Fitness to Practise Committee –26 May 2011

Fitness to Practise Annual Report 2010-11

Executive summary and recommendations

Introduction

Article 44(1)(b) of the Health Professions Order 2001 provides that the

> *'The Council shall publish, by such date in each year as the Privy Council shall specify a statistical report which indicates the efficiency and effectiveness of, and which includes a description of, the arrangements which the Council has put in place under article 21(1)(b) to protect members of the public from registrants whose fitness to practise is impaired, together with the Council's observations on the report.'*
> *'Council shall publish at least once in each calendar year a statistical report which indicates the efficiency and effectiveness 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.'*

The attached appendix is the draft 2010-11 Fitness to Practise Annual report. An appendix setting out data from previous years has been added to this year's report.

Decision

The Committee is asked to recommend that the Council approve the 2009-10 Fitness to Practise Annual report (subject to editorial amendments).

Background information

None

Resource implications

Employee time in writing the report

Financial implications

Accounted for in 2011-12 budget

Appendices

Fitness to Practise Annual report 2010-11

Date of paper

16 May 2011

[front cover]

1 April 2010 to 31 March 2011 [strapline]

Fitness to practise annual report 2011 [title]

Contents

Executive summary

Welcome to the eighth fitness to practise annual report of the Health Professions Council (HPC) covering the period 1 April 2010 to 31 March 2011. This report provides information about the HPC's work in considering allegations about the fitness to practise of our registrants.

In July 2010, we issued further information about the purpose and meaning of our fitness to practise processes. Our fitness to practise process is designed to protect the public from those who are not fit to practise. If a professional's fitness to practise is 'impaired', it means that there are concerns about their ability to practise safely and effectively. This may mean that they should not practice at all. Or that they should be limited in what they are allowed to do. We will take appropriate actions to make this action.

Sometimes professionals make mistakes that are unlikely to be repeated. This means that the person's overall fitness to practise is unlikely to be 'impaired.' Our processes do not mean that we will pursue every isolated or minor mistake.

This followed work that we undertook following the research we commissioned from IPSOS Mori in relation to the expectations of our fitness to practise processes. The outcome of that research has informed the work we have undertaken in relation to our review of the publicly available literature we have about our fitness to practise processes. That has included the review, update and publication of three brochures. Those brochures are:

- How to raise a concern
- What happens if a concern is raised against me
- The Fitness to Practise process: Information for Employers and Managers

We have also published new information on raising concerns for those with accessibility difficulties. In February 2011 we also launched new information on our website. This has included a new audio-visual presentation setting out how our hearings work.

This year we have continued to review whether there are other mechanisms to resolve disputes. We have commissioned research on the potential role of mediation in our regulatory proceedings. This work will help to inform the approach that the HPC takes towards mediation, as well as adding to the evidence base of professional health regulation.

This report details the way in which our fitness to practise panels have dealt with the cases brought before them and it includes information about the number and types of cases and the outcome of those cases.

We have seen a slight decrease in the number of concerns raised with us this year compared to 2009-10. We also received more cases from members of the public this year than any other complainant group. Concerns from members of the public now make up 34 per cent of the total number of concerns raised, a three per cent increase from 2009-10. We will continue to look at mechanisms to ensure that our processes are clear and accessible for all those with a need to interact with them.

Five hundred and thirty three cases were considered by panels of the Investigating Committee in 2010-11, an increase of six per cent from 2009-10. This differs from the number of cases received since not all cases received in a financial year are considered by a panel in that same year. Of those cases considered, a decision was made in 512 cases. The case to answer rate for cases considered by panels of the Investigating Committee is now 57 per cent, a decrease of one per cent from last year. When also taking into account the cases closed before consideration by a panel of the Investigating Committee, 60 per cent of cases are closed without referral to a final hearing.

In September 2010 we reviewed and updated our Investigating Committee process to allow for panels to issue learning points. Where appropriate, panels considering cases at Investigating Committee stage are now including learning points in their decisions where they find there is no case to answer. This only applies in cases where there is a realistic prospect of proving the facts and the statutory ground of an allegation but where there is no realistic prospect of establishing fitness to practise impairment at a final hearing. This ensures that where appropriate, matters are brought to the attention of the registrant concerned, allowing them to address the issue without a need for referral to a full fitness to practise hearing.

We are pleased to be able to report that the report by the Council for Healthcare Regulatory Excellence (CHRE) on the initial stages of health professional regulatory bodies' initial decisions concluded that *'the HPC has a well-managed system of casework with no evidence of unacceptable risks to patients or to the maintenance of public confidence.'*

We concluded 314 cases at final hearing in 2010–11. This is an increase of 18 per cent from 2009–10. The length of time for cases to conclude at final hearing has reduced to a mean and median average of 15 and 14 months. We will continue to take steps to ensure that cases are managed in a timely fashion.

It is of course important to recognise that our case load only involves less than 0.5 per cent of HPC registrants.

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

Kelly Johnson
Director of Fitness to Practise

Introduction

About us (the Health Professions Council)

We are the Health Professions Council, a regulator set up to protect the public. To do this, we keep a Register of those who meet our standards for their training, professional skills and behaviour. We can take action if someone on our Register falls below our standards.

In the year 1 April 2010 to 31 March 2011 we regulated members of the following 15 professions:

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

On 1 April 2010 following the abolition of the Hearing Aid Council, we took over the statutory regulation of Hearing Aid Dispensers. Prior to that date, the Hearing Aid Council was responsible for the statutory regulation of Hearing Aid Dispensers. On 1 April 2010, 1,577 Hearing Aid Dispensers were transferred to the HPC Register.

Each of the professions we regulate has one or more ‘protected titles’ (protected titles include titles like ‘physiotherapist’ and ‘operating department practitioner’). Anyone who uses a protected title and is not registered with us is breaking the law, and could be prosecuted. It is also an offence for a person who is not a registered hearing aid dispenser to perform the functions of a dispenser of hearing aids. For a full list of protected titles and for further information about the protected function of hearing aid dispensers, please go to our website at: www.hpc-uk.org. Registration can be checked either by logging on to www.hpcheck.org or calling +44 (0)20 7582 0866.

Our main functions

To protect the public, we:

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

We may regulate more professions in the future. For an up-to-date list of the professions we regulate, or to learn more about the role of a particular professional, see www.hpc-uk.org.

What is 'fitness to practise'?

When we say that a professional is 'fit to practise' we mean that they have the skills, knowledge and character to practise their profession safely and effectively. However, fitness to practise is not just about professional performance. It also includes acts by a professional which may affect public protection or confidence in the profession. This may include matters not directly related to professional practice.

What is the purpose of the fitness to practise process?

Our fitness to practise process is designed to protect the public from those who are not fit to practise. If a professional's fitness to practise is 'impaired,' it means that there are concerns about their ability to practise safely and effectively. This may mean that they should not practice at all, orr that they should be limited in what they are allowed to do. We will take appropriate actions to make this happen.

Sometimes professionals make mistakes that are unlikely to be repeated. This means that the person's overall fitness to practise is unlikely to be 'impaired.' People sometimes make mistakes or have a one-off instance of unprofessional conduct or behaviour. Our processes do not mean that we will pursue every isolated or minor mistake. However, if a professional is found to fall below our standards, we will take action.

What to expect

If a concern about a professional is raised with us, you can expect us to treat everyone involved in the case fairly and explain what will happen at each stage of the process. We will keep everyone involved in the case up-to-date with the progress of our investigation. We allocate a case manager to each case. They are neutral and do not take the side of either the registrant or the person who makes us aware of concerns. Their role is to manage the case

throughout the process and to gather relevant information. They act as a contact for everyone involved in the case. They cannot give legal advice. However, they can explain how the process works and what panels consider when making decisions.

Raising a fitness to practise concern

Anyone can contact us and raise a concern about a registered professional. This includes members of the public, employers, the police and other professionals. You will find information about how to tell us about a fitness to practise concern in our brochure, 'How to raise a concern' which can be found on our website at: www.hpc-uk.org/publications/brochures/

What types of cases can the HPC consider?

We consider every case individually. However, a professional's fitness to practise is likely to be impaired if the evidence shows that they:

- were dishonest, committed fraud or abused someone's trust;
- exploited a vulnerable person;
- failed to respect service users' rights to make choices about their own care;
- have health problems which they have not dealt with, and which may affect the safety of service users;
- hid mistakes or tried to block our investigation;
- had an improper relationship with a service user;
- carried out reckless or deliberately harmful acts;
- seriously or persistently failed to meet standards;
- were involved in sexual misconduct or indecency (including any involvement in child pornography);
- have a substance abuse or misuse problem;
- have been violent or displayed threatening behaviour; or
- carried out other, equally serious, activities which affect public confidence in the profession.

We can also consider concerns about whether an entry to the HPC Register has been made fraudulently or incorrectly. For example, the person may have provided false information when they applied to be registered or we may have registered them by mistake.

What can't the HPC do?

We are not able to:

- consider cases about professionals who are not registered with us;
- consider cases about organisations (we only deal with cases about individual professionals);
- get involved in clinical care;
- deal with customer-service issues;
- arrange refunds or compensation;

– fine a professional;
– give legal advice; or
– make a professional apologise.

Fitness to practise brochures

For more information about the fitness to practise process, please contact us to request one of the following brochures:

- How to raise a concern
- What happens if a concern is raised about me?
- The fitness to practise process – information for employers and managers
- Information for witnesses

You can also find these publications at: www.hpc-uk.org/publications/brochures/

Practice notes

The HPC has a number of practice notes in place for the various stages of the fitness to practise process. Practice notes are issued by the Council for the guidance of Practice Committee Panels and to assist those appearing before them. New practice notes are issued on a regular basis and all current notes are reviewed to ensure that they are fit for purpose. All of the HPC's practice notes are publicly available on our website at www.hpc-uk.org

Partners and panels

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

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

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

Standard of proof

The HPC uses the 'civil standard of proof' in its final hearing fitness to practise cases. This means that panels consider, on the balance of probabilities, whether an allegation is proven.

Cases received in 2010–11

This section provides information on the number of fitness to practise concerns received about registrants and information about who raised those concerns. We have a 'standard of acceptance' that all cases have to meet before we can deal with a fitness to practise concern about a professional. A case will only be classified as an 'allegation' once it has met this standard of acceptance. The information provided to us must:

- be in writing
- identify the professional
- set out the nature of the concerns in enough detail so that the professional can understand them and then be able to respond

If we do not have all of the information for the case to meet the standard of acceptance for allegations, it will be classified as an 'enquiry.' In these circumstances we will always seek further information. Many enquiries will go on to become allegations once further information is received. The Practice Note 'Standard of Acceptance for Allegations' provides further information on this.

Table 1 shows the total number of cases received in 2010–11 and the number of registrants on the HPC Register (as at 1April 2011).

