First Witness Statement of Bernie O'Reilly on behalf of the Health and Care Professions Council (HCPC)

Pursuant to Rule 9 Request 31 January 2025

Our establishment

1. The Health and Care Professions Council (HCPC) was established (initially as the Health Professions Council) on 17th April 2002 with its Register coming into effect on 9th July 2003. Prior to this date, the regulatory functions were performed under the legal parameters of another organisation, the Council for Professions Supplementary to Medicine (CPSM). At establishment, the Health Professions Council regulated 12 professions, with four professions added to statutory regulation over the years, as outlined in paragraphs four and five.

2. Our function and role are established in various parts of legislation including the Health Professions Order 2001 [BOR/01], and the various Health and Care Professions Council Rules [BOR/02]. The Health Professions Order 2001 was made under section 60 of the Health Act 1999 and came into force on 12 February 2002. Our rules set out the detailed procedures and requirements for several key HCPC functions. They are made by HCPC's Council following consultation and approved by the Privy Council, with the exception of the Education and Training Committee (Rules) 2023. These are made by the HCPC's Council.

Our role

3. The Health and Care Professions Council (HCPC) is a statutory regulator of 15 health and care professions in the United Kingdom. We maintain a Register of professionals, set standards for entry to our Register, approve education and training programmes (successful completion of which enables an individual to apply to join our Register), and deal with concerns where a professional may not be fit to practise. Our main role is to protect the public.

4. Each of the professions we regulate has one or more designated titles, which are protected by law. Professionals must be registered with the HCPC to legally practise in the UK under the following titles:

    a. Arts therapists

    b. Biomedical scientists

    c. Chiropodists/ podiatrists

    d. Clinical scientists

    e. Dietitians

    f. Hearing aid dispensers (since 1 April 2010)

    g. Occupational therapists

    h. Operating department practitioners (since 18 October 2004)

    i. Orthoptists

    j. Paramedics

    k. Physiotherapists

    l. Practitioner psychologists (since 1 July 2009)

    m. Prosthetists/orthotists

    n. Radiographers

    o. Speech and language therapists

5. Between 1 August 2012 and 2 December 2019, the HCPC was also the regulator for social workers, who are now regulated by Social Work England. We do not hold any data on FTP cases relating to social workers during the time that HCPC was the regulator. If this information is needed, it could be sought from Social Work England.

6. We protect the public by investigating concerns about the fitness to practise of our registrants. Anyone can raise a concern about a registrant's fitness to practise. This includes members of the public, employers, colleagues, the police, other organisations, and other health and care professionals.

7. Any registrant or other individual can also be referred to the HCPC for misuse of the above protected titles. Information about misuse of title and the HCPC's processes for receiving and addressing reports of misuse can be found on our website [BOR/03].

Summary of the materials provided

8. Alongside this witness statement, we have provided the Inquiry with:

    a. A completed spreadsheet template containing information on fitness to practise cases identified as relevant to the Inquiry [BOR/04].

    b. Copies of documents referenced in this witness statement or otherwise considered relevant to support this witness statement and/or the identified cases, as detailed in the completed exhibits list template.

Process for obtaining information and material relevant to the Inquiry

9. The HCPC Fitness to Practise (FTP) dataset was searched for any name that could relate to the relevant providers in Essex, informed by the list of providers and relevant locations provided by the Inquiry.

10. The search was restricted to an exact match to a relevant name but was not case sensitive. The search was conducted on four fields in the FTP dataset: EmployerName, EmployerAddress, CurrentEmployer, PreviousEmployer.

11. While we believe this search has identified information relevant to the Inquiry, it should be noted that we cannot fully discount the possibility that some information has not been highlighted in our search due to missing fields, incorrect information provided, or errors in data entry at the time of initial recording. We are not aware of any such errors at this time but will share further information with the Inquiry if they were to be identified.

12. From the dataset of FTP concerns dating from 2001 to the present day, the search identified 248 FTP concerns where a name of interest was present. The majority of these concerns were for the Essex Partnership University NHS Foundation Trust (141).

13. The details of all these cases were reviewed by a senior leader within the FTP Department to identify potential relevance to the Inquiry. Of the 248 cases raised from the initial search, 236 cases have been excluded following this review as they do not appear to be relevant to the Inquiry. The specific reasons for exclusion of certain cases include:

    a. The allegations do not relate to mental health settings

    b. The allegations relate solely to the health of the registrant

    c. The allegations are not directly related to professional activity (e.g. criminal offences outside of the work environment, such as shoplifting)

    d. The allegations relate solely to locations other than Essex.

