

Council meeting 5 & 6 April 2005

OPEN BUSINESS

## Council for Healthcare Regulatory Excellence

### **Purpose**

To receive the draft minutes of the public part of the CHRE Council meeting held on 9 March 2005.

Usually the Executive summary of the most recent CHRE Council meeting is circulated. However, on this occasion the minutes were prepared first. CHRE have agreed to the circulation of these draft minutes on the understanding that these are not final and may be changed at the next CHRE Council meeting.

### **Draft Minutes of CHRE Public Meeting: 9 March 2005 For Approval**

#### **Present**

Jane Wesson (Chair)  
Jonathan Asbridge (Deputy Chair)  
Norma Brook  
Graeme Catto  
Michael Copland-Griffiths  
Frances Dow  
Sue Leggate  
Hew Mathewson  
Jim McCusker  
Hugh Ross  
David Smith  
Rosie Varley  
Sally Williams  
Nicholas Wood

#### **Apologies**

Nigel Clarke  
Sheelagh Hillan  
Peter North  
Kieran Walshe  
Lois Willis

#### **In attendance**

Sandy Forrest, CHRE Director  
Peter Pinto de Sa', CHRE Council Secretary  
Julie Stone, CHRE Deputy Director

#### **Members of the public**

Jenny Newton, Nursing and Midwifery Council  
Beverley Parkin, Royal Pharmaceutical Society of Great Britain

#### **Opening remarks**

1. The Chair welcomed CHRE members, the public and those in attendance to the meeting. The Chair thanked Professor John Campbell, Chair of the New Zealand Medical Council for his presentation to members in the session preceding the formal public meeting and for his contribution as the keynote speaker at the Regulators' Conference which had taken place the previous day.
2. The Chair informed members that Martin Staniforth, the Department of Health's Deputy Director of Workforce, had confirmed that he would be taking early retirement. The Chair confirmed that she would be seeking an early meeting with his replacement, Nic Greenfield.

#### **Apologies**

3. Apologies received from Nigel Clarke, Sheelagh Hillan, Peter North, Kieran Walshe and Lois Willis were read into the note of the meeting.

#### **Minutes of the Meeting of 18 January 2005**

4. The minutes of the meeting of 18 January 2005 were approved with a minor correction to the list of attendees.

**Matters Arising from 18 January 2005**

5. Members were informed that the meeting between CHRE and the GMC's lawyers to agree on a joint interpretation of the Appeal Court judgments in the cases of Dr Ruscillo and Nurse Truscott had taken place on 25 January 2005.
6. The closed session of Council on 5 April 2005 would comprise diversity training for members and discussions on the work arising from the Shipman Inquiry.
7. Members welcomed the news that the General Optical Council's (GOC) Section 60 Order had been approved earlier in the week and the GOC Chair paid tribute to the contribution made by CHRE in helping to progress the order.
8. Members expressed continuing concern at the delays in processing section 60 orders and expressed support for the report of the review of the management and delivery of section 60 Orders which had recommended a project management framework for future orders, the setting-up of a project board for each Section 60 Order, recommendations for improving consultation, and training for those involved in the s60 process.
9. The Chair informed members that the Chief Medical Officer had issued a 'Call for Ideas' to assist his Review Group with its work. A copy of the document was circulated to members and Council agreed that CHRE's formal response would be discussed as part of the agenda for the private session on 5 April 2005.
10. Members noted that s29 cost orders would be discussed at the May 2005 public Council meeting.
11. Council considered the revised arrangements for communicating with members and welcomed the weekly updates that had been circulated since late-January 2005. Members considered the value of the monthly summary of political developments, prepared by Greencoat Communications. While some concern was expressed at the content and presentation of the information, there was general consensus that the summary provided a helpful digest of developments.

**Questions from the Public (1)**

12. The Chairman invited members of the public to speak. No questions were forthcoming. The Chair informed the meeting that members of the public would have another chance to ask questions of the Council at the end of the meeting.

