

Council, 25 September 2014

Enhancing Independence in Fitness to Practise Adjudication

Executive summary and recommendations

Introduction

The recent Law Commissions' Report and draft Bill *Regulation of Health and Social Care Professionals* highlighted that substantial benefits are to be gained from the separation of regulators' investigation and adjudication functions. The report made specific recommendations on the introduction of greater separation between those functions. In terms of HCPC's fitness to practise function, there is already a degree of separation between the investigation and adjudication of fitness to practise cases. However, that separation may not be immediately apparent to members of the public and other stakeholders which may leave the HCPC open to public criticism and reputational risk.

In light of this, the Executive has undertaken a review of HCPC's current model of adjudication. The attached paper sets out four options that may assist with creating a greater degree of independence between the investigation and adjudication of fitness to practise cases.

Option 3 sets out a proposal for the establishment of the Health and Care Professions Tribunal Service. This is the option which is mostly likely to secure the degree of separation and independence identified by the Law Commissions. Appendix 2 sets out in more detail what a tribunal service would look like, including:

- Governance arrangements
- Operational management
- Quality assurance
- Organisational chart
- Practical arrangements

It should be noted that any new model of adjudication would need to ensure that HCPC's core ethos of ensuring justice, fairness, openness and transparency balanced with protecting the public is not compromised.

Decision

The Council is asked to consider the four options and determine which option should be pursued further. Based upon the decision reached, the Executive will then undertake more detailed work and present further reports to Council.

Background information

Set out below is a link to the Law Commissions' report on the review of the legislation covering the regulation of health and social care professions. The work was undertaken jointly by all three UK Law Commissions. Part 9 of the report relates specifically to fitness to practice panels and adjudication. In particular, pages 148-152 of the report covers the separation of investigation and adjudication functions:

<https://www.gov.uk/government/publications/regulation-of-health-and-social-care-professionals>

In October 2010 the former Fitness to Practise Committee considered a paper from the Executive that provided information relating to the proposed establishment of the Office of the Health Professions Adjudicator (OHPA) which was subsequently abolished by the current Government:

<http://www.hcpc-uk.org/assets/documents/1000315620101021FTP05-responsetoOHPAconsultation.pdf>

In May 2011, the former Fitness to Practise Committee also considered a paper from the Executive on models of adjudication which included information about the GMC's future of adjudication:

<http://www.hcpc-uk.org/assets/documents/100034F720110526FTP07-modelsofadjudication.pdf>

Resource implications

Each option contains information about potential resource implications

Financial implications

Further work will need to be undertaken on the financial implications based upon the option which is pursued. However, none of the options involve significant increases in capital or operating costs.

Appendices

Appendix 1 - Enhancing independence in fitness to practise adjudication

Appendix 2 - Establishment of the Health and Care Professions Tribunal Service (including organisational chart)

Appendix 3 - Independence in adjudication work plan

Date of paper

21st August 2014

Enhancing independence in fitness to practise adjudication

Contents

1.0	Introduction	2
2.0	Background – policy and legislative context	2
3.0	The Medical Practitioners Tribunal Service (MPTS).....	6
4.0	Options to enhance independence in adjudication within the HCPC	8
	Option 1 – Maintain the existing arrangements	8
	Option 2 – Internal operational change	10
	Option 3 – Establish the Health and Care Professions Tribunal Service.....	11
	Option 4 – Legislative change	13

Enhancing independence in fitness to practise adjudication

1.0 Introduction

- 1.1 Following the publication of the Law Commissions' Report and Draft Bill, the Executive has undertaken a review of the HCPC's current model of adjudication. One of the Law Commissions' recommendations was that the Professional Standards Authority (PSA) should oversee the regulators' progress towards introducing greater separation between investigation and adjudication. The basis of the test of independence, as set out in the Law Commissions' Report, is whether there are sufficient guarantees to exclude any legitimate doubt about impartiality, applying an objective standard.¹
- 1.2 This paper looks at four options that may facilitate a greater degree of separation between the investigation and adjudication of fitness to practise cases. The Council is invited to consider the four options outlined in the paper and determine which, if any, should be pursued further. Based upon the decision reached, the Executive will then undertake more detailed work and put further reports before the Council.

2.0 Background – policy and legislative context

- 2.1 Currently, the operational and administrative functions associated with the adjudication of fitness to practise cases are carried out by the Adjudications team who sit within the Fitness to Practise Directorate. The HCPC's Investigating Committee, Conduct and Competence Committee and Health

¹ *Findlay v United Kingdom* (1997) 24 EHRR 221 (App No 22107/93), 245.