14. Following this rationale, we have identified twelve cases which may be relevant to the Inquiry. The details of these cases have been included in the spreadsheet template provided and submitted to the Inquiry alongside this statement [BOR/04].

15. The detail included in the spreadsheet of relevant cases [BOR/04] sets out the outcome and a summary of the decision rationale. Five of the records reference decisions made to close cases in accordance with the standard of acceptance policy in place at that time [BOR/05, BOR/06, BOR/07, BOR/08]. Further information relating to this standard of acceptance policy and changes to the implementation of our threshold test have been detailed below.

Our Fitness to Practise (FTP) processes

16. All registrants must meet our standards to join our Register and to maintain their registration. The current standards are available on our website [BOR/09, BOR/10, BOR/11, BOR/12, BOR/13].

17. To remain on our Register, the health and care professionals we regulate must be fit to practise. Fitness to practise means a registrant has the skills, knowledge, character, and health to practise their profession safely and effectively. To remain fit to practise, registrants must keep their skills and knowledge up to date and remain within their field of competence. Fitness to

practise also requires registrants to treat service users with dignity and respect, to collaborate and communicate effectively, to act with honesty and integrity, and to manage any risk that may be posed by their own health.

18. The following outlines the fitness to practise concerns process at a high level [BOR/14]. This process has been in effect since 2019. Further details are provided below regarding changes to our processes prior to this date. Definitions of some of the key terms in our processes are also included in the glossary of terms at the end of the document.

    a. **Stage one: Concern received.**
    Here, a decision is made as to whether the concern is something the HCPC can consider. More information about the types of cases that the HCPC can and cannot consider can be found on our website [BOR/15]. If the concern is not something that the HCPC can consider, the case is closed and the reasons for that decision are fed back.

    b. **Stage two: Investigation begins.**
    If the concern is something that can be considered by the HCPC, the registrant involved is notified about the concern and the process proceeds. The HCPC gathers additional information, if necessary. The registrant and the person who raised the concern are kept updated, and the registrant's employer is contacted at this stage.

    c. **Stage three: Threshold assessment.**
    The concern and gathered information are assessed to determine whether it meets the threshold, which is the minimum criteria for proceeding. The HCPC's threshold policy for fitness to practise investigations can be found on our website [BOR/16]. If it does not meet this threshold, the case is closed and the reasons for the decision are fed back to the parties of the case.

    d. **Stage four: Investigating Committee Panel.**
    If it does meet the threshold, formal allegations are drafted, and the case is referred to the Investigating Committee. The registrant is sent the allegation and the information that was gathered and given 28 days to respond with

their observations. Following this, the Investigating Committee Panel decides whether there is a case to answer, no case to answer, or whether further investigation is needed [BOR/17]. If the case is closed, the reasons for this decision are fed back to the parties of the case.

e. **Stage five: HCPTS hearing.**
If there is a case to answer, the case is heard by either the HCPTS Conduct and Competence Committee or the HCPTS Health Committee. Here, where a committee decides that a registrant's fitness to practise is currently impaired, they will decide whether no further action is necessary or whether a sanction is to be issued, such as a caution, conditions of practice, a suspension, or being struck from the Register. If any sanction is imposed, the panel will have regard to the HCPC's sanctions policy, which can be found on the HCPTS website [BOR/18]. Following this decision, the registrant can appeal, and the Professional Standards Authority can challenge the panel's decision under their section 29 powers if the decision is perceived to be 'unduly lenient'.

19. The HCPC may also impose an interim order as part of FTP proceedings. An interim order is a measure to protect the public by preventing a registrant from practising, or restricting their practise, whilst an investigation takes place. An interim order can be applied for any stage of the process and will be required in cases where concerns about a registrant's fitness to practise are so serious that public safety would be put at risk, or there would be a risk to the public interest, if the registrant were allowed to practise without restriction. In most cases, we will not need to apply for an interim order. More information about interim orders can be found on our website [BOR/19].

20. The fundamental elements of our fitness to practise processes have remained consistent since they were brought into effect during the establishment of our Register in 2003. Only more minor elements of process, for example the ability to hold hearings online rather than in person, have been subject to change over time. Most changes have been to HCPC policies which guide the interpretation

and application of the statutory fitness to practise process set out in the 2001 legislation.

21. One key area of development that has taken place relates to the application of our threshold test. Between 2009 and 2018, the HCPC followed a standard of acceptance policy which set out the threshold that concerns must normally meet before they would be investigated by the HCPC. The policy was developed in response to changes in the volume and nature of fitness to practise concerns received. In May 2015, the policy was updated to introduce the 'credible evidence' test. This test extended the powers of case managers to close cases at an early stage by including an assessment of the evidential basis for allegations of impaired fitness to practise.

22. In 2016, the HCPC approved a new approach to fitness to practise policy, explaining delivery of our public protection mandate through our FTP processes [BOR/20]. It provided an overview of our approach to fitness to practise proceedings but did not provide further guidance on how the standard of acceptance would be applied.

23. A review was undertaken of the standard of acceptance policy in 2018, which concluded that a different, more clear and consistent approach to a threshold test was needed. This led to the introduction of our current approach (as detailed above). The new threshold policy for fitness to practise investigations and the approach to the investigation of health matters policy [BOR/21] came into effect in January 2019, replacing the approach to fitness to practise and standard of acceptance policies.

24. We have also made regular updates to our sanctions policy, previously the indicative sanctions policy [BOR/22, BOR/23, BOR/24, BOR/25], since 2013, with the most recent version published in 2019.

25. Our standards, which registrants are required to meet, have also changed over time via scheduled reviews and public consultations. Historical standards and policies are held in archive to avoid confusion to current registrants but can be provided where helpful to the inquiry.

26. Our FTP processes are strictly governed by legislation which can only be amended by the UK Parliament. Along with other regulators of health and care professions, the HCPC has been seeking legislative change to enable regulatory reform of our processes since around 2009, and have been actively working towards reform since the government's Promoting professionalism, reforming regulation consultation in 2017 [BOR/26].

27. We are working closely with the Department of Health and Social Care to contribute to the development of the future legislation of the General Medical Council, as this is expected to form the basis for future legislation of the HCPC and other professional healthcare regulators. This is a complex project which has experienced delays, and reform of the HCPC's legislation is unfortunately likely to take several more years. Once enacted, we believe new legislation will enable us to more easily adapt and improve our processes to deliver more efficient and compassionate fitness to practise services.

Support to employers and the Professional Liaison Service

28. The HCPC supports employers to identify, manage, and refer concerns about the fitness to practise of its registrants. Since 2006, we have published guidance and information about fitness to practise for employers and managers. The current version of The fitness to practise process: Information for employers and managers was published in September 2024 [BOR/27]. This helps employers to identify fitness to practise concerns and when to raise a concern with the HCPC. It also explains the process that will be followed to investigate the concern and what to do if you employ a registrant who is subject to a fitness to practise investigation.

29. Employers are able to follow an online step-by-step guide [BOR/28] when deciding whether to make a fitness to practise referral, and have access to all our online information about raising a concern, fitness to practise, and the investigation process.

30. Since 2010, the HCPC has also provided an online employer hub, which provides specific information for employers and managers [BOR/29]. A complete

refresh of this hub was undertaken in 2019, when the current information on managing concerns was published [BOR/30]. Employers and managers are also able to subscribe to our employer newsletter, which was first published in 2019. The June 2022 and April 2023 editions focussed on managing concerns and understanding fitness to practise.

31. Since 2007, we have hosted employer events, which have included presentations on the work of HCPC and its regulatory powers and processes, including fitness to practise.

32. The HCPC professional liaison service was established in 2020 following a decision to invest in more upstream regulation. Upstream regulation describes an approach to regulation that is focussed on prevention, partnership and support, and there was a growing evidence base to support its effectiveness to prevent harm.

33. The service is UK-wide and works in partnership with employers to influence and support the development of cultures, working environments, and practices that enable registrants to embed and achieve high professional standards.

34. The service runs several programmes of support including professionalism in practice, which is a suite of evidence-based workshops for registrants, their managers, and leadership teams. The programme includes workshops to:

    a. Increase understanding of the impact of working cultures on professional practice, wellbeing and disengagement, and influence the creation of a supportive culture.

    b. Explore what it means to be a healthcare professional, professional values and behaviours, the key influences in the work environment that allow professionalism to thrive, and the impact of unprofessional behaviours.

    c. Support and empower staff to speak up and raise concerns and achieve their duty of candour requirements.

    d. Develop understanding of fitness to practise and encourage greater local resolution, where appropriate, and improve referrals where necessary.