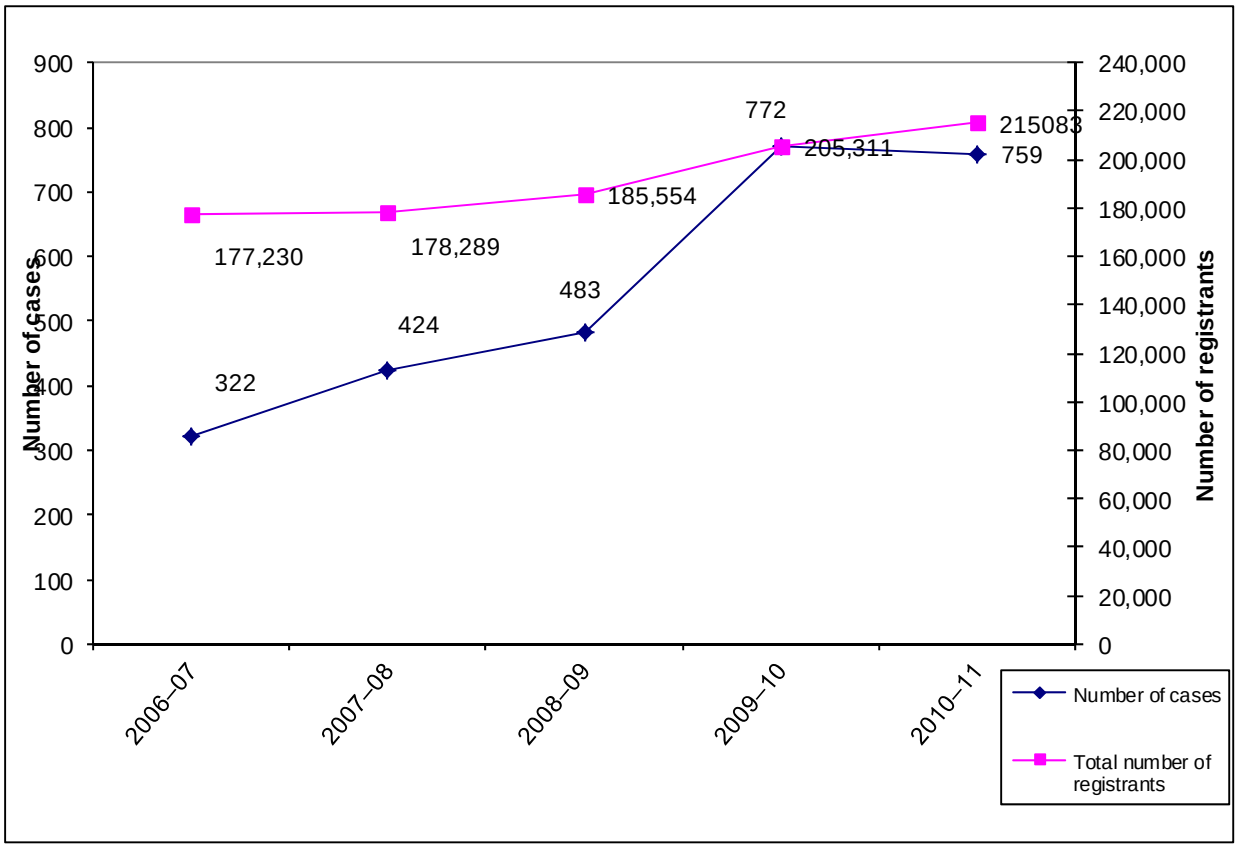
Table 1 Total number of cases received in 2010-11

Year	Number of cases	Total number of registrants	% of registrants subject to complaints
2010–11	**759**	**215,083**	**0.35**

There was a decrease of 1.7 per cent in the number of cases the HPC dealt with in 2010–11 compared to 2009–10. The number of registrants on the Register has increased by 4.5 per cent compared to last year. There has been a slight decrease in the total number of registrants who have had a fitness to practise concern raised about them, from 0.38 per cent of the Register in 2009–10 to 0.35 per cent in 2010–11. The total number of cases as a percentage of the total number of registrants still remains less than 0.5 per cent of the Register. In a small number of instances a registrant will be the subject of more than one case.

Graph 1 shows the number of cases between 2006–07 and 2010–11 compared to the number of registrants.

Graph 1 Total numbers of cases and registrants



If a case fails to meet the HPC's standard of acceptance for allegations or the concerns raised are not about fitness to practise then the case will be closed. In 2010–11, 250 cases were closed without being considered by a panel of the HPC's Investigating Committee. In such cases we will, wherever possible, signpost complainants to other organisations who may be able to assist with the issues raised. The majority of these cases are closed at the early stages of an investigation after further investigations have been undertaken. The average length of time for cases to be closed without being considered by the Investigating Committee in 2010-11 was a median average of three months and a mean average of four months.

Table 2 Length of time from receipt to closure of cases that are not considered by Investigating Committee

Number of months	Number of allegations	Cumulative number of allegations	% of allegations	Cumulative % of allegations
1–4	175	175	70.0	70.0
5–8	22	197	8.8	78.8
9–12	45	242	18.0	96.8
13–16	6	248	2.4	99.2
17–20	2	250	0.8	100.0
21–24	0	250	0.0	100.0
25–28	0	250	0.0	100.0
29–32	0	250	0.0	100.0
33–36	0	250	0.0	100.0
over 36	0	250	0.0	100.0
Total	**250**	**250**	**100**	**100**

Article 22(6) of the Health Professions Order 2001

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

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

In November 2010, the HPC's Education and Training Committee approved changes to the HPC's Health and Character Policy. A review of the policy was undertaken to ensure consistency in the management and investigation of cases and decisions made by panels.

The changes to the policy mean that all self-referrals received by the Fitness to Practise Department are now assessed on receipt to determine if the information disclosed is sufficient to suggest that the registrant's fitness to practise is impaired, and whether it may be appropriate for the matter to be investigated further under Article 22(6) of the Health Professions Order 2001. Self-referrals received from current registrants are no longer considered by a Registration Panel.

Cases by profession and complainant type

The following tables and graphs display information about who raised fitness to practise concerns in 2010–11 and the number of cases received against each profession. The total number of cases received in 2010–11 was 759 (Table 1, page X).

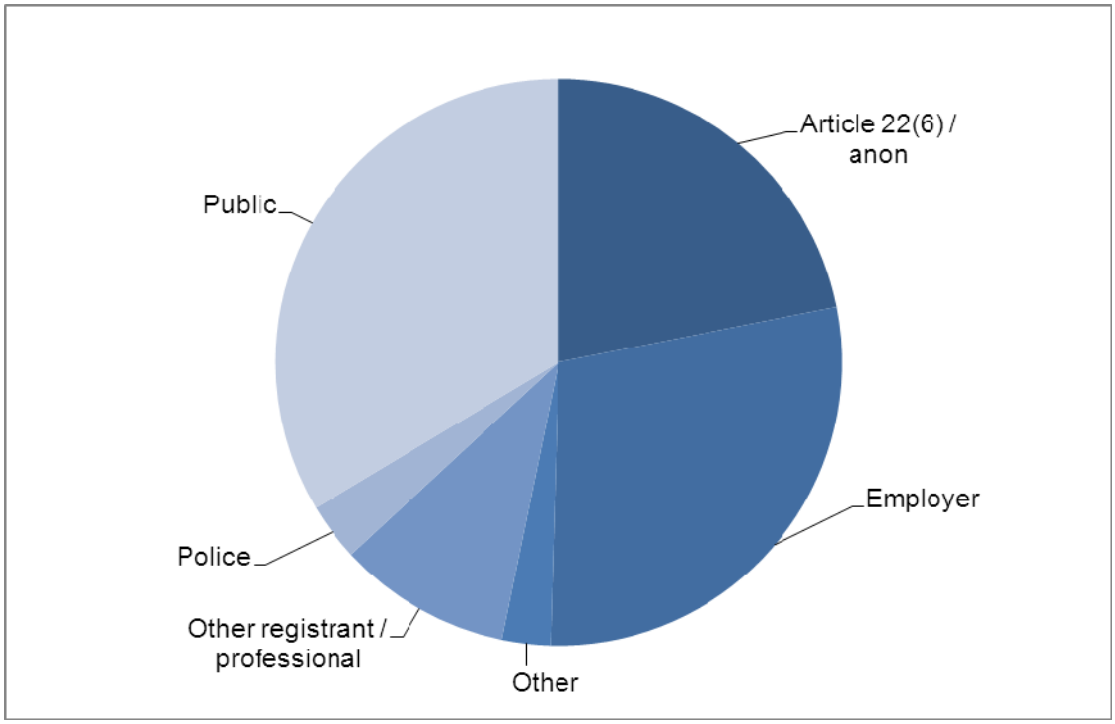
Table 3 provides details on the source of concerns to the HPC. In 2010–11, members of the public made up the single largest complainant group, making up 34 per cent of cases which is an increase of 3 per cent compared to last year. This is the first time that fitness to practise concerns raised by members of the public has been the single largest complainant group. The largest complainant group has previously always been employers. This decrease in concerns raised by employers may be due to a better awareness of the types of issues that the HPC can consider.

Table 3 Who raised concerns in 2010–11

Type of complainant	2010–11	% of cases
Article 22(6) / anon	166	21.87
Employer	217	28.59
Other	21	2.77
Other registrant / professional	75	9.88
Police	25	3.29
Public	255	33.60
Total	**759**	**100**

Graph 2 shows the percentage of fitness to practise concerns received from each type of complainant.

Graph 2 Who raised concerns in 2010–11?



The category 'Other' in Table 3 and Graph 2 includes solicitors acting as complainants, hospitals / clinics (when not acting in the capacity of employer), colleagues (who are not registrants) and the Independent Safeguarding Authority.

Table 4 shows the breakdown of cases that have been received by profession, and provides a comparison to the Register as a whole.

Table 4 Cases by profession

Profession	Number of cases	% of total cases	Number of registrants	% of the Register	% of registrants subject to complaints
Arts therapists	4	0.5	2,899	1.35	0.14
Biomedical scientists	37	4.9	22,627	10.52	0.16
Chiropodists / podiatrists	78	10.3	12,734	5.92	0.61
Clinical scientists	10	1.3	4,621	2.15	0.22
Dietitians	9	1.2	7,322	3.40	0.12
Hearing aid dispensers	44	5.8	1,587	0.74	2.77
Occupational therapists	62	8.2	32,126	14.94	0.19

Operating department practitioners	39	5.1	10,313	4.79	0.38
Orthoptists	0	0.0	1,303	0.61	0.00
Paramedics	188	24.8	16,782	7.80	1.12
Physiotherapists	104	13.7	45,002	20.92	0.23
Practitioner psychologists	118	15.5	17,165	7.98	0.69
Prosthetists / orthotists	1	0.1	901	0.42	0.11
Radiographers	40	5.3	26,615	12.37	0.15
Speech and language therapists	25	3.3	13,086	6.08	0.19
Total	**759**	**100**	**215083**	**100**	**0.35**

Table 5 shows a breakdown of cases by profession and complainant type.