**Prevention of Professional Abuse Network (POPAN) Research on Professional Boundaries and Sexualised Behaviour**

13. At a closed Council session in February 2005, members had considered a report prepared by the Prevention of Professional Abuse Network (POPAN) into professional boundaries issues and sexualised behaviour. The research had identified a number of possible projects and members considered a number of possible approaches for taking this work forward.
14. Members welcomed the report as an initial response to the Ayling Inquiry and agreed that the final report (following any minor corrections identified by the regulatory bodies) should be published on CHRE's website. Council agreed that the title of the report should be broadened to reflect the breadth of boundary violations, and not just those concerned with sexualised behaviour.
15. Council discussed the extent of work in this area being undertaken by individual regulators and supported the development of a common set of guidance covering all healthcare professionals. Members agreed that CHRE should facilitate this on-going work by working with the regulators and through its network of cross-regulatory fora.
16. Members agreed that any eventual guidance would need to be tested rigorously through an extensive and carefully constructed public consultation to ensure that it properly reflected the public's view of boundary issues.

**Emerging Themes from Performance Review Meetings: update  
(paragraph 39, page 7, 18 January 2005 minutes)**

17. Council noted that seven of the nine performance review meetings with regulators had been completed. As was agreed by Council in November 2004, the review process consisted of the completion of a questionnaire followed by a face-to-face meeting with the regulator.
18. Members noted that the meetings to date had identified emerging common challenges and

areas for the sharing of good practice. For example, a number of regulators had identified the reluctance of some police forces to disclose information to enable them to take action against registrants as an area of concern. The Director informed Council that he had made contact with the Association of Chief Police Officers (ACPO) with a view to initiating formal discussions about future information-sharing arrangements with regulators.

19. Members also discussed the variation in the approach of regulators to the issue of diversity. Council considered the extent to which this hampers the regulators understanding the diversity of its registrants and the implications for its work.

20. Council considered the extent to which this year's performance review process should reflect how the regulatory bodies currently deal with complaints made against them.

21. In order to extend the timescale for the 2005/06 performance review process, Council agreed that the process for next year's performance review process would be presented for consideration at the September 2005 meeting. This would include input arising from the feedback meeting which CHRE would be holding with the regulatory bodies on 6 April 2005.

22. Council noted that the agreed notes of the meetings with regulatory bodies would be shared with the regulatory bodies and that, in accordance with Council's decision in 2004, these notes would be published on the CHRE website.

**Action:** The Policy Manager to prepare a draft performance review process for consideration at the September 2005 meeting.

### **Structure of the CHRE's 2004/2005 Annual Report**

23. Members considered the proposed structure and production schedule of CHRE's second Annual Report and agreed that the report should draw on the positive aspects of CHRE's evolving partnership with the regulatory bodies and the progress made in cross-regulatory areas, such as the development of indicative sanctions. Members also agreed that the presentation and format of the first report should be retained.

24. With reference to section 29 issues, members agreed that the report should make reference to the learning points from the consideration of cases, including the changes to regulatory practice made as a result of the outcome of s29 referrals.

25. Members agreed the draft timetable for the production of the report which included time for the clearance of the notes of performance review meetings and the certification of the annual, audited accounts.

26. Members agreed to assist the executive team with the sourcing of appropriate photographic resources. There was discussion on a mechanism to gauge opinion on the report and there was support for the suggestion that a feedback form should be included as part of the finished document.

**Action:** The Policy Manager, with input from the executive team, to prepare a first draft of the report for consideration by Council at the May 2005 Council meeting.

### **Shipman Report: update**

#### **(paragraphs 15 – 18, pages 3 - 4 18 January 2005 minutes)**

27. Members noted that following the January 2005 meeting, Jane Wesson, as CHRE Chair had been invited to join the Review Group which had been established by the Chief Medical Officer, Sir Liam Donaldson, to consider the findings of the Shipman and other recent inquiries and to help inform the Department of Health's patient protection measures.

28. Members agreed that CHRE should consider a formal response to the 'Call For Ideas' at the closed session of Council in April 2005. Members also agreed that it would be helpful if the regulatory bodies also made individual responses to the consultation document.

29. Members also noted that CHRE, in conjunction with the Department of Health, had commissioned CHRE's legal advisors, Baker McKenzie, to prepare a report on various aspects of the Shipman Report which would inform on-going work in this area.

**Action:** The Deputy Director to finalise CHRE's response to the CMO's 'Call For Ideas' following discussion at the April 2005 Council session.

### **Approval of 2005/2006 Business Plan**

#### **(paragraph 21, page 4, 18 January 2005 minutes)**

30. Council considered a revised 2005/2006 Business Plan, following initial consideration in January 2005. Members acknowledged that the precise content of the Business Plan would remain dependant on the Government's response to the Shipman Inquiry (expected later in 2005) and the outcome of on-going funding negotiations with the Department of Health.