Committee perform the adjudicative functions, in the form of panels convened to conduct fitness to practise proceedings. The HCPC's Fitness to Practise Directorate currently operates with a high degree of separation, on the basis that individuals should not perform functions relating to both the investigation and adjudication of fitness to practise matters. Since its establishment, the HCPC has sought to ensure that there is appropriate separation of functions, being one of the first regulators to end the practice of Council members sitting on fitness to practise Panels.

- 2.2 The independence of fitness to practise adjudication has been susceptible to criticism since the Shipman Inquiry in 2004. The previous Government's white paper in 2007 – 'Trust, Assurance and Safety – The Regulation of Health Professionals in the 21st Century,' and a consultation by the Department of Health in 2010 on fitness to practise adjudication for health professionals recommended a greater separation between the investigation and adjudication of fitness to practise cases. The previous Government had also taken forward legislation to create a new body, the Office of the Health Professions Adjudicator (OHPA) which would be separate from the health regulators and adjudicate separately on fitness to practise matters as well as recruiting and training panellists.
- 2.3 The present Government abolished OHPA as part of the Health and Social Care Act 2012, on the basis that the GMC was establishing a separate adjudication function which deliver substantially the same benefits as OHPA, but in a more cost effective manner. The Medical Practitioners Tribunal Service (MPTS) was subsequently launched in June 2012. Its role is to provide a hearings service that is fully independent in its decision making. It is a statutory committee of the GMC but managed at arm's length and separate from the investigatory role of the GMC. Further information about the MPTS current model of adjudication is set out in section 3.0 below.
- 2.4 The independence of adjudication is not a new area of work for the Directorate. A significant amount of work has been undertaken in relation to new models of adjudication and ensuring modern and efficient fitness to

practise adjudication since 2010 when the previous government began consulting on fitness to practise adjudication and assessing different mechanisms for delivery. The Council and the former Fitness to Practise Committee have previously considered papers from the FTP Executive in relation to the proposed establishment of OHPA (in October 2010) and models of adjudication (in May 2011) which included information about the GMC's future of adjudication and the establishment of the MPTS. Links to the relevant papers are set out in the cover sheet to this paper. Since 2010, significant progress has been made in a number of areas which are outlined below:

- Enhanced pre-hearing case management and the use of standard directions, including the use of notices to admit (see relevant Practice Note)
- The use of a skeleton arguments/ case summaries in all final hearing bundles
- Disposal of cases by consent – this process was introduced in 2006 and is now well established. Last year we concluded 20 hearings via HCPC's consent arrangements
- The use of 'learning points' by the Investigating Committee
- Removal of requirement for Hearings Officers to read out the particulars of allegation at the start of proceedings
- Enhanced use of preliminary hearings to resolve issues prior to the start of the substantive hearing
- Improved service level agreement with our solicitors – they are required to notify that a case is ready to fix within two and a half months of the Investigating Committee in 90% of cases (it was previously three and a half months)
- Creation of new Practice Notes and a rolling cycle of review to ensure they remain up to date and fit for purpose
- The introduction of allegation drafting workshops for case managers every 6 months – this ensures that allegations are well drafted and adequately reflect the HCPC's case

- The introduction of ‘loggers’ at HCPC hearings where proceedings are recorded by audio technology instead of using transcription writers
- Ceasing the default production of transcripts in every hearing
- The creation of a Decision Review Group to review the standard of decision making by Panels and make recommendations for revisions to guidance, policies, panel training etc.,

2.5 The proposed OHPA model of adjudication sought to balance the rights of the registrant against the need to ensure public protection which is also the primary objective of HCPC’s proceedings.

Much of the work and efficiencies identified for delivery through OHPA have been achieved by the Directorate since 2010. Many of the identified objectives relating to independence in adjudication and a separate adjudicator have also been superseded by the Law Commissions’ review which is referred to throughout this paper.

2.6 The Law Commissions argue that there are substantial benefits to be gained from the separation of investigation and adjudication amongst the regulators, the primary benefit being increased confidence in regulation from the perspective of the public and professionals alike. The Law Commissions’ report goes on to discuss the merits of a separate fitness to practise adjudicator and outlines its view that there are substantial benefits to be gained from establishing a separate adjudicator. It considers that although the MPTS is not fully separate from the GMC, it has nevertheless introduced a high degree of independence in the adjudication of fitness to practise cases. It goes on to discuss the possibility of establishing a joint tribunal service, however, such a system is likely to have significant cost implications and as such they recommended that it should not form part of the draft Bill. Instead the regulators will have the ability to move towards greater separation without having to establish a whole new adjudication system such as the MPTS. It gives the example of establishing a body (such as an individual or committee) responsible for fitness to practise hearings.

