sanctions policy states:

“A caution order must be for a specified period of between one year and five years [...] In order to ensure that a fair and consistent approach is adopted, panels should regard a period of three years as the ‘benchmark’ for a caution order. However, as panels must consider sanctions in ascending order, the starting point for a caution is one year and a panel should only impose a

caution for a longer period if the facts of the case make it appropriate to do so.”

Length of caution order	Number of orders (total 15)⁷
12 months/1 year	4
2 years	6
3 years	4
5 years	1

2.47 Panels seemed to be consistent in their application of the guidance in the indicative sanctions policy, with the average length of a caution order being approximately two years and two months.

Does the order accord with sanction policy?

Applicable decisions	Not applicable
80 (54%)	67 (46%)

Applicable decisions	
Accords with policy	Does not accord with policy
78 (98%)	2 (3%)

2.48 The auditors have concluded that for administrative reasons two decisions did not accord with our sanction policy. This occurred where the panel approved two VRA applications without being in actual receipt of the original signed document. This issue is discussed in further detail in section 3.

Does it state the operative date of the order?

Applicable decisions	Not applicable
103 (70%)	44 (30%)

Applicable decisions	
States operative date	No operative date
98 (95%)	5 (5%)

⁷ This figure includes one consent order in which a caution order was imposed by the panel through consent.

- 2.49 This category includes all sanction orders, restoration orders and orders of ‘no further action’ where in reviewing a sanction order the panel decided that the registrant’s fitness to practise was no longer impaired.
- 2.50 There was some uncertainty over whether a VRA required a separate order section to be drafted at the end of the decision document. However, for the purpose of this audit where the VRA is referred to in part of the decision and the panel signs it, the auditors understood that it would take immediate effect for purpose of this audit.
- 2.51 Five decisions did not record an operative date in the order and this usually consisted of the omission of ‘from the date this order comes into effect’ or ‘with immediate effect’.

Does it state the end date of the order?

Applicable decisions	Not applicable
50 (34%)	97 (66%)

Applicable decisions	
State end date	No end date
50 (100%)	0 (0%)

- 2.52 All of the cases which imposed a sanction able to expire stated the end date of the order. This category includes suspension, conditions of practice and caution orders. Not applicable to this section were decisions that did not impose a sanction order, discontinuance orders, and consent orders for removal from the register and strike off orders which do not have end dates.

Conditions orders

- 2.53 Conditions were imposed in 19 cases. The following tables analyse the conditions set and whether they accord with the guidance in the indicative sanctions policy.

Are they realistic (is the registrant able to comply)?

Yes	No
19 (100%)	0 (0%)

- 2.54 All of the conditions set during this audit period were sufficiently realistic.

Are they verifiable (are dates on which information is due specific and clear)?

Yes	No
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19 (100%)	0 (0%)
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2.55 The auditors found that all conditions imposed were verifiable and provided specific and clear information about what evidence would be required to meet the conditions and when it would be required.

Are they imposed on anyone other than the registrant?

Yes	No
0 (0%)	19 (100%)

2.56 The auditors interpreted this question to refer to decisions where persons other than the registrant were directly required by the panel to carry out an action to enable the registrant to meet conditions. Where the registrant was responsible for organising other people to carry out certain actions, the auditors understood that the conditions were only imposed on the registrant which could include formulating a personal development plan in conjunction with another professional.

2.57 Based on this interpretation, all of the conditions set in this period were imposed only on the registrants in question. Though many conditions of practice orders imposed a supervisory requirement they did not refer to supervision by any named person and stipulated that the registrant needed to organise these arrangements.

3. Emerging themes

3.1 This section discusses the emerging themes from specific audit questions, and where necessary provides more detailed results to reveal trends and potential areas for further consideration.

Procedural issues

3.2 There was a wide range of procedural issues considered by panels during the period of this audit and the following table sets out the number of instances different types of procedural issues occurred. Some cases considered a number of different procedural issues, so the total number of issues raised does not directly correspond to the total number of hearings (94) where procedural issues were considered.