Limitations

35. Prior to HCPC's commencement in 2003, regulatory activities were conducted by CPSM. Any fitness to practise cases that were raised with CPSM prior to this were processed using CPSM rules, up until approximately 2005. Fitness to practise cases raised under CPSM rules were managed primarily by paper-based documentation and there exists no records in a searchable database that could yield evidence or detailed records.

36. CPSM cases or early HPC cases not migrated to current digital systems are stored in a secure below-ground archive site. Retrieving information from this site poses significant challenges and was not possible to undertake before the deadline of 28 February 2025. We estimate that there are approximately eight hundred cartons of physical files in the archives, which would need to be manually searched. Without specifics of a particular case or incident to narrow a search, it would not be feasible to access and assess individual case documentation.

37. We have therefore been unable to include all cases from before 2003 in our search to determine possible relevance to the Inquiry. However, if a specific incident is identified, it may be possible to locate related information through a manual search of the archives.

38. Any cases closed by a previous regulator or professional body prior to the regulation of a profession transferring to the HCPC, were not migrated to HCPC systems. However, the HCPC Register would reflect any existing sanctions resulting from the fitness to practise processes of the previous regulator.

39. Prior to the statutory regulation of practitioner psychologists in 2009 by the HCPC (then the HPC), the profession was regulated by the British Psychological Society. While our FTP process can consider incidents from the past when assessing a registrant's current fitness to practise, it is possible that incidents may have occurred prior to HCPC regulation of the profession that have not been raised with us and would therefore not be present in our FTP records.

40. Fitness to practise investigations are conducted when a concern is raised with the HCPC. While anyone can raise an FTP concern, and our standards set out a duty of candour to report concerns about safety or wellbeing, there is no guarantee that all breaches of our standards relevant to the Inquiry were raised with the HCPC. Therefore, the Inquiry's investigative work should not be limited to cases provided by regulators.

Glossary of terms

41. For clarity, we have included further information below regarding some of the key terms in the fitness to practise process:

    a. **HCPTS**: The Health and Care Tribunal Service is the fitness to practise adjudication service of the HCPC. Although it is part of the HCPC, the distinct identity of the HCPTS seeks to emphasise that hearings are conducted and managed by independent panels which are at arm's length from the HCPC. More information about the HCPTS can be found on the website [BOR/31].

    b. **Caution**: A caution order appears on the Register but does not restrict a registrant's ability to practise. A caution order can be imposed for any period between one and five years. A caution order can be taken into account if a further allegation is made against the registrant.

    c. **Conditions of practice**: A conditions of practice order allows a registrant to remain in practice, subject to undertaking certain actions or restricting their practice in certain ways which reflect the panel's finding. In some cases, it may be appropriate to impose a single condition for a short period, for example to undertake specific training. However, in most cases, a combination of conditions will be necessary.

    d. **Suspension**: A suspension order prohibits a registrant from practising their profession. Clear guidance is provided by the panel setting out any relevant evidence and what is expected of the registrant before the suspension order is reviewed. A suspension does not prevent a registrant from being

subject to further fitness to practise proceedings for events which occur whilst they are suspended.

e. **Struck from the Register**: A striking off order removes the registrant's name from the Register and prohibits the registrant from practising their profession. Striking off is a long-term sanction and a person may not apply for restoration to the Register within five years of the striking off order being made.

f. **Impairment**: The Health Professions Order 2001 sets out that a registrant's fitness to practise may be impaired for the reasons of misconduct, lack of competence, conviction or caution for a criminal offence, physical or mental health, and/or a determination by another health or social care regulatory or licensing body. Impaired fitness to practise means more than a suggestion that a professional has done something wrong. It means that a concern on one of these five statutory grounds of impairment is serious enough to suggest that the registrant is unfit or unsafe to practise without restriction, or at all.

g. **Voluntary removal**: By voluntary removal agreement, we allow a registrant to remove themselves from the Register. This is on the basis that they no longer wish to practise their profession and admit the substance of the allegation that has been made against them. Voluntary removal agreements are made on similar terms to those that apply when a registrant is struck off the Register. Cases can only be disposed of in this manner with the authorisation of a panel of a practice committee. In order to ensure that we fulfil our obligation to protect the public, we would not ask a panel to agree to resolve a case by consent unless we were satisfied that public protection was being secured properly and effectively, and that there was no detrimental effect to the wider public interest.

Declaration of truth

42. I believe the content of this statement to be true.

[I/S]

Bernie O’Reilly

Chief Executive Officer, The Health and Care Professions Council (HCPC)

Date: 20/03/2025