- 2.7 The Law Commissions' review also recommends that the Professional Standards Authority (PSA) should provide direction by overseeing each regulator's progress towards more independent adjudication, acting in an advisory role. In addition, they recommend that the Government should have regulation making powers to introduce a new adjudication system for any of the regulators, based on the MPTS.
- 2.8 Given the Law Commissions' review and draft Bill, it is felt that now is the time for the HCPC to take steps to move towards a greater separation between its investigation and adjudication functions, building on an already well-established system of decision-making by Panels.

3.0 The Medical Practitioners Tribunal Service (MPTS)

- 3.1 This section provides further information about how the MPTS operates, including its governance arrangements. The MPTS provides a hearing service that is fully independent in its decision-making and separate from the investigatory role of the General Medical Council (GMC). The MPTS is part of, and funded by, the Council but is operationally separate. At the time of writing, the MPTS has been created in shadow form only, however the Department of Health are currently consulting on a Section 60 legislative change to the Medical Act 1983 that would place the MPTS on a statutory footing.
- 3.2 As part of its management of Fitness to Practise and Interim Orders Panel hearings, the MPTS has responsibility for the following:
- ensuring high quality standards of decision-making by panels
 - appointment, appraisal and continuous professional development of panelists and legal assessors
 - scheduling hearings and appointing independent panelists to sit on each hearing
 - providing information about forthcoming hearing to the public and the media
 - facilitating pre-hearing arrangements

- providing secretarial and administrative support to panels during hearings
- ensuring the GMC website is updated and the minutes of public hearings are published in a timely manner
- notifying overseas regulators and other of hearing outcomes
- liaising effectively with all users of the hearings service provided by the MPTS

The MPTS is led by a Chair who is separate from the Chair of the GMC. The MPTS Chair along with the Tribunal Clerk is responsible for the day to day running of the MPTS and the delivery of an efficient adjudication service. There are approximately 88 employees at the MPTS.

3.3 The Chair of the MPTS is effectively a one person committee of the GMC and is directly accountable to its Council, reporting to it twice each year. The Chair is also supported in his role by an advisory committee which provides advice to the Chair in relation to:

- The approach to improving the quality of decision making by panelists.
- The development of the quality and timeliness of the service provided by the MPTS.
- The approach to the recruitment, training, performance management and continuous professional development of panelists, case managers, and legal assessors.
- Other general matters relevant to the MPTS as may be directed by the MPTS Chair.

3.4 There is also a GMC/MPTS Liaison Group which supports the delivery of the hearings service provided by the MPTS and ensures that working arrangements are established and operate effectively. It also ensures an effective working relationship between the MPTS and the functions of the GMC with which it interacts.

3.5 To strengthen and protect the separation between the investigation and adjudication as well as modernising the adjudication process, the draft section 60 order contains measures to:

- Establish the MPTS as a statutory committee of the GMC specifying its powers, responsibilities and duties
- Modernise the MPTS' adjudication function including strengthening the case management arrangements
- Introducing a new right of appeal for the GMC (against decisions of the MPTS Panels)

These proposals arise from the policy development work surrounding the establishment of the OHPA. The Department of Health comments that the GMC has already made significant progress in reforming its adjudication function. By making these changes to the Medical Act 1983, the aim is to enable the GMC to complete these reforms and to secure efficient and effective patient protection and public confidence in its fitness to practise procedures for the long term.

4.0 Options to enhance independence in adjudication within the HCPC

4.1 Set out below are four options that have been identified by the Executive. Included within each option are identified benefits and risks. At appendix 1, further information has been provided around what a tribunal service would look like including proposed governance arrangements (see option 3).

Option 1 – Maintain the existing arrangements

4.2 The option of 'no change' or 'do nothing' would maintain HCPC's current approach as we already have a degree of separation between the investigation and adjudication of fitness to practise cases. The case management and adjudication teams are managed separately, and are currently located in different buildings. The adjudication team is not involved in case management decisions and there is clear role separation between the

teams, for example, with separate operational guidance. HCPC has always sought to ensure a degree of separation, being the first regulator to put Panels at 'arms-length' from the fitness to practise process. The HCPC respects the concept of 'equality of arms' and ensures that advocates who appear on behalf of the Council are not involved in policy development or the training of panelists. Nor has the HCPC ever had any form of 'sign off' arrangements in relation to Panel decisions, which ensures that the independence and impartiality of Panels is not compromised.