Procedural issues	Number of instances
Request for hearing to be held in private	37
Amendments, corrections, withdrawal of allegations	44
Application for full or partial discontinuance of allegations ⁸	13
Application of no case to answer	16
Application for adjournment of hearing	11
Joinder	2
Other	26

3.3 Most procedural issues were relatively straightforward, such as minor amendments to allegations and applications for hearings to be heard in private. For the purpose of this audit, the auditors have not referred to the following procedural issues in the above table: service of good notice; finding FTP is impaired; consent orders; indicative sanctions policy; and conviction and caution allegations.

3.4 The 'other' category relates to cases where more unusual procedural issues occurred, as summarised below.

- In one case, the panel required the disclosure of information and / or production of information and documents (emails) relating to a particular allegation / hearing.

⁸ The auditors have only recorded discontinuance as a procedural issue where it was considered separately or referred to in the relevant consent order.

- In one case, the panel considered the possibility of actual or perceived bias by a panel member due to a connection to the organisation which employed the registrant.
- In one case, the panel considered the redaction of a witness's hearsay evidence.
- In two cases, a formal application was made for witnesses and / or evidence to be anonymised.
- In two cases, there was an application for a conduct and competence committee panel to transfer an allegation / case to the health committee.
- In seven cases, the panels considered special measures in relation to hearing evidence or representation at a hearing (on occasion this consideration was more implicit than explicit). This included hearing evidence via telephone, video or web link.
- In twelve cases, the panels considered the admissibility of a particular piece of evidence (on occasion this consideration was more implicit than explicit). This includes instances where an application was made that some evidence was inadmissible, and cases where new evidence was put forward and the panel considered whether it should be included e.g. possible prejudicial or hearsay evidence.

Administrative mistakes

- 3.5 Previous audits have referred to some administrative errors on the part of the HCPC. The auditors recorded nine decisions in this audit where such errors occurred. The most common errors included typographical errors to allegations which required amendment at a hearing; and the inclusion of not relevant, prejudicial and / or non-redacted material in case bundles.
- 3.6 However, some more unusual administrative errors included a previous panel detailing a particular condition; and a registrant not being provided with a copy of the case bundle 42 days before a hearing. In relation to the latter, the registrant in question waived the notice period.
- 3.7 The auditors also noted two other administrative errors which related to VRAs. These are discussed in more detail under the 'disposal of cases via consent' heading below.

Considering sanctions in ascending order

- 3.8 The auditors have found that not all panels are considering the full range of sanctions in ascending order (nine cases). The most frequent omissions are for mediation, no further action and caution orders. Although the auditors acknowledge that mediation is not considered a formal sanction.

Conviction and caution allegations

- 3.9 The auditors reviewed at least 10 decisions which referred to a panel handling conviction and caution allegations. There is a separate practice note for handling such allegations by panels.
- 3.10 However, some decisions did not provide a summary of the three stage test at the start of the decision. It was evident that the panels in question considered the facts and grounds (as a result of a caution or conviction being received by a registrant) at a single stage; before then considering impairment separately.
- 3.11 From a review of the above 10 decisions, only three decisions gave an accurate breakdown of the three stage test. Six decisions did not record the three stage test appropriately i.e. grounds as misconduct and / or conviction and caution. Finally, one decision was a review hearing where the application of the three stage test was not applicable.
- 3.12 It would be beneficial if all such decisions in future provided a summary of the three stage test at the start of the document. This would make the application of the three stage test more obvious to a more general reader. This issue has been raised in previous audits.