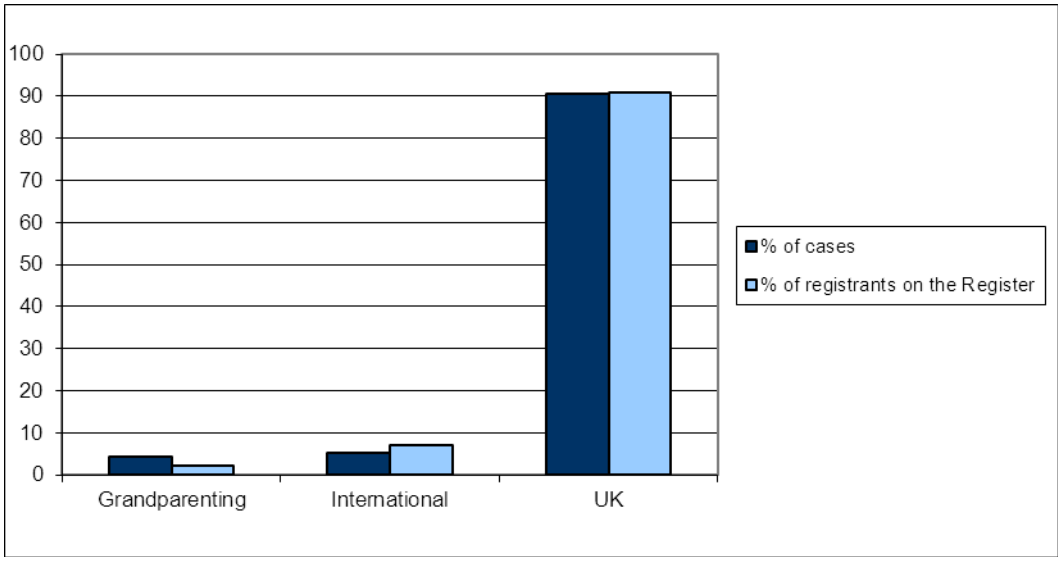
Table 5 Cases by profession and complainant type

Profession	Article 22(6) / anon	Employer	Other	Other registrant / professional	Police	Public	Total
Arts therapists	1	1	0	1	0	1	**4**
Biomedical scientists	13	21	0	3	0	0	**37**
Chiropodists / podiatrists	7	16	1	10	5	39	**78**
Clinical scientists	4	3	0	0	0	3	**10**
Dietitians	1	6	0	2	0	0	**9**
Hearing aid dispensers	0	11	5	0	0	28	**44**
Occupational therapists	11	16	3	11	2	19	**62**
Operating department practitioners	15	16	1	2	2	3	**39**
Orthoptists	0	0	0	0	0	0	**0**
Paramedics	84	58	2	13	4	27	**188**
Physiotherapists	12	25	4	16	7	40	**104**
Practitioner psychologists	5	11	4	13	0	85	**118**
Prosthetists / orthotists	0	0	0	1	0	0	**1**
Radiographers	9	25	0	0	4	2	**40**
Speech and language therapists	4	8	1	3	1	8	**25**
Total	**166**	**217**	**21**	**75**	**25**	**255**	**759**

Cases by route to registration

Graph 3 shows the number of cases by route to registration and indicates a consistent correlation between the proportion of registrants entering the HPC Register by a particular route and the percentage of cases considered (as a percentage of the Register).

Graph 3 Cases by route to registration 2010–11



Convictions

The 15 professions regulated by the HPC are exempt from the Rehabilitation of Offenders Act. This means that convictions are never regarded as 'spent' and can be considered in relation to a registrant's fitness to practise. Under Home Office Circular 6/2006, the HPC is notified when a registrant is convicted or cautioned of an offence in England and Wales. Separate but similar arrangements apply in Scotland and Northern Ireland.

The types of offences we have been informed about in 2010–11 have included:

- possession of child pornography
- theft
- harassment
- sexual assault
- failure to stop after an accident
- criminal damage
- fraud
- rape

Investigating Committee panels

The role of an Investigating Committee Panel (ICP) is to consider allegations made against registrants and to decide whether there is a 'case to answer.'

The Investigating Committee can decide that:

- more information is needed;
- there is a 'case to answer' (which means the matter will proceed to a final hearing); or
- there is 'no case to answer' (which means that the case does not meet the 'realistic prospect' test).

An ICP meets in private to conduct a paper-based consideration of the allegation. Neither the registrant nor the complainant appears before the ICP. The decision about whether or not there is a 'case to answer' must be made on the evidence, and the test to be applied is whether there is a 'realistic prospect' that the HPC will be able to establish that the registrant's fitness to practise is impaired.

The Panel needs to be satisfied that there is a realistic or genuine possibility that the HPC, which has the burden of proof, will be able to prove:

1. the facts alleged;
2. that those facts amount to the statutory ground (e.g. misconduct); and
3. that, in consequence, the Registrant's fitness to practise is impaired.

The Panel should only determine that there is a case to answer if they are satisfied that the HPC's case, when considered as a whole, provides a realistic prospect of establishing that fitness to practise is impaired.

Only cases that meet all three elements of the 'realistic prospect' test can be referred for consideration at a final hearing. Examples of 'no case to answer' decisions can be found at page X.

In some instances, there may be information which proves the facts of a case, but the panel may consider that there is no realistic prospect of establishing that the facts amount to the ground(s) of the allegation (e.g. misconduct, lack of competence etc.). Likewise, panels may consider that there is sufficient information to establish that there is a realistic prospect of proving the facts and the ground(s) of the allegation but there is no realistic prospect of establishing that the registrant's fitness to practise is impaired. This could be because the incident that gave rise to the concern was an isolated lapse that is unlikely to recur or there is evidence to show the registrant has taken action to correct the behaviour that led to the allegation being made. Such cases would result in a 'no case to answer' decision and the case would not proceed.

For further information on the ICP process and the 'realistic prospect test', please see the 'Case to Answer' Practice Note in the Publications section of our website: www.hpc-uk.org/publications/brochures/

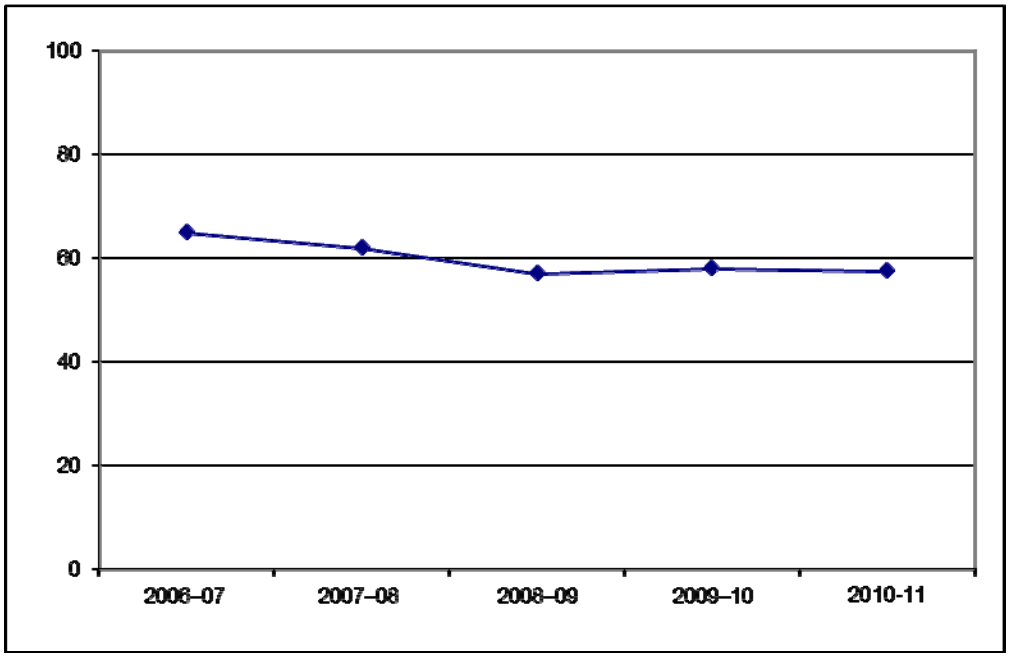
During 2010–11, the HPC undertook a further review of its ICP process to refine the decision-making process. This saw the introduction of 'learning points' as a tool available to ICPs. Learning points can only be used by ICPs in cases where the panel concludes that there is a realistic prospect of proving the facts and statutory ground of the allegation but not fitness to practise impairment. The panel may include learning points or comments on other matters arising from the statutory ground of the allegation, which the panel considers should be brought to the attention of the registrant. Learning points must be general in nature and are designed to act as guidance only. The introduction of learning points is considered to help ensure that the fitness to practise process is proportionate and that only matters where the 'realistic prospect' test is fully met are referred for consideration at a final hearing. In 2010–11 ICPs issued learning points in 16 cases.

During 2010–11, 762 cases moved out of the Investigating Committee remit. This includes 250 cases that were closed prior to being heard by a panel of the Investigating Committee.

In 2010–11, 533 cases were heard by an ICP. Of those cases, 21 were considered at ICP twice as panels had requested further information. This is an increase from the 499 cases that went to ICP in 2009–10.

Graph 4 shows the percentage of 'case to answer' decisions each year from 2006–07 to 2010–11. The 'case to answer' rate for 2010–11 is 57 per cent. This is down one per cent from 2009–10. However, it should be noted that the 'case to answer' rate has been calculated differently to previous years. The 'case to answer' rate for 2010–11 does not include cases which were referred back for further information. If those cases were taken into account, the percentage of 'case to answer' decisions would reduce in relation to the total number of cases that were considered at ICP during 2010–11. Similarly, the 'case to answer' rate reduces to thirty eight per cent of all cases received in 2010–11, including the cases that were closed prior to ICP.

Graph 4 Percentage of allegations with a case to answer decision



Decisions by panels

An ICP may determine that there is a case to answer in relation to all or part of the allegation that is put before it.

Specific allegations that resulted in case to answer decisions included:

- sexual harassment towards colleagues
- falsifying patient records
- failure to perform adequate patient assessments
- theft of property from employer
- failure to maintain adequate patient records
- attending work whilst under the influence of alcohol
- failing to limit/cease practise due to physical and/or mental health
- breach of patient confidentiality
- general competency concerns
- failure to provide appropriate treatment to patients

Allegations that have resulted in a ‘no case to answer’ decision have involved the issues set out in Table 6.

Table 6 Examples of no case to answer decisions

Type of issue	Reason for no case to answer
Leaving an x-ray room without notifying colleagues of whereabouts	Whilst there was information to support the facts of the allegation, the panel considered that it was a one-off incident that was unlikely to recur and therefore there was not a realistic prospect of the HPC proving that the registrant's fitness to practise is impaired at a final hearing.
Breach of service user confidentiality within an educational setting	The panel considered that there was insufficient supporting documentation to establish a realistic prospect of proving the facts of the allegation.
Failure to maintain adequate patient records	The panel considered that the registrant had provided documentation to disprove the facts of the allegation. The panel was satisfied that the registrant's record keeping was acceptable.
Physical and verbal abuse of a colleague	The panel found that the complainant had provoked the registrant and that there was no evidence to indicate that the registrant instigated the altercation. The Panel also noted that the registrant had shown remorse in his response over the incident and accepted that his behaviour fell below the expected standards of a health professional.
Acting in an unprofessional manner towards patients and colleagues	The panel determined there was insufficient evidence to substantiate the allegation as a whole. The panel considered that the facts alleged were insufficient to establish a realistic prospect that the HPC would be able to prove misconduct and/or lack of competence or that the registrant's fitness to practise is impaired.
Failure to assess and treat a fungal toenail and failure to act in a professional manner towards a patient	The panel found that there was no evidence to substantiate the allegations made. The panel found the complainant's allegations to lack credibility.
Engaged in sexual activity and/or other inappropriate conduct with a colleague	The panel noted that there was no reliable corroborative evidence from either party and that a police investigation was inconclusive. The panel considered that the realistic prospect test was not met.
Failure to provide a service user with a follow-up appointment, failure to	The panel found that the facts of the allegation had been supported by the

respond to a service user's telephone messages and failure to inform a service user that patient records had been removed	documentary evidence. However, the panel was satisfied that the registrant had not received the telephone messages from the service user and that this is why a follow-up appointment was not provided and also why telephone calls were not returned. In respect of the removal of the patient notes, the panel was satisfied that this was a one-off error and that the registrant had learnt from the error. Therefore, the panel found that the realistic prospect test was not met in relation to the ground(s) of the allegation and impairment.
Amending patient notes retrospectively, providing incorrect advice in relation to transferring fresh and frozen embryos and disposing of embryos against protocols	The panel considered that there was documentary evidence to support the facts but that there is not a realistic prospect of the HPC establishing that the registrant's fitness to practise is impaired on the basis of those facts.
Police Caution for possessing a weapon for the discharge of a noxious gas/liquid/electrical incapacitation device/thing	The panel found the facts of the allegation were supported by the documents. However, the panel noted that the registrant had immediately informed their manager of the matter and noted that the Caution arose in the context of what the panel considered to be a genuine mistake on the part of the registrant. The panel had regard to the character references provided by the registrant and was satisfied that the registrant had demonstrated genuine remorse. The panel considered that there was no realistic prospect of proving that the registrant's fitness to practise is impaired by reason of the Caution.