- 4.3 The proposed model of adjudication envisaged for OHPA, and the future as envisaged by the Law Commissions' review, was to ensure that fitness to practise adjudication is undertaken in a manner which safeguards fairness to all parties, providing flexibility and proportionate handling of cases but ensuring that public protection remains at the heart of the process. It could be argued that HCPC has been doing this over a number of years with very little external impetus. We continually review our processes and procedures to ensure they are fair, balanced and adequately protect the public, never fearing to adopt modern processes and procedures. Arguably, HCPC's current system of adjudication already meets many of the objectives identified to enhance independence in adjudication. We regulate 16 professions efficiently and effectively with the judicious use of resources and with processes that ensure cases are dealt with expeditiously, fairly and avoiding unnecessary formality. No other regulator faces the same challenges of operating an adjudication system for such a wide range of professions and we have managed to do so despite a year on year increase in fitness to practise cases and a minimal increase in the organisation's revenue from registration fees. It is for the Council to consider whether any change is therefore necessary and proportionate.

Expected Benefits

- 4.4 The option of no change has resource and cost benefits. No additional resources would be required and we would continue on the basis of 'business as usual'.

Risks

- 4.5 There is a growing appetite for a greater degree of separation between investigation and adjudication functions, as set out in the Law Commissions' report. The option of maintaining the existing arrangements would create a risk that HCPC is perceived as failing to move with the times, which in turn could lead to a greater degree of scrutiny by the PSA, public criticism and reputational risk. In addition, the current separation is not immediately apparent to registrants, members of the public and other stakeholders. For example, all correspondence regarding a registrant's fitness to practise hearing is sent by the HCPC, creating a perceived lack of separation between fitness to practise functions. This may lead registrants to view the HCPC wrongly as being the investigator, the prosecutor and the adjudicator.

Option 2 – Internal operational change

- 4.6 This option would involve changes to operational processes and procedures to create a greater degree of independence and separation, for example, with the creation of additional operational guidance and an operating protocol between the case management and adjudication functions. Work is already underway on a number of internal operational work plan items such as the use of pre-hearing teleconferences with all the parties involved in a case (see work plan in appendix 3). This option would not involve a name change or the establishment of a separate tribunal service. It would instead involve enhancing our current processes to ensure they are operationally separate and are seen to be so. For example, we could still consider using a separate PO Box address for all hearings related correspondence.

Expected benefits

- 4.7 This option requires greater use of existing resources than option 1 but is manageable and is unlikely to require any additional resources. In seeking the greater degree of separation recommended by the Law Commissions, the Council should consider whether internal operational change of this kind is sufficient. This option would provide small scale benefits for HCPC, but would

show demonstrable work towards change and a greater degree of separation between the two fitness to practise functions. In addition, it could provide a stepping stone towards an even greater degree of independence in the future.

Risks

- 4.8 This would ultimately be a half way option that could be misleading to registrants and the wider public. It would carry risks that the HCPC is not fully separate or independent in its adjudicative functions. The Council must consider whether a half way option is sufficient and whether this would satisfy the PSA that HCPC is moving towards a greater independence between its investigation and adjudication of fitness to practise cases. This option would also not address the Law Commissions' recommendation that regulators could move towards greater separation by establishing a body or person responsible for the appointment, appraisal and training of Panel Members.

Option 3 – Establish the Health and Care Professions Tribunal Service

- 4.9 This option would involve the HCPC establishing the Health and Care Professions Tribunal Service (HCPTS), broadly based upon the MPTS model. It should be noted however that any tribunal service established by the HCPC would be on a smaller scale and would need to fit into our current system of regulation for all of our 16 professions. As with the MPTS when it was first established, the HCPTS would be created on a non-statutory basis. There would be no changes to employee contracts and all employees would remain within the employment of HCPC and overall direction and control of the HCPC Chief Executive. There would be no separate budget as the operating costs of the service would form part of the Fitness to Practise Department's overall budget which would remain the responsibility of the Director of Fitness to Practise. It is proposed that Panels of the Practice Committees would operate as the 'Tribunal' with separate governance arrangements which would ensure a high degree of transparency and separation. In addition, the administrative arrangements currently undertaken by the adjudications team would have a greater degree of operational separation from the remainder of the HCPC. It is

important to note however that the HCPTS would still remain part of, and under the control of HCPC. This new model of adjudication would need to ensure that HCPC's core ethos is not compromised; of ensuring justice, fairness, openness and transparency balanced with public protection.

4.10 Appendix 1 sets out in more detail what a new tribunal service would look like, including:

- Governance arrangements
- Operational management
- Quality assurance
- Organisational chart
- Practical arrangements

Expected benefits

4.11 This option would provide a greater degree of transparent independence and ensure that there are sufficient guarantees to exclude any legitimate doubt about impartiality. Currently, all correspondence regarding a registrant's fitness to practise is sent by the HCPC, the adjudication function also shares the same website, logo and telephone contact numbers. This lack of apparent separation may lead to a reluctance on the part of registrants to engage in the final hearing process. Greater independence and separation could lead to an increase in engagement by registrants which in turn would assist with the scheduling of cases. We know that a significant percentage of our registrants subject to a fitness to practise cases are unrepresented, therefore any move to establish a separate tribunal is likely to increase confidence and promote fairness for those unrepresented registrants, which in turn may mean that they are more likely to engage in the process.