Disposal of cases via consent

- 3.13 The auditors recognise the benefit in some instances of the HCPC disposing of cases via consent under certain circumstances. A separate practice note has been developed in this area.
- 3.14 Disposing of cases via consent is an effective case management tool which reduces the time taken to deal with allegations and the number of contested hearings which need to be held. However, panels need to ensure that the HCPC's broader public protection obligations are met when considering whether or not a case should be disposed of via consent. This includes ensuring that they are satisfied that:
- the appropriate level of public protection is being secured; and
 - disposing of the case via this mechanism would not be detrimental to the wider public interest.
- 3.15 The auditors were concerned about two cases in particular which were disposed of via consent and related to VRAs. In both instances the panels in question were not in actual receipt of the physical signed copy of the VRA, where the registrant had accepted the allegation in its entirety and was permitted to come off the register on similar terms to those which would apply if they had been struck off.
- 3.16 In one instance the panel were informed that the registrant had posted a signed and witnessed VRA nine days previously for the HCPC's attention. This had not been received prior to the hearing. Further communications occurred via email and the registrant provided photographs of a signed VRA.

The panel was informed that the HCPC was content to rely on the electronic material; and that the panel could agree to make the discontinuance of the allegation conditional on the registrant sending a signed copy of the VRA. This is what occurred, and the panel concluded that a period of 14 days was appropriate to allow the HCPC to inform the registrant of their decision and to make the appropriate arrangements.

- 3.17 The second case related to another VRA application for wide-ranging allegations pertaining to a registrant's lack of competence. Again a panel was informed that the registrant had posted their signed VRA a month previously but this had not yet been received. Nevertheless the panel consented to the VRA subject to receipt of the signed document within five working days.
- 3.18 The auditors concluded that in both instances the panels in question had not provided adequate reasons for taking this decision. Panels should be cautious of adopting such a course of action as our wider public interest objective is not safeguarded in this instance.
- 3.19 In addition to both of the cases referred to above, the auditors noted two other VRA applications where administrative errors on the part of the HCPC were evident. In both instances the content of the allegation (and in at least one case the numbering) on the VRA form was found by a panel to be incorrect. The panels were unable to amend the content of the VRA itself. Nonetheless they still approved the VRA application and / or discontinued the allegation with the proviso that an amended VRA form was received by the HCPC. Such a course of action requires further consideration by the FTP department to ensure that this does not occur in the future.

Legal advice

- 3.20 The majority of decisions stated that the panel accepted the advice of the legal assessor, and often provided some detail as to the advice they received. However, 10 decisions in this audit period did not include any reference to the legal assessor.
- 3.21 Previous audits have referred to the difficulty in assessing decisions in relation to legal advice, as a number of decisions made no reference to the legal assessor, or any advice the panel may have received from them.
- 3.22 The auditors have continued to note some improvement in this area, as only 7 per cent of decisions from this audit made no mention of the legal assessor, or any advice they may have received from them. This marks an improvement of 4 per cent from the previous audit and is a positive development. Moreover for the audit period 1 September 2014 – 31 March 2015, the auditors recorded 16 per cent of decisions not mentioning the legal assessor and / or the advice they had received.

Drafting

3.23 The drafting of decisions across the audit period was often of high quality and the majority of decisions were appropriately structured and written. The following provides further comment on drafting issues.

Use of language

3.24 Most decisions used simple language appropriate to the context. Some decisions included allegations which referred to technical skill or complex concepts, and in such decisions the auditors judged that it was appropriate for the issues to be discussed using the appropriate technical terms which were generally explained as necessary.

3.25 However, there was only one case where the auditors concluded that some technical terms were used more frequently which could have been further explained to a more general reader. This included repeated use of an acronym in the decision before it was explained fully later in the document.

Proof-reading and editing

3.26 The standard of proof reading and editing of decisions being released as final versions has been noted in previous audit reports. The last audit identified 59 per cent of decisions with minor spelling, grammar, and formatting errors evident in the final decisions for that period.

3.27 However, this audit found that 31 per cent of decisions in this period contained some minor drafting errors. This marks a decrease of 28% from the previous audit and is a welcome improvement. However, a smaller sample was used on this occasion.