31. Members considered the CHRE's approach to patient and public involvement and, following on from the discussion under the earlier item on the POPAN report, agreed that there would be value in undertaking continuing discussion on the extent of CHRE's role in this area. Council agreed that members of the Communications Working Group, chaired by Frances Dow, should meet to discuss this issue.

**Action:** The Communications Working Group to prepare a report for discussion by members at the July 2005 Council meeting.

32. The Director reported that, with only a short time before the start of the new financial year, CHRE's budgetary position was unclear. He confirmed that CHRE is currently working on the basis of £1.5 million core budget (exclusive of Section 29 expenditure) with cost of living rise for 2005/2006. CHRE is in discussion with the Department of Health regarding future management of the Section 29 budget. It is proposed that management of Section 29 remains with CHRE and that responsibility for the budget, both in terms of expenditure and recovery of costs, is taken over by the Department.

**Action:** The Director to update members on CHRE's budgetary position when the information becomes available.

#### **Approval of 2005/2008 Corporate Plan (paragraphs 22 – 24, pages 4 -5 , 18 January 2005 minutes)**

33. Council considered a revised version of the 2005/2008 Corporate Plan, following preliminary consideration of a first draft in January 2005. Members had made a number of suggestions to the first draft which had been incorporated.

34. While an attempt had been made to predict the possible effects on the CHRE work programme of the outcome of the Shipman Inquiry, members acknowledged that it was likely that the Corporate Plan would be affected by the recommendations emerging from the Neale, Ayling, Haslam and Kerr inquiries.

35. Members suggested a number of small textual amendments to the plan, including the provision for a review of the operation of CHRE's Welsh Language Scheme.

36. Members discussed the difficulty of measuring the outcomes of the plan and the prioritisation of the various research projects that had been identified.

37. A number of the members informed the Council of on-going research work being under taken by their regulatory bodies. Members agreed that, wherever possible, it would be helpful for this work to be shared with CHRE.

38. Members discussed the concern that had been expressed about the possible detrimental effect to relations between CHRE and regulators because of the adversarial nature of s29 court actions. There was a broad consensus that the s29 cases to date had clarified the scope of the law, provided a useful body of case law and, through the consideration of learning points, contributed to better regulation.

**Action:** The Director to update members on developments affecting the corporate plan when necessary.

#### **Approval of S27 Procedure (paragraphs 25 –27, page 5, 18 January 2005 minutes)**

39. Members considered a draft procedure for issuing directions to regulators under Section 27 of the NHS Reform and Health Care Professionals Act 2002 and agreed that the procedure would be used rarely, if ever.

40. Members agreed to the adoption of the procedure, subject to the following:

- a. the consultation period for proposed S27 changes should be three months
- b. paragraph 16 would be re-worded to clarify that the S27 procedure would only be invoked as 'a last resort'

- c paragraph 24 should be amended by deleting reference to the list of matters relating to public protection
- d. there should be provision in the procedure for information on proposed directions to be shared with the Scottish Parliament and the Welsh Assembly
- e. the wording in procedure document should reflect the wording in the Act.

Following a question as to whether the Act specified that a change had to be 'necessary' and not just 'desirable', it was confirmed that the Act, in relation to both Section 27 and Section 29 uses the word 'desirable'.

41. Having considered a draft voting procedure for possible rule changes under S27, members agreed that general voting procedures for all matters requiring a vote in Council should be developed. The procedure for dealing with s27 matters would need to include consideration of issues such as the quorum, the voting majority, abstentions and the Chair's casting vote.

**Action:** The Policy Manager to circulate a final version of the procedure for information; and with the Council Secretary to develop a voting procedure for consideration at the May 2005 Council meeting.

### **Indicative Sanctions Guidance**

**(paragraphs 31 – 33, page 6, 18 January 2005 minutes)**

42. At the closed Council session in February 2005, members had considered a draft set of common values and principles underpinning sets of Indicative Sanctions Guidance (ISG) prepared by a working group of the CHRE-sponsored Fitness to Practise Forum.

43. Members agreed that a small number of CHRE members who had expressed an interest in participating in a steering group at the February 2005 meeting (Sue Leggate, Jim McCusker, Sally Williams and Lois Willis) would work with the Fitness to Practise Forum to devise a template for indicative sanctions guidance, which could assist those regulators who do not currently have a set of indicative sanctions and serve as an exemplar of good practice in this area.