4.12 The MPTS model has been commended and any future reform of the regulators' adjudication functions is likely to be based on the MPTS. In light of this, it is recommended by the Executive that the option of establishing a separate tribunal service in the short term would bring substantial benefits with minimal costs, whilst ensuring that the HCPC remains a modern, efficient and effective regulator. It would also allow us to create a model that is

appropriate for the HCPC and its values and objectives rather than potentially being required to use or participate in some other, less suitable, adjudicative body.

Risks

- 4.13 In terms of risk, this would be a major project for the Fitness to Practise Directorate. This option is also likely to require additional resources and incur further costs.

Option 4 – Legislative change

- 4.14 This option would only be viable if, following the general election in May 2015, the incoming Government was to establish an independent adjudicator, similar to OHPA. The present Government, having reviewed the case for an independent adjudicator, abolished OHPA. Further, the Law Commissions' report points out that the jurisprudence on Article 6 ECHR does not require an entirely separate fitness to practise adjudicator, but simply processes and procedures that overcome any legitimate doubt as to the impartiality of the decision-maker. The Law Commissions' draft Bill would provide the Government with the power to introduce a separate adjudication system for any of the regulators, based on the MPTS should they wish to do so. However, at present there is nothing to indicate that the draft Bill will be taken forward in the next Parliament. The Executive does not think that any change to our legislation can be made by Government before May 2015.

Benefits

- 4.15 The benefit of waiting for legislative change (if any) following the general election in May 2015 is that HCPC may have greater clarity as to the direction in which it (and the other regulators) is expected to move on this issue by the incoming Government.

Risks

- 4.16 The risk of waiting for some form of legislative change is that HCPC will be far less likely to be able to set or influence the agenda for the establishment of a separate adjudicator if the Government has determined that such a body should be established.

Appendix 2

Establishment of the Health and Care Professions Tribunal Service

Introduction

This is an outline of an adjudicative body that is part of the HCPC but nonetheless operationally separate from the rest of the organisation.

At present, the HCPC's adjudicative functions in respect of fitness to practise are performed in the name of three 'virtual' statutory committees; the Investigating Committee, Conduct and Competence Committee and Health Committee. In this context "committee" is a somewhat misleading descriptor as, by Articles 26(1), 27 and 28 (respectively) of the Health and Social Work Professions Order 2001 (the Order), those committees only have the functions of investigating and adjudicating on allegations and related matters.

In practice, those committees only ever exist in the form of a three person Panel, convened to conduct fitness to practise proceedings, as Rule 3 of the Health and Care Professions Council (Practice Committees and Miscellaneous Amendments Rules 2009 (the 2009 Rules) provides that:

The Practice Committees

3.—(1) Each Practice Committee shall consist of not more than 350 persons, appointed by the Council, none of whom is a member of the Council.

(2) Members of a Practice Committee may only participate in the proceedings of the committee that they are invited to participate in by the Registrar or by a person authorised by the Registrar to invite them.

The HCPC has always sought to enable Panels to operate at arm's length and as independently as the Order will allow. For example, the HCPC was one of the first regulators to end the practice of Council members sitting on Panels. Similarly, HCPC's Fitness to Practise Directorate operates on the basis of a high degree of separation and very few individuals within that Directorate perform functions relating to both investigation/prosecution and adjudication.

However, the independence of Panels and the separation of the staff that support them is not immediately apparent to the outside observer. Taking the most obvious example, a registrant who is subject to an allegation may receive correspondence from the person investigating that allegation and from the person arranging a hearing in respect of that allegation, all of which will be from the HCPC. This lack of apparent separation may lead to the registrant being reluctant to participate fully in pre-hearing case management processes, based upon the perception that he or she is being asked to disclose information to the 'prosecutor' rather than to a neutral adjudicative body.

What is proposed is that Panels of the three Practice Committees should operate as the "Health and Care Professions Tribunal" (the Tribunal) and be supported by:

- governance arrangements that provide the Tribunal with a high degree of transparent independence; and
- administrative arrangements which are operationally separate from the remainder of the HCPC and seen to be so.

The Tribunal, together with the administrative staff supporting them, would be known as the “Health and Care Professions Tribunal Service” (HCPTS).

Preliminary issue

What is proposed, securing an increased level of transparent adjudicative independence, can be achieved without legislative change. However, under the Company, Limited Liability Partnership and Business Names (Sensitive Words and Expressions) Regulations 2009, use of the word “tribunal” in a business name requires the consent of the Registrar of Companies (acting on behalf of the Secretary of State).

The Secretary of State has given the HCPC the necessary consents in respect of both the “Health and Care Professions Tribunal” and the “Health and Care Professions Tribunal Service”, so this preliminary legal issue has been resolved.

Governance

At the heart of the new arrangements would a new body (the Tribunal Service Committee), which would be established as a non-statutory committee of the Council. The Tribunal Service Committee would consist of six members appointed by the Council (one of whom would also be appointed as Chair) as follows:

- three members appointed from among the Tribunal Panellists;¹ and
- three independent members (neither Tribunal Panellists nor Council members).

As Council members are already excluded (by Rule 3(1) of the 2009 Rules) from being Tribunal Panellists, the Tribunal Service Committee would consist entirely of non-Council members.

The Tribunal Service Committee would be responsible for:

- advising the Council on the qualities, abilities and competences required of Tribunal Panellists and Legal Assessors;
- establishing arrangements for:
 - the merit-based selection of Tribunal Panellists and Legal Assessors by fair and open competition; and

¹ those Panellists appointed would also be designated as the Practice Committee Chairs required by rule 4(2) of the 2009 Rules

- the training and assessment of Tribunal Panellists and Legal Assessors;
- providing guidance to the Tribunal on matters of procedure and practice for the purpose of ensuring that tribunal proceedings are conducted efficiently and effectively.

As the Tribunal Service Committee would be responsible for establishing rather than operating the selection, training or assessment processes, it is not intended that Tribunal Service Committee members would need to sit on selection panels etc.

As with any other HCPC committee, in accordance with paragraph 13 of Schedule 1 to the Order, the Council would determine the standing orders, etc. of the Tribunal Service Committee. The Tribunal Service Committee would report directly to the Council and be subject to its strategic decisions (such as budgetary and resource controls and high level policies such as those relating to indicative sanctions) but, beyond that would operate independently.

Under Article 44(1)(b) of the Order, the Council is required to publish an annual report on the arrangements it has put in place under to protect members of the public from registrants whose fitness to practise is impaired. Such reports must be submitted to the Privy Council for laying before the UK and Scottish Parliaments. It is proposed that the adjudication element of that report would in future be submitted to the Council separately, on behalf of the Tribunal Service Committee.

Management

Day to day management of the Tribunal would be the responsibility of the Head of Adjudication, who would be known as the Head of Tribunal Services (a title selected to avoid archaic alternatives such as “Clerk to the Tribunal”). The HCPC employees currently performing adjudicative functions would become the staff of the HCPTS, with appropriately amended job titles (e.g. Hearings Officers would be known as Tribunal Officers) and be under the direction and control of the Head of Tribunal Services.

As the HCPTS would not be a separate legal entity there would be no change in employment etc., but HCPTS staff would be identified as such and, for example, would be given email addresses based upon an appropriate HCPTS web domain name.

Consistent with modern hearing management techniques, the Head of Tribunal Services would have functions delegated to him/her by the Tribunal (by directions from the Practice Committees), such as being able to conduct telephone ‘listing hearings’ or to appoint officers to do so.

The function of the Registrar under Rule 3(2) of the 2009 Rules, of summoning Panels, would also need to be delegated to the Head of Tribunal Services.

The Head of Tribunal Services would continue to report to the Director of Fitness to Practise, who would remain responsible for the whole fitness to practise process. However, an operational framework would need to be established which identifies those administrative and management responsibilities which should remain within the HCPTS and thus be exercised by the Head of Tribunal Services and those (typically high-level issues) which would be subject to the Director's control. For example, at one end of the scale, those in management outside of the HCPTS should not be giving instructions to HCPTS staff about the arrangements for an individual hearing. At the other end of that scale, as the Council would set the budget of the HCPTS, the Director of Fitness to Practise would be responsible for ensuring that the HCPTS was adhering to relevant budgetary controls.

Quality assurance

At present, the quality assurance of Panel decisions is undertaken within the Fitness to Practise Directorate. This is appropriate as:

- Article 38(2) of the Order provides for the HCPC to be the respondent to any appeal against such a decision;
- any challenge to such a decision by the Professional Standards Authority on the grounds of undue lenience will be against the HCPC rather than the Panel; and
- it is the HCPC that, based upon such quality assurance reviews, will make any application for review of the Panel's order under 30(2) of the Order.

Accordingly, it is not proposed that the quality assurance of Panel decisions should be performed by the HCPTS.

Clearly, the review of decisions is likely to generate information of use to the HCPTS, some of which may need to be taken into account as part of any assessment processes developed by the Tribunal Service Committee. That information should be shared with the HCPTS, but on the basis of a protocol which ensures that there is no suggestion of interference in Tribunal decisions by those outside of the HCPTS.

Practical matters

Branding

To reinforce the separate nature of the Tribunal, the HCPTS should have distinct and separate branding. This should not be based upon current HCPC branding but be deliberately different and, for example, avoid the use of similar fonts and layouts. The inclusion of an appropriate symbol (such as a stylised scales of justice) may also assist.

Similarly, HCPTS documents and correspondence should be seen to be different from those of the HCPC and it is suggested that a different sans serif font (for example, Calibri) be used rather than that adopted by the HCPC (Arial).

Disclosure

In law, the Tribunal and HCPTS would still be operating as part of the HCPC but under business names which differ from that of the HCPC. As such, there is an obligation under company law to disclose the true nature of both organisations. It is suggested that this could be achieved by publications including the following information (which on letterheads, etc. would take the form of a footer):

“The Health and Care Professions Tribunal Service is the adjudication service of the
Health and Care Professions Council”

“The Health and Care Professions Tribunal is the adjudicative body
of the Health and Care Professions Council”

Panels would be described in their decisions etc. as the Health and Care Professions Tribunal but “sitting as the [Conduct and Competence, etc.] Committee of the Health and Care Professions Council”.

Domain name

The HCPTS should also use a web domain that cannot be confused with the HCPC. Given the similarity of the abbreviations (HCPC and HCPT or HCPTS) , it may be sensible to include the word tribunal in the domain name, for example, www.hcptribunal.org.uk. Some tribunals include their domain name in their logo and, in order to strengthen the separation between HCPC and the Tribunal, this would also seem to be a sensible approach to adopt.

Postal address

The HCPTS should have a separate postal address from the HCPC. Generally, as users find it easier to use PO Box addresses, many courts and tribunals have them and this should be considered. For example, tribunals as diverse as the Immigration and Asylum Chamber of the First-Tier Tribunal and the Investigatory Powers Tribunal use the following addresses:

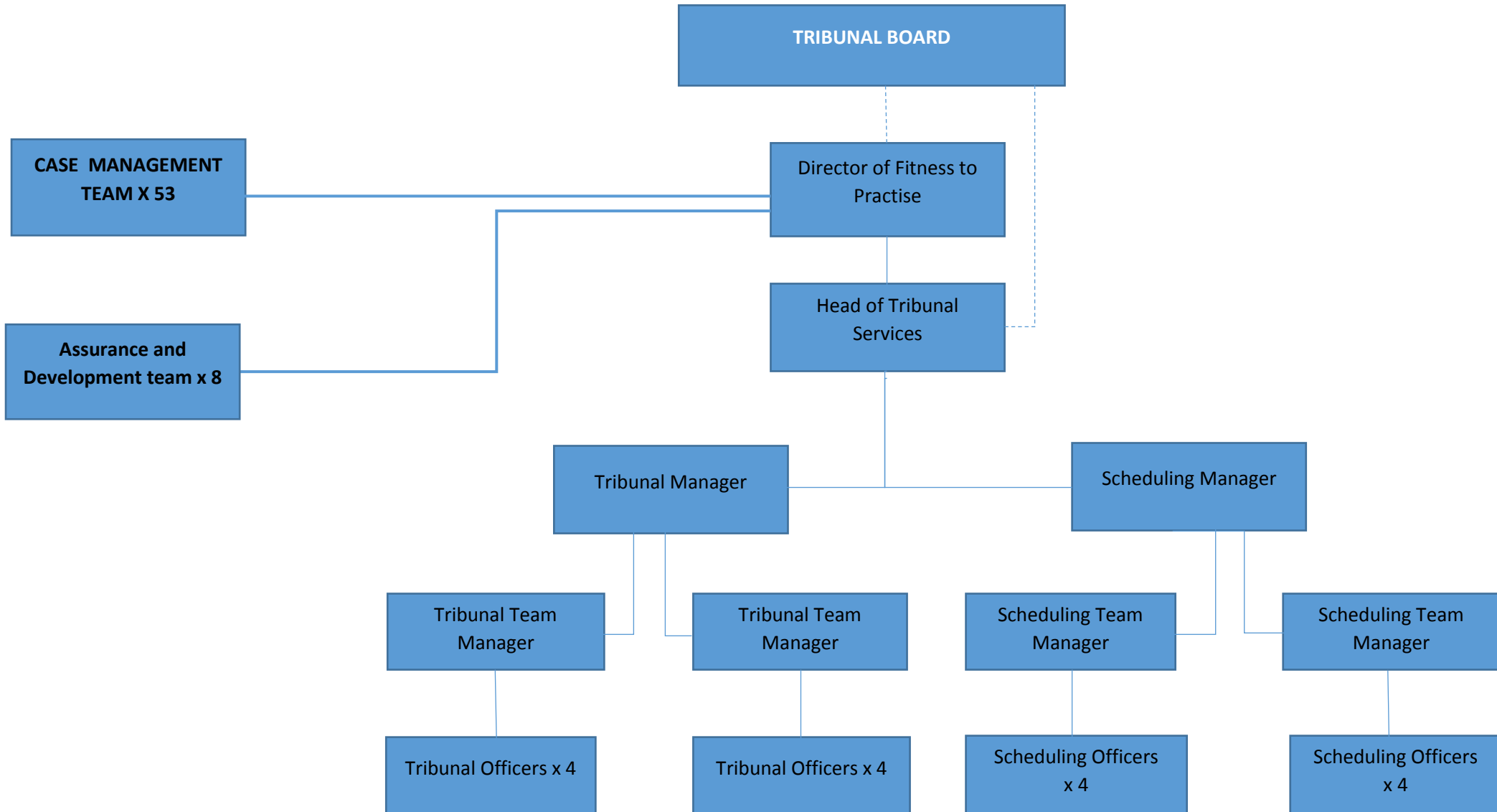
First Tier Tribunal
PO Box 7866
Loughborough
LE11 2XZ