3.28 The majority of errors identified in this period related to inconsistent formatting, with irregular paragraph spacing, character spacing and page numbering among the most prominent. The following provides a brief overview of some common drafting issues:

- one decisions had minor grammatical mistakes evident which included some typos;
- two decisions contained unusual language including legal terms such as 'obiter dicta' and 'gravamen';
- seven decisions could have more clearly specified the public and personal component of finding that a registrant's fitness to practise was impaired;
- 10 decisions contained inconsistent formatting including irregular paragraph or sentence spacing, frequent use of long paragraphs, or the paragraph headings being located on a separate page to the accompanying content;
- 10 decisions did not contain either page or paragraph numbering; and
- 17 decisions did not specify the profession of the registrant in question on the decision cover sheet.

4. Learning points and recommendations

4.1 The Fitness to Practise Department has made the following comments in relation to this report:

- The report continues to highlight the wide range of procedural issues considered by panels. Following our 12-month pilot for the use of pre-hearing teleconferences, we have decided to continue using this tool on an ad hoc basis as the teleconferences are an effective mechanism for identifying preliminary issues in advance of the final hearing.
- The report highlights that not all panels are considering the full range of sanctions in ascending order (nine cases). We will remind panels of the need to do so at future panel training sessions due to take place in the summer.
- The audit report highlighted concerns about two cases in particular that were disposed of via consent and related to voluntary removal agreements. The report concluded that in both instances the panels in question had not provided adequate reasons for their decision and there were concerns that the public interest had not been adequately safeguarded. In conjunction with the case management team we will be looking into how the issues arose in relation to these specific cases to ensure that they do not occur again in the future.
- It is positive that there has been a continued improvement in relation to reference to the advice of the Legal Assessor as this was covered at both a Legal Assessor review day, and panel refresher training sessions last year.
- We are glad that the audit noted that the drafting of decisions across the audit period was often of high quality and the majority of decisions were appropriately structured and well written.
- We are also glad to note that the standard of proof reading and editing of decisions continues to improve, there was a decrease of 28% in minor drafting errors (although a smaller sample of decisions were audited in this period). With the introduction of a formatting guide for Hearings Officers and panellists following the last audit report in November 2015, we hope that there continues to be improvements in this area.

Appendix 1

Audit Form Final/Review Hearing Decisions

Case details	
Case name	
Case reference	FTP
Panel type	Conduct and Competence/ Health/Investigating/Review
Hearing date	
Legal Assessor	
Panel Chair	

1. Procedural issues

If the registrant was not there and unrepresented, did panel consider issue of proceeding in absence?	Yes/No/Registrant or representative attended
Did any other procedural issues arise?	Yes/No/Comments
Was Legal Assessor advice disregarded?	Yes/No/Comments
Was the three stage test applied?	Yes/No/Comments
Evidence by way of mitigation considered	

2. Drafting

Is decision written in clear and unambiguous terms (does it avoid jargon, technical, esoteric language)?	Yes/No/Comments
Is it written in short sentences?	Yes/No/Comments
Is it written of target audience?	Yes/No/Comments
Was the factual background of the case included in the decision?	Yes/No/Comments
If review hearing, does decision make reference to previous facts?	Yes/No/Comments/Not review hearing
Is it a stand alone decision?	Yes/No/Comments
Are there adequate reasons for the decision?	Yes/No/Comments

Conclusions on submissions (adjourned, facts, admissibility)	Yes/No/Comments
Does it clearly set out the finding of facts (including disputed and undisputed facts and if disputed, why decision was made)	Yes/No/Comments

3. Order

What was the panel's decision?	Not well founded/ no further action/ mediation/ caution/ conditions/ suspension/ striking off
How long was the sanction imposed for?	
Does the order accord with sanction policy?	Yes/No/Comments
Does it state the operative date of the order?	Yes/No/Comments
Does it state the end date of the order?	Yes/No/Comments
If conditions imposed:	
- are they realistic (is the registrant able to comply)?	Yes/No/Comments
- are they verifiable (are dates on which information is due specific and clear)?	Yes/No/Comments
- are they imposed on anyone other than the registrant?	Yes/No/Comments

4. Policy issues

Are there any emerging policy issues?

Audited by:

Date: