

Council, 7 July 2016

Health and Care Professions Tribunal Service

Executive summary and recommendations

Introduction

At meetings in September 2014, March 2015 and February 2016, the Council considered papers in relation to enhancing independence in adjudication. Links to those papers are provided for in the background information below. Attached as appendices to this paper are five papers which the Council is asked to discuss and consider.

In brief, appendix 1 provides a background to the ongoing work that has been done in relation to independence in adjudication, appendix 2 provides proposed operational guidelines (which are provided as supporting information for the Council), appendix 3 provides the proposed governance arrangements for the tribunal, appendix 4 the proposed standing orders for the Tribunal Advisory Committee and appendix 5 proposed amendments to the Scheme of Delegation.

Decision

The Council is asked to discuss the attached papers and resolve that:

1. the Practice Committees of the Health and Care Professions Council are from [date] to be known collectively as, and to conduct all proceedings under Part V of the Health and Social Work Professions Order 2001 under the name of, the Health and Care Professions Tribunal;
2. the revised Standing Orders for Committees of the Health and Care Professions Council put before the Council today are adopted and are to be incorporated into the HCPC Code of Corporate Governance and the previous Standing Orders are revoked;
3. the revised Scheme of Delegation put before the Council today is adopted and is to be incorporated into the HCPC Code of Corporate Governance and the previous Scheme is revoked;
4. the Chair, acting on behalf of the Council, has delegated authority to approve arrangements for the recruitment, selection and nomination of members of the Tribunal Advisory Committee.

Background information

Council Paper – Enhancing Independence in Fitness to Practise Adjudication, September 2014

<http://www.hcpc-uk.org/assets/documents/100048A1Enc04-EnhancingIndependenceinFitnessToPractiseAdjudication.pdf>

Council Paper – Enhancing Independence in Fitness to Practise Adjudication, 25 March 2015

<http://www.hcpc-uk.org/assets/documents/10004B08Enc05-Independenceinadjudication.pdf>

Council Paper – Independence in Fitness to Practise Adjudication update, 11 February 2016

<http://www.hcpc-uk.org/assets/documents/10004F03Enc03-IndependenceinFitnessToPractiseAdjudicationupdate.pdf>

Resource implications

Provided for in the 2016-17 Fitness to Practise work plan and budget

Financial implications

The Council approved the 2016-17 budget at its meeting in March 2016 and that budget including the project costs for the establishment of the Health and Care Professions Tribunal Service. Subject to Council approval of the resolutions set out above, the project to establish the HCPTS is expected to finish in March 2017. The costs allocated to the project are as follows:

Operational Expenditure: £78,426

Capital Expenditure: £99,829

It is also anticipated that that the Tribunal Advisory Committee will meet 3 times per year and as a result in 2017-18 will incur the following costs:

Attendance Fee: £5,760 (3 Meetings, 6 Members)

Travel and Subsistence: £4,500 (3 Meetings, 6 Members)

In subsequent years as terms of office for members of the Tribunal Advisory Committee end, there will be recruitment costs for the appointment of new members.

There are no additional budgetary requirements for the Fitness to Practise directorate as a result of the establishment of the HCPTS

Appendices

Appendix 1 – Independence in Adjudication Background paper

Appendix 2 – Proposed HCPTS Operating Guidelines

Appendix 3 – HCPTS proposed governance arrangements

Appendix 4 – HCPTS – Proposed Standing Orders for the Tribunal Advisory Committee

Appendix 5 – Proposed amendments to the Scheme of Delegation

Date of paper

24 June 2016

Independence in Adjudication

Introduction

This paper sets out the background to the ongoing work in relation to independence in adjudication and the proposed establishment of the Health and Care Professions Tribunal (the Tribunal).

Background and policy context

Independence in adjudication has been an important part of the work for the Fitness to Practise Department for many years. This reflects the clear role separation that the Council has sought since it was established and which led to it being one of the first regulators to end the practice of Council members sitting on fitness to practise Panels. There is already a high degree of functional separation within the Fitness to Practise Department, which ensures that individuals do not perform functions relating to both the investigation of fitness to practise allegations and their adjudication.

The need for independent fitness to practise adjudication has been the subject of long-running debate, critical comment and attempts at reform. The Command Paper *Trust, Assurance and Safety – The Regulation of Health Professionals in the 21st Century*, (Cm 7013, 2007), which set out various reform proposals arising from the Shipman Inquiry, stated:

“4.33 The independence and impartiality of those who pass judgement on health professionals in fitness to practise proceedings is central to public and professional confidence in their findings and the sanctions that they impose.”

A year later, the Health and Social Care Act 2008 established the independent Office of the Health Professions Adjudicator (OHPA). OHPA was to be responsible for adjudicating GMC cases and those relating to the professions regulated by the General Optical Council, and potentially all other health professionals.

Before OHPA became operational, a further consultation was undertaken in 2010 by the Department of Health that questioned the need for OHPA (*Fitness to Practise Adjudication for Health Professionals: Assessing different mechanisms for delivery*). It did so on the basis of the steps already being taken by the regulators, and notably the GMC, in moving towards a greater degree of independence in adjudication.

