

PsyPraxis - the Changing Context

Research Report 47 19 March 2010, *Janet.Low@mac.com*

On Monday this week (15 March) I attended the Fitness to Practise Hearing of Council member Malcolm Cross. It has been a few months since I last attended an FTP meeting, and I was surprised to be asked to leave the room shortly after the proceedings began when the panel members left to deliberate in private. I asked the Hearings Officer to tell me the reason for this new and petty inconvenience. She was unable to. She promised to discover the reason and let me know (she did not take a note of my name or contact details, and I have heard nothing since). While I was in conversation with her the legal assessor of the case, Simon Russen (a freelance Barrister), came into the room and addressed me directly, cutting through my conversation with the clerk. He demanded to know if I was refusing to leave. Stunned, I told him I wanted to know the reason for being asked, as I am reluctant to obey rules that have no clear and rational basis. I had been asked to sit in the corner on arrival, but had failed to do that too. He left the room immediately. To my utter amazement, when the panel returned shortly afterwards Mr Russen interrupted the Panel Chair to say 'I don't know who that woman is in the brown jacket (pointing at me), but she refused to leave the room when the Panel left, and you might want to exclude her from the proceedings either now or in the future.' The Panel Chair looked surprised, ignored him, and continued with her business.

Is this not way outside Mr Russen's jurisdiction? He certainly didn't bother to avail himself of the facts before throwing his weight around. I experienced it as an intense use of power with no other purpose than of frightening and humiliating me. It was very Kafkaesque.

The hearing's officer had fetched the adjudications officer to explain that I must leave the (large and empty) room in case the lawyers wanted to have a private word. This is a very weak argument – lawyers are capable of having quiet words, if they really need them, without putting the public to any particular inconvenience – but I agreed to her request to prove that I was civil, and to deflate the aggression that was ever growing stronger. As soon as I had crossed the threshold I was invited in again as the hearing was about to restart. So, this was a ritual designed to exercise power to show who had it and who didn't. It was blunt and unnecessary. It was rude and disrespectful. It is outside the field of reason and rationality. It suggests the HPC does not understand the power it holds – that it is incompetent; or, worse, that it does understand and likes to play around. Either way, it undermines trust in the HPC.

This, however, is but a local instance. The real travesty is demonstrated by the treatment of the registrant in question. As you know, I have written about Fitness to Practise cases I've observed before. The highly centralised nature of the process is fundamentally at odds with the aim of dealing justly with a case. The premise upon which the process has been built is profoundly un-British – it presumes guilt of the professional as a starting point. Not only does this ensure a never ending supply of work for the FTP lawyers, administrators and panel members, but it also allows unproven allegations to be posted in public, which in turn attract (perhaps even bring forth) the salacious appetite of the media, who then publish details from the witness statements before the process is complete. This damages the reputation of the registrant, the profession, and indeed the

country as a whole. The harm is done, multiplied and distributed through the networks of national (indeed global) media – it cannot be undone. The next day the independent Panel (after 6 hours of private deliberation) held that the HPC case was not well made: the Registrant had No Case To Answer.

How is the HPC held to account for its unwise allegation? I cannot see how this is to be done.

The politics of the case help to bring into view the fault at the heart of the HPC: who counts as ‘we’ in any particular moment and who holds them to account? On the one hand, the HPC is independent of the professionals – here ‘we’, as CEO Marc Seale has said, are the men in grey suits, the boring bureaucrats, the administrators that service the computers and meetings and that carry out government policy. ‘We’ are the people who receive complaints, shuffle the papers, avoid making decisions, hire the lawyers, and proceed as if *we* are protecting the public. However, at other times, the ‘we’ presents a face that includes some professionals: those appointed by the HPC to sit on the various committees, panels, and to visit the universities on the ambiguous edge of the power. In this mode, from a certain point of view, it appears as if the HPC is in fact a professional organisation – which is not, really, the case.

At the FTP of Dr Cross, then, it was the HPC who brought the case against him. It was the HPC who believed he had a case to answer. The Panel, independent of the HPC, ruled this an error of judgement.

The committees that assess the complaints and decide whether a case should go forward or not – who exactly are they? Are they part of the HPC or not? Where is the inside and where is the outside of the HPC?

The HPC has allowed, created and promoted the opportunity for the reputation of a registrant, of a Council Member, and arguably of a whole profession, to be publicly displayed falsely. Dr Cross would

find his picture and his name published in the Daily Telegraph next to a range of spurious allegations. The procedure of the HPC had *manufactured* a set of *facts* that the journalists were invited to report. Does this not make the HPC responsible for defamation – defamation of Dr Cross, of the Psychology Profession and ultimately, perversely itself!

The twisted logic that lies at the heart of the law that established the HPC makes the HPC really rather dangerous. It behoves those who manipulate HPC power to actively understand it, and to understand their position within it. It is certainly not the remit of a boring bureaucrat in a grey suit. This job demands someone wise.

As things stand the administrators are given the power to proceed with cases against registrants (and to hire lawyers) without ever having to think about, much less face up to, the consequences of their actions.

The fault in the law can be traced to the thoughtlessness of Professor Ian Kennedy whose political promotion to the chair of the BRII led directly to the invention of the HPC. It appears that Kennedy’s idea played directly into political beliefs that neither the professionals nor those closely associated with them could be trusted to manage themselves, so a QUANGO that knows nothing about either of these things was created as their ruler. In effect Kennedy’s recommendation insists that the HPC remains stupid, as any sign of wisdom renders it liable to the pernicious accusation of being professional. This is clearly rubbish.

Wisdom is required to make sensible assessments in disputes and conflicts around work. Wisdom and information. Although the people delegated to do this work on behalf of the HPC may indeed have these capacities, the structures and channels in which they work clearly undermine, and even destroy, this valuable resource.