**Action:** The Deputy Director to prepare a progress report for consideration at the May 2005 Council Meeting.

### **Complaints Handling**

**(paragraph 40, page 7, 18 January 2005 minutes)**

44. Members considered CHRE's approach to developing principles of good practice in complaints handling by the regulatory bodies; and how the regulatory bodies handled complaints against themselves.

45. Members agreed to adopt the principles of good practice in the handling of complaints (or allegations) against registrants by the regulatory bodies, which had been developed by a CHRE-convened workshop of stakeholders in November 2004, subject to the deletion of the reference to proceedings being 'informal'.

46. Members agreed that the amended principles of good practice should be posted on CHRE's website, and that they should be commended to the regulatory bodies for their own discussion and use, as appropriate. Council also agreed that registrants' current guidance on complaints-handling should be used to inform the content and format of a common template. In addition, there was discussion about the extent to which the principles of good practice would feature in the 2005/2006 performance review process.

47. With reference to the regulators' approach to dealing with complaints made against them, members agreed that further work was necessary to develop a shared understanding of good practice. Sally Williams and Sue Leggate, in conjunction with Peter North and Hew Mathewson agreed to undertake initial work in this area and report to a future meeting of Council.

**Action:** The Policy Manager to present an interim progress report for consideration at the May 2005 meeting.

### **Director's Report**

48. Members received an update on activities since November 2004.

49. The Director informed members that discussions are on-going with the Department of Health

on whether, or not, CHRE can remain at its current location (11 Strand) past December 2005, but the outcome of this had to be decided by April 2005 if the Department intended to break the lease.

**Action:** The Director to report developments on CHRE accommodation issues to the May 2005 Council meeting.

#### **Business Plan: update**

**(paragraphs 21 – 24, page 64, 11 November 2004 minutes)**

50. Members noted that the Council had achieved all of its targets in terms of internal organisational development, and the majority of its other targets.

#### **Chairman's Report**

**(paragraph 47, page 8, 18 January 2005 minutes)**

51. Members received an update on activities since January 2005. Council accepted the Chair's suggestion that consideration of CHRE's committee membership for 2005/2006 and the training needs of members would be considered at the May 2005 Council meeting.

#### **Section 29: Update**

**(paragraph 46, page 8, 18 January 2005 minutes)**

52. Council noted a report on the Section 29 (s29) cases considered by the CHRE between 1 April 2004 and 22 February 2005. Members also received information on s29 cases referred to the High Court by CHRE and those s29 referral cases closed since the January 2005 meeting.

53. Members welcomed the offer by Hew Mathewson to consider a 'root-cause' analysis of the recent referral case of Mr Fleischmann at the closed Council session in June 2005.

54. Members considered whether the figures on s29 cases should be broken down by NHS region but agreed that, because of the small number of cases involved, this would not be helpful.

#### **Regulatory Conference 8 March 2005**

**(paragraphs 36 – 38, page 7, 18 January 2005 minutes)**

55. Members recorded their thanks to the CHRE office team for their work in organising the Regulators' Conference. Council agreed that the presentations made at the conference and the content of the speech made by Health Minister, Lord Warner, would be circulated to CHRE members and the regulatory bodies.

56. Members agreed that a formal report on the event, drawing on the discussions in the parallel sessions should be considered at the next public Council meeting.

**Action:** The Council Secretary to prepare a formal report for consideration at the May 2005 meeting.

#### **Approved Minutes of Scrutiny Committee on 25 October 2004**

**(paragraphs 53 – 54, page 69, 11 November 2004 minutes)**

57. Members received the approved minutes of the Scrutiny Committee Meeting which had taken place on 25 October 2004.

#### **Approved Minutes of Audit Committee Meeting on 25 October 2004**

**(paragraphs 61, page 60, 8 September 2004 minutes)**

58. Members received the approved minutes of the Audit Committee Meeting which had taken place on 25 October 2004.

#### **Questions from the Public (2)**

59. Members of the public were invited for a second time to ask questions of the Council. No questions were forthcoming.

#### **Next Meeting**

60. The next public meeting of the Council would take place at the Stormont Hotel, Newtownards Road, Belfast (the first CHRE meeting in Northern Ireland) on Thursday 12 May 2005.