OHPA was abolished by the Health and Social Care Act 2012 and, in the same year, the GMC established the Medical Practitioners Tribunal Service (MPTS) with a view delivering substantially the same benefits as OHPA (in terms of independence), but on a more cost-effective basis.

Initially, the MPTS was set up on a non-statutory basis but following changes made by a 'Section 60 Order' (subordinate legislation made under section 60 of the Health Act 1999) it is now a statutory committee of the GMC.

More recently, in 2014 the Law Commissions jointly published a report (*Regulation of Health Care Professionals; Regulation of Social Care Professionals in England*) which included the recommendation that:

“73: The Government should have regulation-making powers to introduce a separate adjudication system for any of the regulators, based on the Medical Practitioners Tribunal Service.”

That report (in common with most Law Commissions' reports) included a draft Bill which would establish a common legal framework for the regulation of health care professionals across the UK (and social care professionals in England).

In January 2015, the Government accepted the Law Commissions' key recommendations and indicated that legislation would be brought forward in due course. In its response document (Cm 8995), the Government stated:

“5.32 Ensuring the impartiality of fitness to practise panels by increasing the separation between the regulatory body's role as investigator and the panel's role as adjudicator has been a long term policy objective for this and previous Governments... We agree that the Government should have a regulation making power to enable the regulatory bodies to adopt systems with a greater degree of separation (whether on the Medical Practitioner Tribunal Service or other model) as appropriate.”

The Law Commissions' work and the Government's commitment to increasing adjudicative independence have been the catalysts for the HCPC's most recent work on this topic.

The MPTS is now operating successfully as a separate hearings service for the GMC, having done so initially on a non-statutory basis, but now as a statutory committee of the GMC. It provides a useful model for the HCPC but, for various reasons, is not one which the HCPC should simply replicate.

The model adopted by the HCPC must take account of its size, the cost and resource implications and its needs as a multi-professional regulator. The model also needs to build upon the HCPC's commitment to 'open justice'; ensuring that proceedings are conducted in an open, transparent and proportionate manner.

In September 2014 the Council considered four options that would increase the degree of separation between the investigation and adjudication of fitness to practise cases. The Council agreed that the option of establishing a separate tribunal should be pursued further.

What would the Tribunal look like?

The Council has previously considered broad proposals for the establishment of the Tribunal but, in summary they are as follows:

- the Practice Committees (which only exist to conduct fitness to practise proceedings by means of Panels) would be known collectively as the “Health and Care Professions Tribunal”. That name had to be settled upon at an early stage in the process, once the Council had agreed to pursue the tribunal option, because of company law. The word “tribunal” is a ‘sensitive’ business name and its use requires the consent of the Secretary of State (in practice the Registrar of Companies). That consent can only be obtained where a complete name is proposed. The Secretary of State has given the HCPC the necessary consent in respect of both the “Health and Care Professions Tribunal” and the “Health and Care Professions Tribunal Service”;
- the Tribunal would not be a separate entity, but would remain part of the HCPC. The independence being sought is not separation but simply a high degree of independent decision-making and the independent appointment of decision-makers;
- the Director of Fitness to Practise would continue to have overall responsibility for the adjudication function, which would remain part of the Fitness to Practise Department;
- as the Tribunal would not be a separate entity, there would be no change to the terms and conditions or continuity of employment of any HCPC employees involved in the adjudication (or any other) function;
- the budget of the Tribunal would be set based upon the existing fitness to practise caseload, performance expectations and adjudication-related expenditure. Project costs have been accounted for in the 2016-17 budget and no significant additional costs are envisaged (other than payments at prevailing partner rates to members of the Tribunal Advisory Committee);
- services would continue to be provided by the HCPC to the Tribunal, which would also be subject to all of the HCPC’s information governance, accounting, auditing and risk management processes. As the Tribunal is not a separate entity, no new risks arise, but operational guidelines may need to be developed to help manage some aspects of the relationship between the Tribunal and the remainder of the HCPC,
- a Tribunal Advisory Committee (**TAC**) would be established as a non-statutory committee of the Council, in accordance with terms of reference set by the Council;
- the Council would continue to receive regular summaries of all hearing outcome data and performance against key indicators.

Key differences: operational processes

Set out below are some key operational differences that have been identified:

Description	Current practice	Proposed changes
Advising on recruitment, training and appraisal of fitness to practise panel members and legal assessors	Recruitment, training and appraisal of fitness to practise panel members and legal assessors is undertaken by the HCPC Partners team, working in conjunction with the adjudication team.	No change is proposed. FTP panel members and legal assessors would continue to be recruited, trained and appraised by the Partners team. However, TAC would provide advice on the qualities, abilities and competences required of panellists and legal assessors.
Approval of Practice Notes	All Practice Notes are approved by the Council	TAC would approve changes to Practice Notes or new Practice Notes.
Brochure relating to adjudication/hearings process	This is integrated within the general FTP brochures	A separate brochure would be created providing information to all participants about the Tribunal and its processes
Publication of hearings related activity	Hearing activity and outcomes are published on the HCPC website.	Hearing activity and outcomes would be published on a separate Tribunal website.
Correspondence	All hearing-related correspondence is sent on HCPC letterhead or by HCPC email, in the same manner as any other FTP correspondence	All hearing-related correspondence would be sent on Tribunal letterhead or Tribunal email.

Health and Care Professions Tribunal Service

Proposed Operational Guidance

Introduction

The Health and Care Professions Tribunal (the **Tribunal**) is part of the Health and Care Professions Council (**HCPC**). It is not a separate organisation but has a distinct identity to help make clear that the adjudication of fitness to practise allegations is undertaken at arm's length from the HCPC by independent Panels.

The Tribunal Service

The Health and Care Professions Tribunal Service (**HCPTS**) provides support to the Tribunal. The HCPTS is part of the HCPC's Fitness to Practise Directorate and comprises two teams: a scheduling team and a hearings team. An organogram for the HCPTS is set out in the appendix. The Head of Tribunal Services reports to the Director of Fitness to Practise.

HCPTS supports the Tribunal by ensuring that hearings are listed, conducted and concluded in a fair, efficient and timely manner. The main functions of the HCPTS include:

- planning and managing the budget and resources required for the efficient operation of the Tribunal, including monitoring and reporting on operational performance against forecasts;
- scheduling hearings and arranging for panellists to conduct, and legal assessors to be present at, those hearings;
- ensuring the optimum use of available hearing resources;
- managing and co-ordinating Investigating Panels;
- managing hearings, including providing administrative support to Panels during hearings;
- assisting Panels to maintain a consistent high quality of decision making;
- facilitating pre-hearing arrangements; liaising with hearing participants and other stakeholders;
- providing witness support;
- managing the transcription service providers.

Employees

As the HCPTS is not a separate entity from the HCPC, all employees within the HCPTS are employed by the HCPC. The establishment of the HCPTS does not

affect the terms and conditions of employment or continuity of service of any HCPC employee.

Location

The HCPTS is based at 405 Kennington Road, the dedicated hearing facilities which the HCPC has established for the Tribunal and where the majority of hearings are held.

Tribunal recruitment, training and appraisal

The HCPC Partners Team, which forms part of the Human Resources Directorate remains responsible for administering the recruitment, training and appraisal of Tribunal panellists and legal assessors.

That function must be performed in accordance with any policies which the Council may establish, having regard to the advice of the Council's Tribunal Advisory Committee (**TAC**).

TAC secretariat

Secretariat support for the TAC is provided by the HCPC Secretariat. An employee from within the Secretariat acts as the Secretary to the Committee. The Secretary provides the appropriate support to the TAC, including:

- issuing notice of, and the agenda for, meetings;
- keeping minutes of meetings; and
- providing advice and governance support to the Committee.

Feedback, learning and development

In accordance with established Council policy, the Policy and Standards Directorate conducts six-monthly quality audits of Tribunal hearing decisions. The outcomes of those audits are used by the HCPTS in revising processes and procedures.

The findings of those audits will be shared with the TAC, so that they can be taken into account by the TAC in making recommendations to the Council on training or in issuing guidance on practice and procedure.

Work plan and management information

The HCPTS is responsible for the monitoring and oversight of all adjudication-related activity.

The HCPTS work plan and management information pack form part of the work plan and management information pack for the wider Fitness to Practise Directorate but must be presented to the Council as distinctly separate parts of that work plan and information pack.

Budget and budgeting procedures

The Head of Tribunal Services is responsible for the management, oversight and monitoring of the Tribunal's budget, which forms a separate part of the wider budget for the Fitness to Practise Directorate.

The Head of Tribunal Services has authority to incur expenditure approved in the budget, but subject to complying with the HCPC's financial management regime, including the Council's strategic decisions in respect of finance and the Financial Regulations.

Audit and risk management

The HCPTS must ensure that the risks it faces are dealt with in an appropriate manner, in accordance with the established HCPC policies on risk management.

The HCPTS must comply with HCPC's audit and oversight arrangements and cooperate with any internal or external audit by the HCPC's auditors, whether of the HCPTS or the HCPC more generally.

Information Governance

As the HCPTS is part of the HCPC any data which it holds or processes is data in respect of which the HCPC is the data controller. The HCPTS must only process personal data for the purpose of performing its functions and in accordance with prevailing HCPC data protection policies.

Proposed Governance Arrangements for the Health and Care Professions Tribunal

Introduction

At its meeting on 25th September 2014, the Council endorsed the need for greater separation between the HCPC's investigative and adjudication functions and agreed that the option of establishing the Health and Care Professions Tribunal (the **Tribunal**) should be pursued further.

The HCPC's adjudicative functions are performed in the name of the three HCPC Practice Committees, but those committees only exist when a Panel is convened to conduct fitness to practise proceedings. If the Council agrees to its establishment, those Panels would sit as the Tribunal. The Tribunal would remain part of the HCPC, but at arm's length and with administrative arrangements which are (and are seen to be) operationally distinct from the remainder of the HCPC.

Tribunal Advisory Committee

The Tribunal Advisory Committee (**TAC**) would be established as a non-statutory committee of the Council and comprise:

- three members appointed from among the Tribunal Chairs; and
- three independent members (who are not Tribunal Chairs, Tribunal Panellists or Council Members).

TAC members would be recruited by open competition and appointed for a fixed term of up to four years (but with varying terms to allow for staggered re-appointments and thus some continuity of committee membership). They would be eligible for re-appointment but, in line with the arrangements for the Council and its other committees, could not serve for an aggregate of more than eight years in any twenty years.

TAC would report directly to the Council and be subject to its strategic decisions, notably budgetary and resource controls, and its high level policy in respect of fitness to practise.

As these arrangements are about increasing independence and transparency in respect of existing processes, TAC's functions are currently being undertaken by others within the HCPC. Consequently, beyond payments to TAC members (at prevailing HCPC partner rates), its work is not expected to have a significant financial impact.

TAC's terms of reference would provide it with four specific responsibilities:

1. *advising the Council on the qualities, abilities and competences required of Tribunal Panellists, Tribunal Chairs and Legal Assessors.*

The HCPC has done substantial work in this area in the past and, for example,

has a competency framework for Tribunal Panellists and Tribunal Chairs which was originally developed based upon work undertaken by the (then) Judicial Studies Board.

The expectation is that the TAC would consider and advise the Council on best practice in this area so that the Council's policy documents like the competency framework remain fit for purpose.

2. *advising the Council on arrangements for the fair, open and merit-based selection of Tribunal Panellists, Tribunal Chairs and Legal Assessors.*

Tribunal Panellists, Tribunal Chairs and Legal Assessors are already recruited by open competition but it is anticipated that TAC would advise the Council to adopt arrangements which ensure that recruitment is undertaken at arm's length from the Council and, in particular, without the direct involvement of Council members.

As TAC would be responsible for advising the Council on the arrangements rather than operating them, it is not intended that TAC members would sit on selection panels.

3. *advising the Council on arrangements for the training and assessment of Tribunal Panellists, Tribunal Chairs and Legal Assessors.*

Similar considerations apply to the initial and ongoing training of Tribunal Panellists, Tribunal Chairs and Legal Assessors and the arrangements for their assessment.

The HCPC's processes for training and assessing those involved in the fitness to process undergoes constant review and development, and TAC would be able to provide valuable insight which contributes to that development process.

As with recruitment, TAC would be responsible for advising the Council on the training and assessment arrangements rather than operating them, so it is not intended that TAC members would conduct assessments or act as trainers.

4. *providing guidance to the Tribunal on matters of practice and procedure, in order to assist the Tribunal to conduct proceedings fairly, proportionately, efficiently and effectively.*

At present, the Council sets high level policy in respect of fitness to practise proceedings (such as, the Standard of Acceptance for Allegations and the Indicative Sanctions Policy) but also approves Practice Notes, which provide detailed guidance to Panels on practice and procedure.

Setting policy is clearly a matter for Council and it would retain that responsibility. TAC would be responsible for approving Practice Notes.

Standing Orders

The Health and Social Work Professions Order 2001 (Sch. 1, para. 13) requires the Council to determine the standing orders of any committee that it may establish.

A revised draft of the HCPC's Standing Orders for Committees is appended, which

makes provision for TAC, including setting out its terms of reference (at Annex 1). The relevant amendments are:

SO 1.5: which introduces the concept of the Tribunal;

SO 2.2: which sets out the composition of TAC (3 Tribunal Chairs, 3 independent members);

SO 3.2.2: which requires TAC to meet at least twice each year. This means the Council would receive a report on TAC's work at least once every six months. It is expected that, in most cases, TAC's report would be combined with a six monthly report from the Head of Tribunal Services setting out a summary of hearing outcome data and performance against key performance indicators;

SO 9.1.2: which sets TAC's quorum as any four members.

Delegated authority

As TAC is principally an advisory body, it requires no delegated authority. However, a revised draft of the Council's Scheme of Delegation is appended which contains the following changes:

- functions in respect of the Practice Committees (which become the Tribunal) and which are currently delegated to the Director of Fitness to Practise are transferred to the Head of Tribunal Services;
- the language of the Scheme is amended to reflect the establishment of the Tribunal;
- certain delegations have been clarified to show that they derive from the Health and Care Professions Council (Practice Committees and Miscellaneous Amendments) Rules 2009 rather than the Order (or are authorised by the Registrar).

Standing Orders for Committees of the Health and Care Professions Council

1 Application and Interpretation

- 1.1 These Standing Orders, together with the Health and Social Work Professions Order 2001 (**the Order**), establish the basic rules about how HCPC committees conduct their proceedings.
- 1.2 In these Standing Orders, **Committee** means any committee (or sub-committee) to which they apply, and other terms used in these Standing Orders have the same meaning as in the Order.
- 1.3 If a procedural point arises during a meeting that is not covered by these Standing Orders or the Order, the common law rules concerning the conduct of meetings will apply.
- 1.4 The Chair is the final authority on the interpretation of these Standing Orders.
- 1.5 These Standing Orders do not apply to the proceedings of the HCPC Practice Committees, known collectively as the "Health and Care Professions Tribunal" (the Tribunal), the proceedings of which are governed by statutory rules made under the Order.

2 Composition of committees

- 2.1 The composition of the **Education and Training Committee** is to be determined by the Council in accordance with rules made by it under paragraph 17 of Schedule 1 to the Order.
- 2.2 The **Tribunal Advisory Committee**, which performs the functions set out in Annex 1, comprises six members, none of whom is a Council member, appointed by the Council (on the terms it determines), of which:
 - 2.2.1 three members must be Tribunal Chairs; and
 - 2.2.2 three members must not be Tribunal Chairs or Tribunal Panellists.
- 2.3 The **Audit Committee**, which performs the functions set out in Annex 2, comprises four members, appointed by the Council (on the terms it determines), of which:
 - 2.3.1 at least one member must have recent, significant and relevant financial experience;
 - 2.3.2 at least two members must be members of Council; and
 - 2.3.3 at least one member must not be a member of Council.

- 2.4 The **Remuneration Committee**, which determines the salaries of the Chief Executive and members of the Executive Management Team and the salary scales for all other HCPC employees, comprises the Chair of the Council and two other Council members, none of whom are members of the Audit Committee, appointed by the Council (on the terms it determines).
- 2.5 The membership, terms of office and terms of reference of any other Committee are as determined by the Council.

3 Frequency of Meetings

- 3.1 Subject to Standing Order 3.2, the Committee is to meet at the times it determines.
- 3.2 As a minimum:
- 3.2.1 the **Education and Training Committee** must meet four times each year, on dates correlated with the Council's cycle of meetings;
- 3.2.2 the **Tribunal Advisory Committee** must meet twice each year;
and
- 3.2.3 the **Audit Committee** must meet three times in each year, on dates which coincide with key dates within the financial reporting and audit cycle.

4 Adjournment of Meeting

- 4.1 The Chair may, with the consent of the Committee, adjourn a meeting, but no business may be transacted at an adjourned meeting other than the business which had not been disposed of when the adjournment took place.
- 4.2 If a meeting is adjourned for more than seven days (but not otherwise), notice of the meeting must be given in accordance with Standing Order 6.

5 Access to meetings

- 5.1 All meetings of the Committee must be open to the public unless the business under consideration concerns:
- 5.1.1 information relating to a registrant, former registrant or applicant for registration;
- 5.1.2 information relating to an employee or office holder, former employee or applicant for any post or office;
- 5.1.3 the terms of, or expenditure under, a tender or contract for the purchase or supply of goods or services or the acquisition or disposal of property;
- 5.1.4 negotiations or consultation concerning labour relations between the Council and its employees;

- 5.1.5 any issue relating to legal proceedings which are being contemplated or instituted by or against the Council;
- 5.1.6 action being taken to prevent or detect crime or to prosecute offenders;
- 5.1.7 the source of information given to the Committee in confidence; or
- 5.1.8 any other matter which, in the opinion of the Chair, is confidential or the public disclosure of which would prejudice the effective discharge of the Committee's or Council's functions.

6 Notice of Meetings

- 6.1 The Secretary must give members not less than seven days' notice of the time and place of a meeting.
- 6.2 If for any reason a meeting is convened at shorter notice, then the Secretary must give members notice of the time and place of the meeting at the time that the meeting is convened.
- 6.3 Failure to send notice of a meeting to a member does not invalidate the proceedings of that meeting.

7 Agenda

- 7.1 The Secretary must issue an agenda for each meeting.
- 7.2 Except in cases of urgency or where circumstances make it impracticable to do so, the agenda for a meeting and any accompanying papers must be sent to members seven days before the meeting.

8 Chair

- 8.1 The Chair of the Committee, who is appointed by the Council (on the terms it determines), is to preside at any meeting of the Committee.
- 8.2 If the Chair is absent from, or otherwise unable to preside at, a meeting the members present must nominate one of their number to serve as chair at that meeting.
- 8.3 In these Standing Orders, references to the **Chair** include a member presiding at a meeting of the Committee in place of the Chair.

9 Quorum

- 9.1 The quorum at a meeting of the Committee is:
 - 9.1.1 in the case of the ***Education and Training Committee***, as provided for in rules made by the Council under paragraph 17 of Schedule 1 to the Order;
 - 9.1.2 in the case of the ***Tribunal Advisory Committee***, any four members;
 - 9.1.3 in the case of the ***Audit Committee***, any three members;

- 9.1.4 in the case of the **Remuneration Committee**, any two members;
and
- 9.1.5 in any other case, half of the members of the Committee plus one.
- 9.2 If a quorum is not present within 15 minutes of the time appointed for a meeting to commence, all business which should have been transacted at that meeting is to be held over until the next meeting.
- 9.3 If, during a meeting of the Committee, a quorum ceases to exist, the meeting must be dissolved and all remaining business adjourned to the next meeting of the Committee.

10 Conduct of Meetings

- 10.1 The order of business at a meeting must follow that set out in the agenda unless it is varied by the Chair with the consent of the meeting.
- 10.2 A member may only initiate a debate or move a motion on a matter which is not on the agenda with the consent of the meeting.
- 10.3 All motions must relate to matters that are within or related to the functions of the Committee.
- 10.4 Members must not make derogatory personal references or use offensive expressions or improper language to any other member or any employee of the Council.
- 10.5 A member must speak to the subject under discussion. The Chair may call attention to any irrelevance, repetition, unbecoming language or other improper conduct on the part of a member and, where the member persists in that conduct, may direct that member to cease speaking.
- 10.6 A ruling by the Chair on any question of order, whether or not provided for by the Standing Orders, is final and not open to debate.

11 Voting

- 11.1 Except where the Order specifies otherwise, any question at a meeting is to be decided by a majority of the members present voting by a show of hands.
- 11.2 In the event of an equality of votes, the Chair is entitled to an additional casting vote.

12 Minutes of meetings

- 12.1 The Secretary must keep minutes of each meeting, which must include a record of the members present at that meeting.
- 12.2 At each meeting, the minutes of the preceding meeting must be confirmed (or confirmed as amended) and be signed by the Chair as a true record of that meeting.
- 12.3 The signed minutes of a meeting, unless the contrary is proved, are conclusive proof of the proceedings of that meeting.

13 Duration

Subject to Standing Order 9. 2, a meeting must start at the time set out in the notice of meeting and may continue until all of the business on the agenda has been disposed of, but the duration of a meeting may only exceed three hours with the consent of the members present.

14 Disorder

14.1 If, in the opinion of the Chair, a member has persistently disregarded the ruling of the Chair or behaved in a manner which is obstructing the business of the meeting, the Chair may order that member to withdraw from the whole or part of the remainder of the meeting.

14.2 In the event of a disturbance which, in the opinion of the Chair, prevents the orderly conduct of business, the Chair may adjourn the meeting for a period that the Chair considers appropriate.

14.3 If a person other than a member interrupts the proceedings at any meeting, the Chair may order that person to be removed from the meeting or may order the part of the room which is open to the public to be cleared.

15 Members' interests

15.1 Members must make a declaration of their personal interests in the form required by the Council (which must be published in the Council's Register of Members' Interests) and must ensure that their interests as set out in that Register are accurate and up to date.

15.2 The agenda for every meeting must include as an item of business the declaration of interests. A member who has a personal interest in any matter under consideration at that meeting, whether or not declared in the Register of Members' Interests, must promptly disclose that interest to the meeting. If the interest is a prejudicial interest, the member must withdraw from the meeting during the Committee's consideration of that matter.

16 Code of conduct

Members must comply with the Code of Conduct adopted by the Council.

17 Members' education, training and performance

17.1 The Council may establish standards of education and training for members and, as part of those standards, arrange for members to undergo training to assist them in their performance of their duties.

17.2 The Council may establish standards of attendance and performance for members, including a system of annual performance appraisal.

17.3 Members must comply with any applicable standards established by the Council under this Standing Order and must not, without reasonable excuse, refuse to participate in any training or appraisal processes.

18 Approval of resolutions without meeting

A resolution which, with the consent of the Chair, is circulated to, and approved in writing or electronic form by not less than three quarters of the members entitled to receive notice of and attend a meeting of the Committee shall be as valid as if it had been passed at such a meeting.

19 The Secretary

The Secretary to the Council, or any other person that the Secretary to the Council may appoint, is to be the Secretary to the Committee (the **Secretary**).

20 Adoption

These Standing Orders were adopted by the Council on [date] and supersede all previous versions. They apply to any Committee meeting held on or after [date].

Annex 1

Tribunal Advisory Committee: Terms of Reference

The *Tribunal Advisory Committee* is to:

1. advise the Council on the qualities, abilities and competences required of:
 - 1.1 Panel Members of the Tribunal (**Tribunal Panellists**)
 - 1.2 Panel Chairs of the Tribunal (**Tribunal Chairs**); and
 - 1.3 Legal Assessors;
2. advise the Council on arrangements for the merit-based selection, by fair and open competition, of:
 - 2.1 Tribunal Panellists;
 - 2.2 Tribunal Chairs; and
 - 2.3 Legal Assessors;
3. advise the Council on arrangements for the training and assessment of:
 - 3.1 Tribunal Panellists;
 - 3.2 Tribunal Chairs; and
 - 3.3 Legal Assessors;
4. provide guidance to the Tribunal on matters of practice and procedure, in order to assist the Tribunal to conduct proceedings fairly, proportionately, efficiently and effectively.

Annex 2

Audit Committee: Terms of Reference

The **Audit Committee** is to:

1. advise the Council and the Registrar (as Accounting Officer) on the appointment of internal and external auditors;
2. approve internal and external audit programmes and fees;
3. review the external auditors' management letters and any other relevant reports and report on these to the Council as appropriate;
4. receive reports on the internal audit work plan and consider appropriate action arising from them;
5. review the Council's annual report and accounts and make recommendations to the Council and the Registrar (as Accounting Officer) as appropriate;
6. consider whether risk management processes are adequate for all risks to which the Council is exposed and approve or, where the Committee considers that significant policy issues are involved, recommend that the Council approve measures to eliminate or mitigate against them;
7. at the request of the Council, advise it on matters of corporate governance (but without limiting the Committee's power to make recommendations to the Council on corporate governance issues arising from the work of the auditors);
8. consider and make recommendations to the Council and the Registrar (as Accounting Officer) as appropriate on the Council's:
 - 8.1 accounting policies;
 - 8.2 anti-fraud policies; and
 - 8.3 'whistle-blowing' processes.

Scheme of Delegation

1 Introduction

- 1.1 This scheme of delegation (the **Scheme**) is intended to facilitate the efficient and effective functioning of the Health and Care Professions Council (the **Council**).
- 1.2 The Scheme is designed to ensure that, so far as possible, the Council and its Committees set policy and strategy and the Executive implements that policy and strategy and is responsible for all operational matters.
- 1.3 The Scheme sets out:
 - 1.3.1 those decisions which the Council has reserved to itself;
 - 1.3.2 those decisions which it has delegated to its Education and Training Committee;
 - 1.3.3 those decisions which it has delegated to the Chief Executive and Registrar (the **Chief Executive**), some of which may also be exercised by nominated officers of the Executive or by persons nominated by the Chief Executive;
 - 1.3.4 those decisions which it has delegated to other nominated officers of the Executive.
- 1.4 The Executive, under the direction of the Chief Executive, remains responsible for day to day administration of the HPC's affairs and nothing in the Scheme applies to any decision which is administrative in nature.
- 1.5 The Scheme does not affect those statutory functions which are conferred upon the Registrar by or under the Order, the discharge or delegation of which are a matter for the Chief Executive (as Registrar).

2 Withdrawal of delegated power

- 2.1 The Scheme remains in force unless and until it is amended or revoked by the Council.
- 2.2 The requirement to amend or revoke the Scheme does not apply to any matter where the Council is of the opinion that delegated authority should not be exercised. In that event, the Council may resolve that delegated authority is not to be exercised in relation to that matter.

3 Exercise of delegated power

- 3.1 Where power is delegated under the Scheme, it must be exercised in a manner which is consistent with the Council's obligations under the

general law and the Health and Social Work Professions Order 2001 (the **Order**).

- 3.2 In particular, the decision maker must have regard to Article 3(4) of the Order, which provides that the main objective of the Council in exercising its functions is to safeguard the health and well-being of persons using or needing the services of registrants.
- 3.3 The decision maker must also recognise that lawful exercise of a statutory power requires not only formal compliance with the conditions laid down for its performance but also with the principle that all statutory powers must be exercised in good faith and for their proper purpose.
- 3.4 Delegation does not impliedly authorise sub-delegation. Consequently, a Committee or person to whom the Council has delegated any power may not permit another Committee or person to exercise that power unless the Council has expressly authorised them to do so.

4 Matters reserved to the Council

- 4.1 The Council retains ultimate responsibility for all policy matters including agreeing the overall strategy for the performance of its functions.
- 4.2 The power to make Rules is specifically reserved to the Council by Article 3(12) of the Order and cannot be delegated.
- 4.3 The Council retains responsibility for the following decisions which, to the extent that it is lawful to do so, may only be delegated by means of a specific resolution of the Council:
 - 4.3.1 establishing the Standards of Proficiency, Standards of Conduct, Performance and Ethics, Standards of Education and Training and Standards of Continuing Professional Development;
 - 4.3.2 prescribing good conduct and good character requirements for safe and effective practice;
 - 4.3.3 establishing criteria for the purposes of Article 13 (grandparenting criteria), Article 15 (approvals criteria) and Article 15B (criteria for approved mental health professionals courses) of the Order;
 - 4.3.4 making recommendations to the Secretary of State and the Scottish Ministers concerning the regulation of any profession or social care workers in England and giving guidance on the criteria that it will take into account in so doing;
 - 4.3.5 making any proposal to the Privy Council concerning the structure of the register;
 - 4.3.6 approving any report, plans or accounts to be submitted to the Privy Council, the Secretary of State or the Scottish Ministers;
 - 4.3.7 setting the fees to be charged for or associated with registration (including renewal, readmission, restoration and scrutiny fees);

- 4.3.8 establishing any committee or sub-committee and making the Standing Orders for any committee or sub-committee;
 - 4.3.9 appointing members to any committee or sub-committee;
 - 4.3.10 appointing or removing the Chief Executive;
 - 4.3.11 appointing members to represent the Council on outside bodies;
 - 4.3.12 entering into any arrangements with a body created or designated by the National Assembly for Wales under Article 20 of the Order;
 - 4.3.13 acquiring or disposing of any freehold or leasehold interest in land and property or other interest in land;
 - 4.3.14 re-structuring the Council's staff where the changes involve 20 or more employees.
- 4.4 The Council is also responsible for making decisions in relation to any matter:
- 4.4.1 in which a person who would otherwise have delegated authority to act has an actual or potential interest;
 - 4.4.2 which, in the opinion of the Chief Executive, would for any reason be more appropriately dealt with by the Council.

5 Matters delegated to the Education and Training Committee

Approving, for the purpose of Article 12 of the Order, qualifications awarded in the United Kingdom which attest to the Standards of Proficiency required for admission.