Investigatory Powers Tribunal
PO Box 33220
London
SW1H 9ZQ

Telephone numbers

If possible, the HCPTS should have separate telephone numbers, or at least one central switchboard number which is distinct from those of the HCPC.

The Health and Care Professions Council Tribunal Service (HCPTS)



Independence in Adjudication work plan

Process and Operational efficiencies

Activity	Description	Identified Benefits	Person responsible	Progress update
The use of pre-hearing teleconferences prior to scheduling a hearing	Prior to scheduling of the final hearing, a teleconference will be held, where an informal agreement would be made by all parties on topics such as the date and duration of the final hearing, the witnesses both parties intend to call and the identification of any preliminary issues that need to be resolved.	Increased engagement by registrants and representatives. Agreements can be reached between both sides which may prevent delays at the start of proceedings. The identification of preliminary issues at an early stage.	Scheduling Manager	We are currently on track to begin a 9 month pilot in October 2014
Amendments to current scheduling process	It currently takes approximately 8 months from the notice of allegation being sent to the registrant to the final hearing date. Currently, Scheduling Officers canvas for witness availability after the case has been notified as ready to fix by our solicitors. We propose to	Once implemented, it is hoped that the changes will reduce the length of time it takes to schedule a hearing by 2 months, down from 8 months to 6 months.	Scheduling Manager	We are currently on track to begin a 9 month pilot in October 2014

	make efficiencies to the process by obtaining witness availability when witness statements are taken by our instructed solicitors. The registrant will also be advised at a much earlier stage of the target month in which their final hearing is likely to be held.			
Managed agendas for Panel Chairs	Ensuring Panel Chairs are clear about priorities at commencement of hearings. This is managed by the Hearing Officers.	Ensures the smooth and timely running of hearings	Adjudication Manager	Revised documents are now in circulation
Guidance for Case Management on Post ICP responsibilities	Further written guidance for the case management team on the process to be followed once a case is in the post ICP remit, this relates particularly to adjournment and postponement requests and requests for preliminary hearings	This will ensure Case Managers understand what process is to be followed, will ensure consistency and prevent any potential delays to scheduling	Adjudication Manager	A draft guidance document has been drafted on postponement and adjournment requests. Further guidance on preliminary issues is in progress

Information Technology enhancements

Activity	Description	Identified Benefits	Person responsible	Progress update
Laptops/lpads for Panel Members and the use of electronic bundles	To provide panel members with laptops/lpads and roll out the use of electronic bundles	Enhanced information security. Potential cost efficiencies in the long term	Adjudication Manager	Initial scoping exercise has taken place. Met with the GDC who use lpads and electronic bundles for their Investigating Committee. This is a long term project that will require further scoping before any additional work can begin
Use of recording equipment in hearing rooms	This involves the use of portable recording equipment that would be managed in house, rather than the use of external loggers	Long term cost benefits of moving to an in house system	Scheduling Manager	This is a long term project that could only be initiated once the plan for 186 KPR have been finalised and agreed
SMS alerts for Panel Members	Panel Members to have the option of using an SMS alert service for confirming availability	If implemented this could save Scheduling Officer time	Scheduling Manager	Initial scoping is currently underway with a survey to Panel Members nearing completion.
The use of video-conferencing at hearings	Developing the use of video-conferencing facilities at hearings. Potential to move to an integrated system. The	Improved ease of use and cost efficiencies	Scheduling Manager	This is currently on hold until we have further information about the 186 KPR project

	current system used is complex and time consuming to set up			
--	---	--	--	--