Case to answer by complainant

Table 7 shows the number of 'case to answer' decisions by complainant type. Fitness to practise concerns received from employers represent the highest percentage of 'case to answer' decisions. In 2010–11, 199 fitness to practise concerns received from employers were heard at ICP. Of those, 82 per cent received a 'case to answer' decision. Members of the public are the largest complainant category, with 255 fitness to practise concerns having been raised by members of the public in 2010-11. In 2010-11, 145 of the cases considered by an ICP were received from members of the public. However, only 22 per cent of fitness to practise concerns received from members of the public resulted in a 'case to answer' decision at ICP. There has been no change in the percentage of 'case to answer' decisions made in respect of concerns raised by members of the public since 2009–10.

Table 7 Case to answer by complainant

Complainant	Number of case to answer	Number of no case to answer	Total	% case to answer
Article 22(6)	66	26	92	72
Employer	163	36	199	82
Police	15	13	28	54
Professional body	2	0	2	100
Public	32	113	145	22
Registrant / professional	10	24	34	29
Other	6	6	12	50
Total	**294**	**218**	**512**	**57**

Case to answer and route to registration

Table 8 shows that there is consistency between the percentage of registrants who entered the Register via a certain route and the number of fitness to practise concerns raised in relation to those registrants. For example, registrants who came onto the Register via the 'Grandparenting' route make up two per cent of the total number of registrants on the Register. The number of fitness to practise concerns raised in relation to those registrants is three per cent of the total number of fitness to practise concerns raised in 2010–11. Three per cent of fitness to practise concerns received in relation to registrants who entered the Register via 'Grandparenting' had a 'case to answer' decision made at ICP.

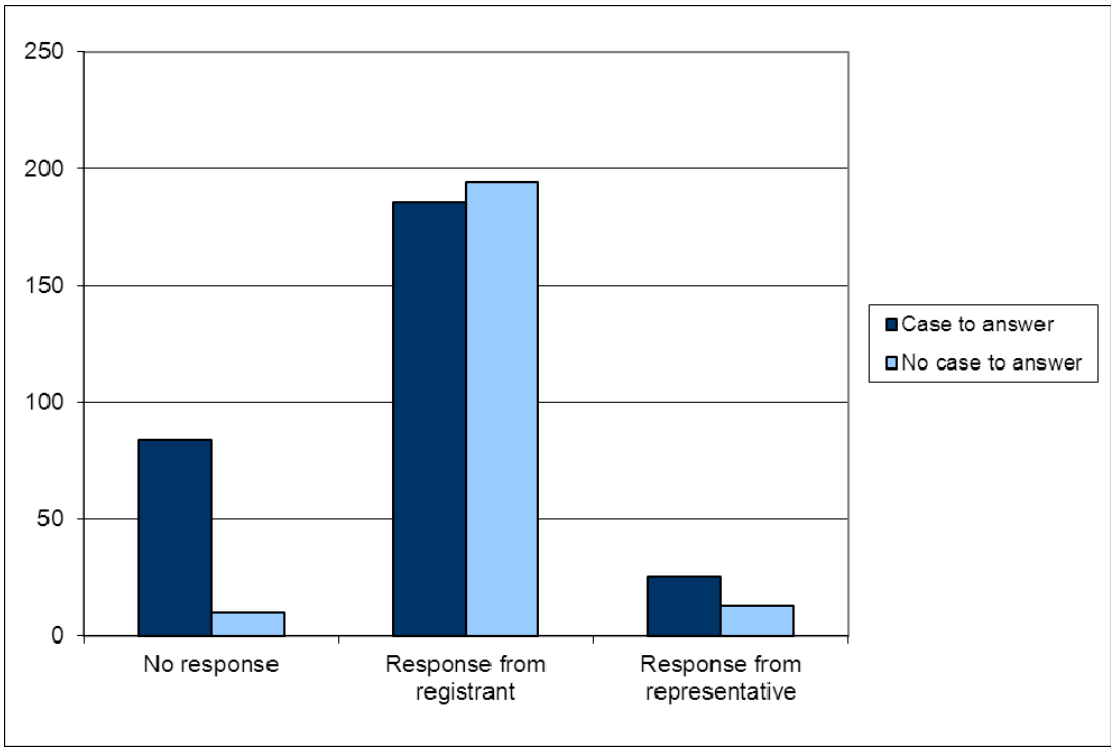
Table 8 Case to answer and route to registration

Route to registration	Number of case to answer	% of allegations	Number of no case to answer	% of allegations	Total allegations	% of allegations	% of registrants on the Register
Grandparenting	9	3	8	4	**17**	3	2
International	28	10	8	4	**36**	7	7
UK	257	87	202	93	**459**	90	91
Not Known	0	0	0	0	**0**	0	0
Total	**294**	**100**	**218**	**100**	**512**	**100**	**100**

Case to answer and representation

Graph 5 provides information on 'case to answer' and 'no case to answer' decisions and representation. In 2010–11, representations were made to the ICP by either the registrant or their representative in 418 of the 512 cases where a decision was made by a panel of the Investigating Committee. A total of 218 cases resulted in a 'no case to answer' decision. Of this number, 208 were cases where representations were provided. By contrast, only 10 cases resulted in a 'no case to answer' decision being made where no representations were received from the registrant.

Graph 5 Representations provided to Investigating Panel



Time taken from receipt of allegation to Investigating Panel

Table 9 shows the length of time taken for allegations to be put before an ICP in 2010–11. The table shows that 81.3 per cent of allegations were considered by a panel within eight months of receipt. This is down slightly from last year when 83.3 per cent of allegations were put before an ICP within eight months of receipt. The mean length of time taken for a matter to be considered by an ICP is 6 months from receipt of the allegation and the median length of time is 5 months.

Table 9 Length of time from receipt of allegation to Investigating Panel

Number of months	Number of cases	Cumulative number of cases	% of cases	Cumulative % cases
1–4	228	228	44.5	44.5
5–8	188	416	36.7	81.3
9–12	62	478	12.1	93.4
13–16	18	496	3.5	96.9
17–20	9	505	1.8	98.6
21–24	4	509	0.8	99.4
25–28	2	511	0.4	99.8
29–32	1	512	0.2	100.0
33–36	0	512	0.0	100.0
over 36	0	512	0.0	100.0
Total	**512**	**512**	**100**	**100**

Interim orders

If an allegation is serious enough to suggest that the registrant may cause harm to themselves or to others, or there are other reasons in the public interest, we may apply for an interim order. An interim order prevents a registrant from practising, or places limits on their practice, until the case is heard.

Panels of our practice committees may impose an ‘interim conditions of practice order’ or an ‘interim suspension order’ on registrants subject to a fitness to practise investigation. This power is used when the nature and severity of the allegation is such that, if the registrant remains free to practice without restraint, they may pose a risk to the public or to themselves. Panels will only impose an interim order when they feel that the public or the registrant involved require immediate protection. Panels will also consider the potential impact on public confidence in the regulatory process should a registrant be allowed to continue to practise without restriction whilst subject to an allegation. If an interim order is imposed, it will apply immediately and across the UK. Its duration is set out in our legislation, the Health Professions Order 2001. It cannot last for more than 18 months.

A practice committee panel may make an interim order, to take effect either before a final decision is made in relation to an allegation or pending an appeal against such a final decision.

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

Table 10 shows the number of interim orders by professions and the number of cases where an interim order has been granted, reviewed or revoked. We are obliged to review an interim order six months after it is first imposed and every three months thereafter. A review may also take place if new evidence becomes available after the order was imposed. In some cases an interim suspension order may be replaced with an interim conditions of practice order if the panel consider this will adequately protect the public. In six cases in 2010 –11an interim order was revoked by a review panel.

In 2010–11 there were 48 applications for interim orders made, and 44 of those orders were granted.

The HPC applied to the High Court for an extension of an interim order in nine cases as the maximum length of time a panel can impose an interim order is 18 months. The applications were granted and extended for a period of twelve months.

Table 10 Number of interim orders by profession

Profession	Applications considered	Applications granted	Applications not granted	Orders reviewed	Orders revoked on review
Arts therapists	0	0	0	0	0
Biomedical scientists	5	5	0	2	0
Chiropodists / podiatrists	1	1	0	9	1
Clinical scientists	3	3	0	2	0
Dietitians	0	0	0	0	0
Hearing aid dispensers	2	2	0	0	0
Occupational therapists	3	2	1	7	0
Operating department practitioners	5	5	0	24	2
Orthoptists	0	0	0	0	0
Paramedics	17	16	1	33	1
Physiotherapists	5	5	0	20	0
Practitioner psychologists	1	0	1	10	1
Prosthetists / orthotists	0	0	0	0	0
Radiographers	6	5	1	12	1
Speech and language therapists	0	0	0	4	0
Total	**48**	**44**	**4**	**123**	**6**

Final hearings

Three hundred and fourteen cases were concluded in 2010-11, involving 300 registrants (10 registrants had more than one complaint considered at their hearing). Hearings where allegations were well founded concerned only 0.15 per cent of registrants on the HPC Register.

Most hearings are held in public, as required by our legislation, the Health Professions Order 2001. Occasionally a hearing, or part of it, may be heard in private in certain circumstances.

The HPC is obliged to hold hearings in the UK country of the registrant concerned. The majority of hearings take place in London at the HPC's offices. Where appropriate, proceedings are held in locations other than regional centres, for example, to accommodate attendees with restricted mobility. In 2010–11 hearings took place in Belfast, Cardiff, Edinburgh, London, Manchester, the Shetland Islands and Wrexham, amongst other places.

Table 11 illustrates the number of public hearings that were held in 2010–2011, including cases that were adjourned or were not concluded. It details the number of public hearings heard in relation to interim orders, final hearings and reviews of substantive decisions. Some cases will have been considered at more than one hearing in the same year, for example, if proceedings ran out of time and a new date had to be arranged. Further sections of this report deal specifically with cases that were concluded at final hearing.