6 Matters delegated to the Chief Executive

- 6.1 Maintaining the register and establishing arrangements for its publication and inspection.
- 6.2 Issuing certificates of good standing to registrants who wish to practise in another relevant European State.
- 6.3 Referring any allegation received by the Council under Part V of the Order to a Practice Committee or to Screeners. This power may also be exercised by the Director of Fitness to Practise.
- 6.4 Exercising the power under Article 22(6) of the Order to refer a matter for investigation as if it was the subject of an allegation.
- 6.5 Subject to any appointments procedure established by the Council, appointing:
 - 6.5.1 Visitors under Article 16 of the Order;
 - 6.5.2 Members and Panel Chairs of the Practice Committees (collectively, the Health and Care Profession Tribunal (the Tribunal)) under rules 3 and 4 of the Health and Care Professions Council (Practice Committees and Miscellaneous

Amendments) Rules 2009; and

6.5.3 Legal Assessors, Registrant Assessors, and Medical Assessors under Articles 34 to 36 of the Order.

This power may also be exercised by the Director of Human Resources.

- 6.6 Prosecuting offences under Articles 39 and 39A of the Order (but subject to any prosecution policy established by the Council). This power may also be exercised by the Director of Fitness to Practise.
- 6.7 Conducting and defending all proceedings brought by or against the Council in any court, tribunal or arbitration other than proceedings relating to fitness to practise cases or proceedings under section 29 of the NHS Reform and Health Care Professions Act 2002.
- 6.8 Entering into arrangements for the provision of administrative, technical or advisory services under Article 44A of the Order.
- 6.9 Advising the Privy Council that a person has ceased to be a member of the Council. This power may also be exercised by the Secretary to the Council.
- 6.10 Maintaining and publishing the Register of Members' Interests. This power may also be exercised by the Secretary to the Council.

7 Matters delegated to the Chief Executive and any officer nominated by the Chief Executive

- 7.1 Determining applications for registration (but subject to any policies or procedures established by the Council or the Education and Training Committee).
- 7.2 Determining and administering the Council's employment procedures and processes.
- 7.3 Arranging any insurance on behalf of the Council where either the value of the premium payable does not exceed £50,000 or the renewal premium payable does not exceed the previous premium by more than 10%.
- 7.4 Tendering, awarding and varying contracts where the estimated total value does not exceed £100,000. The Chief Executive, with the approval of the Chair of the Council, may enter into contracts which exceed that limit (except in any case where the Council has resolved otherwise).
- 7.5 Approving the terms of any other agreement or transaction of a minor or urgent nature which, in the opinion of the Chief Executive, is in the best interests of the Council.
- 7.6 Managing any property owned by the Council or in which the Council has an interest including the submission of planning and building consent applications.
- 7.7 Appointing (but not selecting):
 - 7.7.1 the members of any Panel which is to determine a registration appeal; and

- 7.7.2 the Legal Assessor who is to be present at a registration appeal hearing.
- 7.8 Publishing the particulars of decisions (and the reasons for them) made by the Council's Registration Appeals Panel.
- 7.9 Conducting and defending all proceedings brought by or against the Council in relation to registration appeals.
- 7.10 Appointing authorised persons for the purpose of Articles 37(7) of the Order.

8 Matters delegated to the Director of Fitness to Practise

- 8.1 Conducting and defending all proceedings brought by or against the Council in relation to fitness to practise cases and proceedings under section 29 of the NHS Reform and Health Care Professions Act 2002.
- 8.2 Appointing authorised persons for the purpose of Article 25(1) of the Order.
- 8.3 Requiring a person to comply with Article 25(2) of Order (certain information to be provided by a registrant who is the subject of an allegation). This power may be exercised by any person nominated by the Director of Fitness to Practise.
- 8.4 Seeking an extension by a court, under Article 31(8) of the Order, of an interim order made by a Practice Committee.

9 Matters delegated to the Head of Tribunal Services

- 9.1 Appointing (but not selecting) the Legal Assessor who is to be present at a Tribunal hearing.
- 9.2 Publishing the particulars of orders and decisions made by the Tribunal (and the reasons for them).
(The Head of Tribunal Services is also authorised by the Registrar under rules 3(2) and 4(3) of the Health and Care Professions Council (Practice Committees and Miscellaneous Amendments) Rules 2009, to invite Panel Members and Panel Chairs of the Tribunal to participate in fitness to practise proceedings.)

10 Matters delegated to the Director of Education

- 10.1 Appointing (but not selecting) Visitors to conduct a visit or perform other functions under Part IV of the Order.
- 10.2 Publishing Visitors' reports and any responses to such reports (where the respondent has asked for it to be published).
- 10.3 Maintaining and publishing the Council's list of approved courses of education and training, qualifications and institutions.

11 Matters delegated to the Director of Finance

- 11.1 In conjunction with the Chief Executive, who is the Council's Accounting Officer:

- 11.1.1 keeping the accounts and preparing the annual accounts of the Council in accordance with Article 46 of the Order;
- 11.1.2 administering the Council's finances including, but not limited to, the day to day control and regulation of those finances.