Table 11 Number of public hearings

	Interim order and review	Final hearing	Review hearing	Restoration hearing	Article 30(7) hearing	Total
2006–2007	55	125	42	0	0	**222**
2007–2008	71	187	66	0	0	**324**
2008–2009	85	219	92	0	0	**396**
2009–2010	141	331	95	0	0	**567**
2010-2011	**171**	**403**	**99**	**2**	**1**	**676**

Time taken from receipt of allegation to final hearing

Table 12 shows the length of time it took for cases to conclude, measured from the date of receipt of the allegation. The table also shows the number and percentage of allegations cumulatively as the length of time increases.

The length of time taken for cases that were referred for a hearing to conclude was a mean of 15 and a median of 14 months from receipt of the allegation. In

2009–10 the mean average length of time was 18 months and the median average length of time was 16 months.

The length of hearings can be extended for a number of reasons, these include, protracted investigations, legal argument, availability of parties and requests for adjournments, which can all delay proceedings. Where criminal investigations have begun, the HPC will wait for the conclusion of court proceedings. Criminal cases are often lengthy in nature and can extend the time it takes for a case to reach a hearing.

Table 12 sets out the length of time for a case to conclude from receipt of the allegation to final hearing, which was a mean average of 15 months and median average of 14 months.

Table 12 Length of time from receipt of allegation to final hearing

Number of months	Number of cases	Cumulative number of cases	% of cases	Cumulative % cases
0– 4	1	1	0.3	0.3
5– 8	35	36	11.1	11.5
9–12	75	111	23.9	35.4
13–16	104	215	33.1	68.5
17–20	48	263	15.3	83.8
21–24	26	289	8.3	92.0
25–28	9	298	2.9	94.9
29–32	7	305	2.2	97.1
33–36	6	311	1.9	99.0
over 36	3	314	1.0	100.0
Total	**314**	**314**	**100**	**100**

Table 13 sets out the total length of time to close all cases from the point an allegation was received to case closure at different points in the fitness to practise process. The total length of time was a mean average of nine months and a median average of seven months.

Table 13 Length of time to close all cases, including those closed pre ICP, those where no case to answer is found and those concluded at final hearing

Number of months	Number of cases	Cumulative number of cases	% of cases	Cumulative % cases
1–4	273	273	34.9	34.9
5–8	149	422	19.1	54.0
9–12	142	564	18.2	72.1
13–16	116	680	14.8	87.0
17–20	51	731	6.5	93.5
21–24	26	757	3.3	96.8
25–28	9	766	1.2	98.0
29–32	7	773	0.9	98.8

33–36	6	779	0.8	99.6
over 36	3	782	0.4	100.0
Total	**782**	**782**	**100**	**100**

Days of hearing

Panels of the Investigating Committee, Conduct and Competence Committee and Health Committee met on 566 days in 2010–11 to consider final hearing cases. This number includes cases that were part heard or adjourned.

Panels of the Investigating Committee heard cases concerning fraudulent or incorrect entry only.

Panels may hear more than one case on some days to make the best use of time available. Of the 314 final hearing cases that concluded in 2010–2011, it took an average of 1.8 days to conclude cases.

What powers do panels have?

The purpose of fitness to practise proceedings is to protect the public, not to punish registrants. Panels carefully consider all the individual circumstances of each case and take into account what has been said by all parties involved before making any decision.

Panels must first consider whether the facts of any allegations against a registrant are proven. They then have to decide whether any of the proven facts amount to the 'ground' set out in the allegation, for example misconduct or lack of competence and if, as a result, the registrant's fitness to practise is currently impaired. If the panel decide a registrant's fitness to practise is impaired they will then go on to consider whether to impose a sanction.

In cases where the ground of the allegations solely concerns health or lack of competence, the panel hearing the case does not have the option to make a striking off order in the first instance. It is recognised that in cases where ill health has impaired fitness to practise or where competence has fallen below expected standards, that it may be possible for the registrant to remedy the situation over time. The registrant may be provided the opportunity to seek treatment or training and may be able to return to practice if a panel is satisfied that it is a safe option.

If a panel decides there are still concerns about the registrant being fit to practise, they can:

- take no further action or order mediation (a process where an independent person helps the registrant and the other people involved agree on a solution to issues);

- caution the registrant (place a warning on their registration details for between one to five years);

- make conditions of practice that the registrant must work under;

- suspend the registrant from practising; or

- strike the registrant's name from the Register, which means they cannot practice.

In cases of incorrect or fraudulent entry to the Register, the options available to the panel are to take no action, to amend the entry on the Register, for example to change the modality of a registrant or to remove the person from the Register.

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

Outcomes at final hearings

Table 14 is a summary of the outcomes of hearings that concluded in 2010–2011. It does not include cases that were adjourned or part heard. Decisions from all public hearings where fitness to practise is considered to be impaired are published on our website at: www.hpc-uk.org. Details of cases that are considered to be not well founded are not published on the HPC website unless specifically requested by the registrant concerned. A list of cases that were well founded are included in Appendix one of this report.

Table 14 Outcome by type of committee

Committee	Amended	Caution	Conditions of Practise	No further action	Not wellfound	Removed (incorrect/ fraudulent entry)	Struck-off	Suspension	Voluntary removal	Total
Conduct and Competence Committee	0	70	22	3	83	0	62	44	13	**297**
Health Committee	0	0	4	0	1	0	0	5	4	**14**
Investigating Committee (fraudul	0	0	0	1	1	1	0	0	0	**3**

ent and incorrect entry)										
Grand Total	**0**	**70**	**26**	**4**	**85**	**1**	**62**	**49**	**17**	**314**

Outcome by profession

Table 15 shows what sanctions were made in relation to the different professions the HPC regulates. In some cases there was more than one allegation against the same registrant. The table sets out the sanctions imposed per case, rather than by registrant.

Table 15 Sanctions imposed by profession

Profession	Amended	Caution	Conditions of practice	No further action	Not well found	Removed (incorrect/ fraudulent entry)	Struck off	Suspension	Voluntary removal	Total
Arts therapist	0	0	1	0	0	0	0	0	0	**1**
Biomedical scientist	0	5	0	0	3	1	5	4	1	**19**
Chiropodists / podiatrist	0	6	2	0	9	0	6	3	1	**27**
Clinical scientist	0	0	1	0	0	0	0	0	1	**2**
Dietitian	0	1	0	0	0	0	0	1	1	**3**
Hearing aid dispenser	0	0	0	0	4	0	2	2	0	**8**
Occupational therapist	0	5	3	0	7	0	3	8	8	**34**
Operating department practitioner	0	7	3	1	5	0	7	7	0	**30**
Orthoptist	0	0	0	0	0	0	0	0	0	**0**
Paramedic	0	33	3	1	27	0	14	5	1	**84**
Physiotherapist	0	9	5	0	14	0	11	10	3	**52**
Practitioner psychologist	0	0	2	1	11	0	2	3	0	**19**
Prosthetist / orthotist	0	0	1	0	0	0	2	0	0	**3**
Radiographer	0	2	2	1	4	0	7	5	1	**22**

Speech and language therapist	0	2	3	0	1	0	3	1	0	**10**
Total	**0**	**70**	**26**	**4**	**85**	**1**	**62**	**49**	**17**	**314**

Outcome and representation of registrants

All registrants are invited to attend their final hearing. Some attend and represent themselves, whilst others bring a union or professional body representative or have professional representation, for example a solicitor or lawyer. Some registrants choose not to attend, but they can submit written representations for the panel to consider in their absence.

The HPC encourages registrants to participate in their hearings where possible. It aims to make information about hearings and their procedures accessible and transparent in order to maximise participation.

Panels may proceed in a registrant's absence if they are satisfied that the HPC has properly served notice of the hearing and that it is just to do so. Panels cannot draw any adverse conclusions from the fact that a registrant may fail to attend their hearing. They will receive independent legal advice from the legal assessor in relation to choosing whether or not to proceed in the absence of the registrant.

The panel must be satisfied that in all the circumstances, it would be appropriate to proceed in the registrant's absence. The practice note, Proceeding in the Absence of the Registrant provides further information on this.

In 2010–2011, 64 per cent of registrants chose to represent themselves or be represented by a professional. This is a slight increase from 2009–2010, when registrants or representatives attended in 62 per cent of cases.

Graph 6 Representation at final hearings

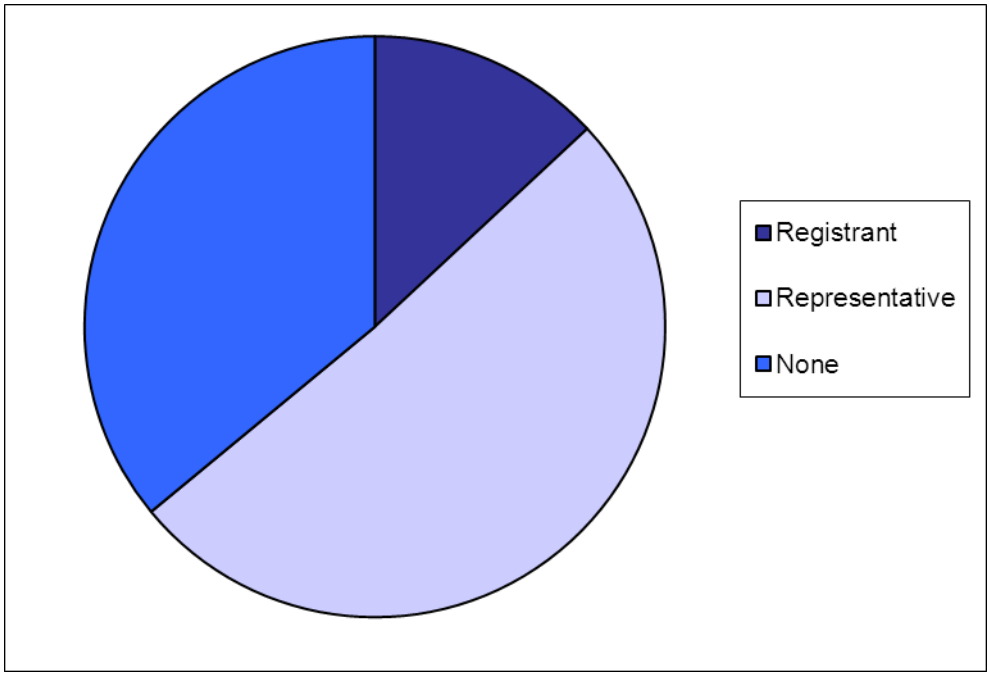


Table 16 details outcomes of final hearings and whether the registrant attended alone, with a representative or was absent from proceedings.

Table 16 Outcome and representation at final hearings

Outcome	Registrant	Representative	None	Total
Amended	0	0	0	0
Caution	17	43	10	70
Conditions of practice	2	21	3	26
No further action	1	2	1	4
Not well found	13	63	9	85
Removed	0	0	1	1
Struck off	4	10	48	62
Suspension	4	20	25	49
Voluntary removal	0	1	16	17
Total	**41**	**160**	**113**	**314**

Outcome and route to registration

Table 17 shows the correlation between routes to registration and the outcomes of final hearings. As with case to answer decisions at ICP, the percentage of hearings where fitness to practise is found to be impaired broadly correlates with the percentage of registrants on the register and their route to registration. The number of hearings concerning registrants who entered the Register via the UK approved route was 91 per cent.

Table 17 Outcome and route to registration

Route to registration	Amended	Caution	Conditions of Practice	No further action	Not well found	Removed	Struck off	Suspension	Voluntary Removal	Total cases	% of cases	% of registrants on the Register
Grandparenting	0	4	1	0	1	0	4	0	0	**10**	3	2
International	0	6	3	0	6	0	5	9	2	**31**	10	7
UK	0	60	22	4	78	1	53	40	15	**273**	87	91
Total	**0**	**70**	**26**	**4**	**85**	**1**	**62**	**49**	**17**	**314**	**100**	**100**

Conduct and Competence Committee panels

Panels of the Conduct and Competence Committee consider allegations that a registrant's fitness to practise is impaired by reason of misconduct, lack of competence, a conviction or caution for a criminal offence, a determination by another regulator responsible for health or social care and being barred under the vetting and barring schemes from working with vulnerable adults or children.

Misconduct

In 2010–2011the majority of cases, 72 per cent, related to allegations that the registrant's fitness to practise was impaired by reason of their misconduct. Some cases also concerned other types of allegations concerning lack of competence or a conviction. Some of the misconduct allegations that were considered included:

- attending work under the influence of alcohol;
- engaging in sexual relationships with a service user;
- failing to provided adequate patient care;
- false claims to qualifications;
- fraudulent claims for paid sick leave; and
- self-administration of medication.

Case studies 1 and 2 below give an illustration of the types of issues that are considered where allegations relate to matters of misconduct. They have been based on real cases that have been anonymised.

Misconduct case study 1:

A dietician was cautioned after having been found to have compromised patient confidentiality by publishing patient identifiable details on the registrant's personal blog page. It was also found that the registrant made derogatory remarks about colleagues and the hospital at which the registrant worked on the blog page.

Whilst giving evidence, the registrant fully admitted to the allegation made. The panel found that the matters were serious and had the effect of bringing the profession into disrepute. The panel determined that the registrant's blog was capable of being widely and publically available and that it was unrestricted. The panel was satisfied that the behaviour shown by the registrant in writing and publishing the blogs clearly amounted to misconduct and was accepted as such by the registrant. The panel did not consider that the registrant had demonstrated insight into her actions and therefore considered that the behaviour exhibited by the registrant had not been remedied and that her current fitness to practise was impaired.

In determining the appropriate sanction for the misconduct, the panel considered that breaching of confidentiality of patient information was a fundamental breach of trust and was unacceptable behaviour for a health care professional. The panel also determined that derogatory comments about NHS colleagues and institutions, which are widely available for the public to see, represent equally unacceptable behaviour.

The panel was satisfied that the registrant had shown remorse and given firm assurances as to her future behaviour and lack of repetition. The panel had consideration for the references provided by the registrant. The panel was satisfied that the registrant was a competent and caring clinician and considered that a caution order was a proportionate and appropriate sanction in this case. The caution order was imposed for a period of three years in order to mark the gravity of the offence.

Misconduct case study 2:

An operating department practitioner was suspended from the Register for a period of 12 months after being found to have taken controlled drugs, namely co-codamol, from their employer for their own personal use. The panel determined that the facts found proved were so serious that they amounted to misconduct.

The panel did not consider that there was any evidence of lack of competence on the part of the registrant, and that the evidence demonstrated that the registrant was thought of as highly skilled at their job. In reaching its conclusion, the panel had regard to the mitigating testimonials and references from colleagues. The panel noted that the registrant had a career of 27 years and had been considered skilled and able.

The panel also considered the aggravating factors, that the registrant breached the trust of their employer, that the registrant posed a risk to patients and colleagues as a result of the actions, that the incidents were not isolated and that the registrant had shown little insight into their actions. The panel determined that in all the circumstances, a suspension order was the most appropriate and proportionate sanction.

Lack of competence

One hundred and forty six allegations concerned issues of lack of competence in 2010—2011 which included:

- failure to provide adequate service user care;
- inadequate clinical knowledge; and
- poor-record-keeping.

Lack of competence allegations were most frequently cited as a reason of impairment of fitness to practise after allegations of misconduct in 2010-–2011. Of the 146 allegations concerning competence, 41 concerned a sole lack of competence. The case study below is an example of a hearing that considered an allegation that related solely to lack of competence.

Lack of competence case study:

An occupational therapist was suspended due to a number of difficulties with their clinical practice, including concerns with caseload management, clinical assessments and evaluations. The Panel found that there was no substantial evidence on which the shortcomings identified by the established particulars of the allegation had been addressed; therefore the conclusion of the findings was that the allegation was well founded and the Panel proceeded to consider the issue of sanction.

The Panel concluded that the only sanction that would afford sufficient protection of the public was a suspension order for a period of 12 months. This was because the shortcomings identified were wide-ranging, persistent, involved basic core competencies and had the potential to compromise patient safety. The Panel felt it would not be discharging its public duty if it permitted the Registrant to practise with that risk still present.

Convictions/ cautions

There were 41 cases considered by panels where the registrant had been convicted or cautioned for a criminal offence. Of those, 30 related solely to allegations of convictions or cautions and did not include other types of allegations.

Criminal convictions or cautions were the third most frequent ground of allegations considered in 2010-–2011. Under Home Office Circular 6/2006, the HPC is notified when a registrant is convicted or cautioned for an offence in England and Wales. Separate but similar arrangements apply in Scotland and Northern Ireland.

The case study below is an example of a case concerning an allegation relating to a criminal conviction.

Conviction case study:

A paramedic received a two-year caution order against their name after being convicted for two counts of common assault for which the registrant was fined and given a community service order.

The panel noted the admissions of the registrant that the incident leading to the conviction had taken place after a course while he was under the influence of cocaine. The incident had then occurred in a bar during the evening after a number of the course attendees had already been for a meal during which the registrant had consumed alcohol. The panel also noted that the registrant had swapped shifts in order to be able to attend the course and had been working on a shift until 3.00am on the morning of the course.

The panel recognised that the registrant had made a full admission, had pleaded guilty and expressed both regret and remorse. The registrant had also self-reported the matter to the HPC, had attended a Drugs Rehabilitation Clinic as part of bail conditions, and was supported by his employer who had accepted that it was a one-off incident and had imposed a final written warning which was about to expire.

The Panel found that the registrant had been convicted of assault offences, but was also guilty of misconduct due to the admitted use of a Class A drug. In making a finding of impairment, the panel noted the registrant's admission that his fitness to practise was impaired and concluded that he brought the profession of paramedic into disrepute in committing a common assault in a public place.

In determining the appropriate sanction the panel felt there was unlikely to be a repetition on the part of the registrant and took into account the considerable mitigation put forward on his behalf including his admissions and actions since the incident and contributory personal circumstances at the time of the incident. However, the panel decided the issues raised were appropriately serious that to take no action would not adequately meet the situation. The Panel decided that a caution order was proportionate, in all the circumstances, having regard to public confidence in the profession.

Health Committee panels

Panels of the Health Committee consider allegations that registrants' fitness to practise is impaired by reason of their physical and / or mental health. Many registrants manage a health condition effectively and work within any limitations their condition may present. However the HPC can take action when the health of a registrant is considered to be affecting their ability to practice safely and effectively.

The HPC presenting officer at a health committee hearing will usually make an application for proceedings to be heard in private. Often sensitive matters regarding registrants' ill health are discussed and it may not be appropriate for that information to be discussed in public session.

The Health Committee considered 14 cases, concerning 12 registrants in 2010-–2011. Of those cases five registrants were suspended from the register, four were given conditions of practice orders, four consented to remove themselves voluntarily from the register and one case was not well founded.

Not well founded

Once a panel of the Investigating Committee has determined there is a case to answer in relation to the allegation made, the HPC is obliged to proceed with the case. Final hearings that are 'not well founded' are cases where at the hearing, the panel is unable to find either the facts, grounds or impairment of fitness to practise proved to the required standard. If any of these three elements cannot be proven, then the hearing concludes and no further action is taken. In 2010–2011 there were 85 cases considered to be not well founded at final hearing.

Table 18 sets out the number of not well founded cases in 2010-–2011.

Table 18 Cases not well-founded

Year	Number of not well-founded cases	Total number of concluded cases	% of cases not well founded
2006–07	18	96	19
2007–08	26	156	17
2008–09	40	175	23
2009–10	76	256	30
2010-11	85	314	27

In the majority of cases considered to be not well founded registrants demonstrated that their fitness to practise was not impaired. The test of 'impairment' is based on registrants' current state, i.e. at the time of the hearing. If registrants are able to demonstrate insight and can show that any shortcomings have been remedied, panels may not find fitness to practise currently impaired.

In some cases, even though the ground of an allegation (i.e. misconduct, lack of competence) may be found to be proven, a panel may determine that the ground does not amount to an impairment of current fitness to practise. For example, if an allegation was minor in nature or an isolated incident, and where reoccurrence is unlikely.

In other cases the facts of an allegation may not be proved to the required standard (the balance of probabilities). When the facts of an allegation are not

well founded, this may be due to the standard or nature of the evidence before the Panel.

The following case studies are examples of not well founded cases.

Not well founded case study 1:

The registrant, a physiotherapist, was present at the hearing and was represented. The allegations against the registrant were occurred whilst employed as a bank member of staff, the registrant cancelled clinic appointments with patients and re-booked them at home on a private basis. The registrant's fitness to practise was alleged to have been impaired by reason of misconduct.

In reaching its decision the Panel heard live evidence from two witnesses who were patients and read statements from patients and the receptionists who were responsible for managing the appointments system. Whilst these witnesses did not give live evidence, their evidence was agreed. The Panel also heard evidence from the registrant and submissions from the registrant's representative.

There was clear unchallenged evidence that the registrant cancelled the respective appointments, saw patients in their homes on the dates set out in the particulars and treated them.

In the Panel's assessment, the registrant's actions did not fall below the standard expected of a registered healthcare professional. The registrant was not prohibited from seeing private patients, she did not breach any prevailing policy or her contract, she went about matters openly and made very limited financial gain from it. The Panel also found that there was an absence of dishonesty and the registrant's actions were found to be genuine.

The Panel had regard to the Standards of Conduct, Performance and Ethics and paid particular attention to Standards 3 and 13 which require registrants to keep high standards of personal conduct, to behave with honesty and integrity and to make sure that their behaviour does not damage the public's confidence in them or their profession. However, they concluded that in the circumstances of this case, Standards 3 and 13 had not been breached. Therefore, the Panel decided that the allegations were not well founded.

Not well founded case study 2:

A Panel of the Conduct and Competence Committee considered an allegation that the registrant, a paramedic, had failed to attend at a serious incident to which they had been assigned, but had instead passed that assignment to a night crew. That had resulted in a delay to an elderly patient receiving care which amounted to misconduct.

The registrant accepted that they had failed to attend at the incident and that this amounted to misconduct, but disputed that there was a delay or that her current fitness to practise was impaired.

The Panel heard evidence from a Clinical Manager, and from two ambulance technicians who had taken over the assignment. The Panel heard further representations from a representative of the registrant in relation to the delay and from the HPC's Presenting Officer. The Panel concluded that on the balance of evidence available the allegation of delay was not well founded.

The Panel then considered the registrant's admission that their failure to attend at the incident amounted to misconduct and whether their fitness to practise was impaired by virtue of that misconduct. In reaching its decision, the Panel took account of the Standards of Conduct, Performance and Ethics, the fact that the fitness to practise impairment had to be current, and that a finding of impairment was of matter of judgement for the Panel. The panel noted that they were impressed by the oral testimony of the registrant and of the witnesses and concluded that they were a highly competent and well respected paramedic. The Panel determined that the registrant had reflected on their misconduct and had shown remorse for their actions. The Panel was satisfied that the incident was an isolated one and the risk of a similar repetition was very low. Consequently the Panel found that the allegation that the registrant's fitness to practise was impaired as a result of her misconduct was not well founded.

Not well founded case study 3:

The registrant attended the hearing and represented themselves. The allegation was one of misconduct, specifically in relation to a letter that was written by the registrant to a third party, which contained comments regarding the complainant that were seen as unprofessional.

The Panel received oral and written evidence from the complainant. The Panel also received a written statement from the third party who was not present and also heard oral evidence from the registrant.

The Panel found the registrant to be a credible witness and accepted their evidence that the registrant was motivated not by any personal difficulties with the complainant but by a genuine concern for those involved in other proceedings. Whilst the Panel found the complainant to be a credible witness the Panel believed that after considering their evidence and examining in context the letter written by the registrant, that the complainant had misinterpreted the content of that letter as personal criticism.

On the balance of probabilities the facts of the case were not proven and the Panel found the allegations were not well founded.

Costs

The HPC is funded by registration fees. The budget for the Fitness to Practise Department in 2010-11 was approximately £7 million which is about 42 per cent of HPC's operating costs (a slight increase from 2009–10 when the percentage was 40 per cent). We have continued to use Case Managers to present hearings in their capacity of Presenting Officer and have seen an increase in the number of cases which have been disposed of via the HPC's consent arrangements. The average cost of a hearing (excluding legal services and staff costs) is approximately £4,000.

Suspension and conditions of practice review hearings

Any suspension or conditions of practice order that is imposed must be reviewed by a further panel prior to its expiry date. A review may also take place at any time at the request of the registrant concerned or the HPC. Registrants may request reviews if they are experiencing difficulties complying with conditions imposed or if new evidence relating to the original order comes to light.

The HPC can also request a review of an order if, for example, it has evidence that the registrant concerned has breached any condition imposed by a panel.

If a suspension order was imposed, a review panel will look for evidence to satisfy it that the issues that led to the original order have been addressed and that the registrant concerned no longer poses a risk to the public.

If a review panel is not satisfied that the registrant concerned is fit to practice, the panel may;

- extend an existing conditions of practice order
- further extend a suspension order
- strike the registrant's name from the register, which means they cannot practice

In 2010-–2011, 99 review hearings were held. Table 19 shows the number of number of review hearings held.

Table 19 Number of review hearings

Year	Number of review hearings
2006–07	42
2007–08	66
2008–09	92
2009–10	95
2010-11	99

The HPC uses Case Managers, who work within the Fitness to Practise department, to act as Presenting Officers for review hearings. This has proved to be an effective use of resources, which has helped reduce the amount of spending associated with instructing external solicitors.

Table 20 shows the decisions that were made by review panels in 2010-–2011.

Table 20 Review hearing decisions

Review Hearing Outcome	Number of cases
Conditions continued	9
Conditions revoked	14
Conditions revoked, caution imposed	1
Suspension continued	35
Suspension revoked, caution imposed	2
Suspension revoked, conditions imposed	5
Suspension revoked	4
Struck Off	22
Voluntary removal from the Register	7
Total	99

Restoration hearings

Article 33(1) of the Health Professions Order 2001 enables a person who has been struck off the HPC Register by a Practice Committee and who wishes to be restored to the Register, make an application for restoration.

An application for restoration to the Register following a striking off order cannot be made until five years have elapsed since the striking off order came into force. In addition, a person may not make more than one application for restoration in any period of 12 months.

The procedure followed is generally the same as for other fitness to practise proceedings. However, although the hearing is conducted in the normal manner, Rule 13(10) of the procedural rules requires the Panel to adopt an order of proceedings which provides for the applicant to present his or her case first and for the HPC Presenting Officer to make submissions after that.

In applying for restoration, the burden of proof is upon the applicant. This means it is for the applicant to prove that he or she should be restored to the Register and not for the HPC to prove the contrary. If a Panel grants an application for restoration, it may do so unconditionally or subject to the applicant:

- meeting any applicable education and training requirements specified by the Council; or
- complying with a conditions of practice order imposed by the Panel.

The Practice Note, 'Restoration to the Register' has been issued for the guidance of Practice Committee Panels and to assist those appearing before them. It can be viewed in the Publications section of our website: www.hpc-uk.org/publications/practicenotes/

In 2010–11, two applicants were restored to the Register with conditions of practice.

Article 30(7) hearings

Article 30(7) of the Health Professions Order 2001 enables a striking off order to be reviewed at any time where *"new evidence relevant to a striking-off order"* becomes available after a striking-off order has been made.

Registrants making applications under Article 30(7) must demonstrate to a Practice Committee that:

- they are in possession of "new evidence";

- the new evidence is relevant to any or all of the following:

- the finding that the allegations were well founded
- the finding that fitness to practise is impaired
- the decision to impose a Striking Off Order; and

- there is a reasonable explanation as to why the evidence was not available at the time of the original hearing; or

- if the registrant did not attend the hearing at which the Striking Off Order was made, evidence that the registrant was not afforded a reasonable opportunity to attend.

In 2010–11, one application for a review of a striking-off order was considered by a Practice Committee. At that review, a striking-off order was replaced with a conditions of practice order. The Panel was entirely satisfied that the new evidence was relevant to the striking-off decision and determined that in view of the fact that the registrant had taken remedial action before the striking off order was imposed and had continued to take steps since, the Panel determined that it would be disproportionate to allow the striking-off order to stand.

Disposal of cases by consent

The HPC's consent process is a means by which the HPC and the registrant concerned may seek to conclude a case without the need for a contested hearing, by putting before a Panel an order of the kind which the Panel would have been likely to make in any event.

The HPC will only consider resolving a case by consent:

- after an Investigating Committee Panel has found that there is a "case to answer", so that a proper assessment has been made of the nature, extent and viability of the allegation;

- where the registrant is willing to admit the allegation in full. A registrant's insight into, and willingness to address failings are key elements in the fitness to practise process and it would be inappropriate to dispose of a case by consent where the registrant denies liability; and

- where any remedial action agreed between the registrant and the HPC is consistent with the expected outcome if the case was to proceed to a contested hearing.

The process may also be used when existing conditions of practice orders or suspension orders are reviewed. This enables orders to be varied, replaced or revoked without the need for a contested hearing.

In order to ensure the HPC is fulfilling its obligation to protect the public, neither the HPC nor a Panel should agree to resolve a case by consent unless they are satisfied that:

- the appropriate level of public protection is being secured; and

- doing so would not be detrimental to the wider public interest.

In 2010-11, 17 cases were concluded via the HPC's consent arrangements. Further information on the process can be found in the 'Disposal of cases by Consent' practice note.

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

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

The CHRE can refer a regulator's final decision in a fitness to practise case to the High Court (or in Scotland, the Court of Session). They can do this if it is

felt that a decision by the regulatory body is unduly lenient and that such a referral is in the public interest.

In 2010–11, no cases were referred to the High Court by CHRE.

Registrants can also appeal the decisions made by panels to the High Court, or the Court of Session. In 2010–11, six registrants appealed decisions made by panels of the Conduct and Competence Committee, three appeal cases (including one appeal received in previous years), were concluded in 2010–11. They had the following outcomes:

- Registrant withdrew appeal
- Case remitted back for redetermination as to impairment and sanction
- Case remitted back for redetermination as to sanction

Developments for 2010–11

Audit / qualitative review of Investigating Panel and final hearing decisions

In conjunction with the Policy department, the Fitness to Practise Department has conducted a review of all Investigating Committee Panel and Final hearing decisions. Regular reports of the reviews have been considered by HPC's Fitness to Practise Committee.

Fitness to practise publications / brochures

Revised versions of the HPC's fitness to practise brochures have been published. The new publications were reviewed and updated following recommendations that came out of the expectations of complainants research conducted by IPSOS Mori. The revised brochures are as follows:

- How to raise a concern
- What happens if a concern is raised about me?
- The fitness to practise process – information for employers and managers

The brochures can be found on our website at: www.hpc-uk.org/publications/brochures/

Understanding fitness to practise hearings – audio visual presentation

The HPC produced an audio visual presentation to assist people in their understanding of fitness to practise hearings. The video was designed to help those people who may want to attend or be asked to attend at such hearings and to clarify the roles and responsibilities of those involved in layman terms. The presentation is available on the HPC website at: www.hpc-uk.org/complaints/

What is fitness to practise – Council policy statement

The Fitness to Practise Department hosted a seminar following the expectations of complainants research conducted by IPSOS Mori. The seminar included reviewing a policy statement on the meaning of 'fitness to practise.'

The Policy statement on fitness to practise was subsequently approved by Council and is available on our website, at: www.hpc-uk.org/complaints/fitnesstopractise/furtherinfo/

Vetting and Barring Scheme

The HPC began to refer appropriate cases to the Independent Safeguarding Authority (ISA) to comply with the requirements of the Safeguarding Vulnerable Groups Act 2006. This followed a period of liaison with the ISA designed to determine how the HPC should fulfil its duties under the Act and the practical arrangements for referring cases to them.

CHRE audit of initial decisions

The second Council for Healthcare Regulatory Excellence (CHRE) audit of initial fitness to practise decisions took place. The CHRE audit report found that the HPC had a robust initial-stages casework system that led to good decisions which were properly recorded and communicated. CHRE highlighted several examples of HPC good practice including strengths in case handling, trying to assist complainants, good systems for managing cases and good record keeping.

Regulation of Hearing Aid Dispensers

On 1 April 2010 following the abolition of the Hearing Aid Council, we took over the statutory regulation of Hearing Aid Dispensers. Prior to that date, the Hearing Aid Council was responsible for the statutory regulation of Hearing Aid Dispensers. On 1 April 2010, 1,577 Hearing Aid Dispensers were transferred to the HPC Register.

Review of drink and drug related criminal offences

As a result of recommendations from the CHRE first fitness to practise audit report of health professional regulatory bodies' initial decisions, the Fitness to Practise Department undertook a review of its mechanisms for dealing with alcohol and/or drug related criminal offences and reviewed the approach of three of the other healthcare regulators. The report was considered by the HPC's Fitness to Practise Committee who determined that the HPC's current mechanisms for dealing with such cases were appropriate and that no changes were required.

There is currently no requirement for a registrant to undergo a health assessment prior to such fitness to practise cases being considered by the

Investigating Committee. There is currently no legislative provision that could compel a registrant to undergo a health assessment.

Changes to the Health and Character Policy

Following approval by the HPC's Education and Training Committee and Council, changes were made to the Health and Character Policy.

A review of the policy was undertaken to ensure consistency in the management and investigation of cases and decisions made by panels.

The changes to the policy mean that all self-referrals into the Fitness to Practise Department will now be assessed on receipt to determine if the information disclosed is sufficient to suggest that the registrant's fitness to practise is impaired, and whether it may be appropriate for the matter to be investigated further under Article 22(6) of the Health Professions Order 2001.

Developments for 2011–12

Health and Social Care Bill

The HPC welcomed the publication of the government's Health and Social Care Bill.

The Bill stipulates that the new name for the HPC which, subject to parliamentary approval, will be the Health and Care Professions Council (HCPC) once the Register opens to social workers.

The Bill lays out the abolition of the General Social Care Council (GSCC) and provides for the regulation of social workers in England to become the responsibility of the renamed Health and Care Professions Council.
We continue to work closely with the GSCC to ensure a smooth transition and to welcome social workers into a multi-professional regulatory body.

Case Management System

Work on developing the new Fitness to Practise Department case management system is ongoing. It is anticipated that the system will go live in Autumn 2011.

Alternative mechanisms to resolve disputes

We will continue with our work to look at alternative ways of resolving disputes between registrants and the public. We have commissioned research to seek the views of stakeholders and the public on the use of mediation in HPC's regulatory proceedings and anticipate developing a pilot for its use.

How to raise a concern

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

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

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

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

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

List of tables

List of graphs

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* Three separate allegations were considered against this registrant at the same hearing

** Two separate allegations were considered against this registrant at the same hearing

Appendix two – historic statistics

Cases received

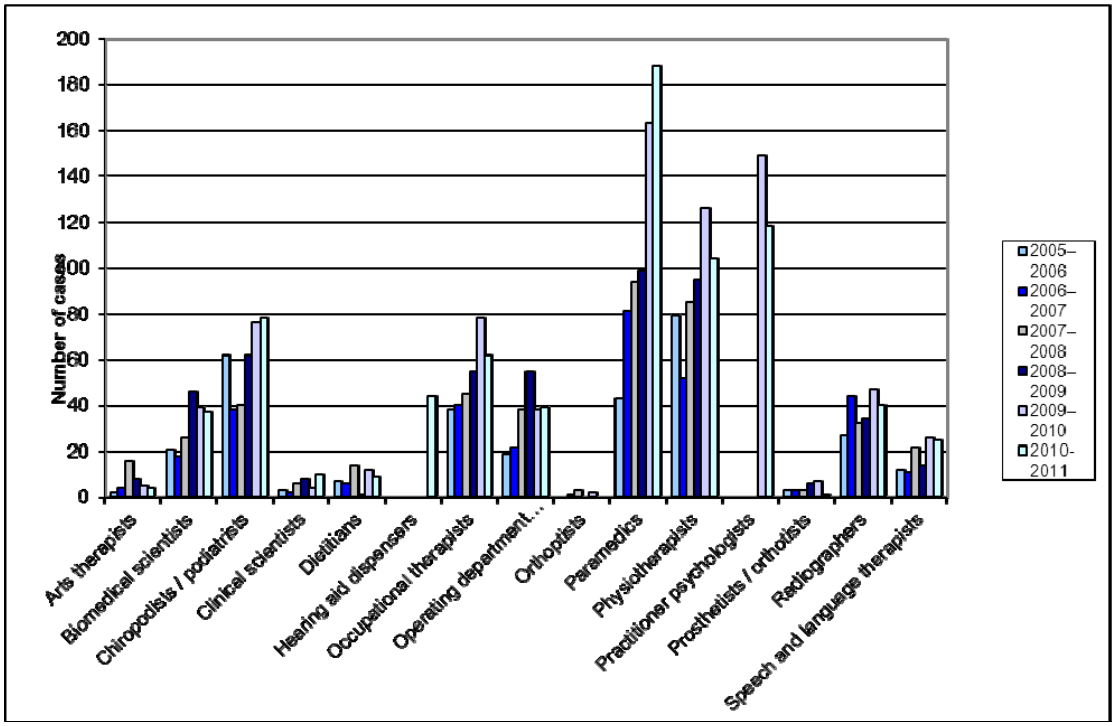
Number of cases received - 2003 – 2011

Year	Number of cases	Total number of registrants	% of registrants subject to complaints
2002-03	70	144,141	0.05
2003-04	134	144,834	0.09
2004-05	172	160,513	0.11
2005–06	316	169,366	0.19
2006–07	322	177,230	0.18
2007–08	424	178,289	0.24
2008–09	483	185,554	0.26
2009–10	772	205,311	0.38
2010-11	759	215083	0.35

Who makes complaints - 2006 – 2011

Type of complainant	2005–06	% of cases	2006–07	% of cases	2007–08	% of cases	2008–09	% of cases	2009–10	% of cases	2010-11	% c
Article 22(6) / anon	58	18	35	11	63	15	64	13	108	14	166	
BPS / AEP transfer*	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	44	6	0	
Employer	123	39	161	50	171	40	202	42	254	33	217	
Other	15	5	1	0.3	5	1	16	3	30	4	21	
Other registrant / professional	28	9	16	5	42	10	56	12	60	8	75	
Police	24	8	31	10	35	8	36	7	39	5	25	
Public	68	21	78	24	108	25	109	23	237	31	255	
Total	**316**	**100**	**322**	**100**	**424**	**100**	**483**	**100**	**772**	**100**	759	

Cases by profession - 2005 – 2011



Cases by route to registration – 2006 – 2011

Route to registration	2005 – 06 cases	% of cases	2006 – 07 cases	% of cases	2007 – 08 cases	% of cases	2008-09 cases	% of cases	2009 – 10 cases	% of cases	2010-11 cases	% of cases	% of registrants on the Register
Grandparenting	35	11	15	5	15	3.5	21	4	24	3	32	4	2
International	30	9.5	29	9	36	8.5	35	7	63	8	40	5	7
UK	242	77	278	86	373	88	425	88	685	89	687	91	91
Not Known	9	2.5	0	0	0	0	2	0	0	0	0	0	0
Total	316	100	322	100	424	100	483	100	772	100	759	100	100

Cases by UK home country – 2006 – 2011

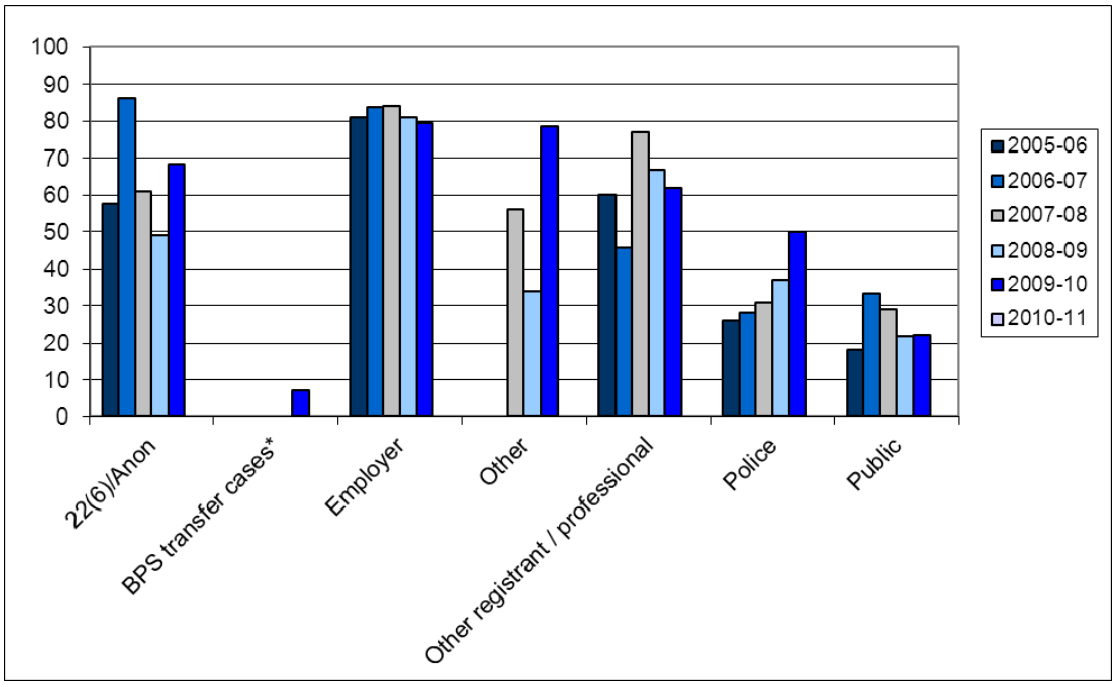
UK home country	2005–06	2006–07	2007–08	2008–09	2009–10	2010-11	% of cases in 2010-11
England	281	279	358	414	686	657	86.6
Northern Ireland	10	7	9	3	9	21	2.8
Scotland	10	19	24	26	43	32	4.2
Wales	3	13	17	25	21	39	5.1
Address outside UK	12	4	16	15	13	10	1.3
Total	**316**	**322**	**424**	**483**	**772**	**759**	**100.0**

Investigating Committee

Allegations where a case to answer decision was reached – 2005 – 2011

Year	% of allegations with case to answer decision
2004-05	44
2005–06	58
2006–07	65
2007–08	62
2008–09	57
2009–10	58
2010-11	57

Percentage case to answer, comparison of 2005 – 06, 2006 – 07, 2007–08, 2008 – 09, 2009 – 10 and 2010 – 11



Representations provided to Investigating Panel by profession - 2006 – 2011

	Case to answer				No case to answer				
Year	No response	Response from registrant	Response from representative	Total case to answer	No response	Response from registrant	Response from representative	Total no case to answer	Total cases
2005–06	32	52	14	101	NA	NA	NA	70	171
2006–07	40	79	28	147	3	66	4	73	220
2007–08	59	85	9	153	17	68	6	91	244
2008–09	61	131	14	206	21	115	13	149	355
2009–10	70	200	21	291	14	177	7	198	489
2010-11	**84**	**185**	**25**	294	**10**	**195**	**13**	218	512

Interim orders

Interim order hearings - 2004 – 2011

Year	Applications granted	Orders reviewed	Orders revoked on review	Number of cases	% of allegations where interim order was imposed
2004–05	15	0	0	172	9
2005–06	15	12	1	316	5
2006–07	17	38	1	322	5
2007–08	19	52	3	424	4
2008–09	27	55	1	483	6
2009–10	0	0	0	772	0
2010-11	44	123	6	759	6
Total	137	280	12	3,248	4

Final hearings

Number of public hearings - 2005 – 2011

	Type of hearing					
Year	Interim order and review	Final hearing	Review hearing	Restoration hearing	Article 30(7) hearing	Total
2004–2005	25	66	11	1	0	**102**
2005–2006	28	86	26	0	0	**140**
2006–2007	55	125	42	0	0	**222**
2007–2008	71	187	66	0	0	**324**
2008–2009	85	219	92	0	0	**396**
2009–2010	141	331	95	0	0	**567**
2010-2011	**171**	**403**	**99**	**2**	**1**	**673**

Representation at final hearings - 2006 – 2011

	Type of representation		
Year	Registrant	Representative	None
2006–07	13	46	43
2007–08	17	80	59
2008–09	21	74	80
2009–10	44	114	98
2010-11	41	160	113

Suspension and conditions of practice review hearings

Number of review hearings - 2005 – 2011

Year	Number of review hearings
2004–05	11
2005–06	26
2006–07	42
2007–08	66
2008–09	92
2009–10	95
2010-11	99