

Council, 11 February 2016

Independence in Fitness to Practise Adjudication update

Executive summary and recommendations

### **Introduction**

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

In March 2015, the Council discussed and approved papers which set out proposed operational and governance arrangements that would form the basis of a new HCPC tribunal service.

This paper provides an update on the work of the Fitness to Practise Adjudication team in this area.

### **Decision**

The Council is requested to discuss this paper. No decision is required.

### **Background information**

Set out below is a link to the options paper considered by Council in September 2014 and the further papers approved in March 2015:

[www.hcpc-uk.org/assets/documents/100048A1Enc04-EnhancingIndependenceinFitnessToPractiseAdjudication.pdf](http://www.hcpc-uk.org/assets/documents/100048A1Enc04-EnhancingIndependenceinFitnessToPractiseAdjudication.pdf)

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

The work behind this project originated from The Law Commissions' Report and draft Bill Regulation of Health and Social Care Professionals (April 2014) which highlighted that substantial benefits are to be gained from the separation of regulators' investigation and adjudication functions.

In January 2015, the Government published its response to the Law Commission Bill, in which it agreed with the Law Commissions' proposed recommendations around increasing the separation between the regulatory body's role as investigator and adjudicator. This is a step which has already been taken by the General Medical Council (GMC) who have created a separate hearings service called the Medical

Practitioners Tribunal Service (MPTS) who are separate to the investigatory role of the GMC and has responsibility for all key hearings activity.

Further information regarding the role of the MPTS can be found on its website here:

<http://www.mpts-uk.org/about/1520.asp>

### **Resource implications**

Further work will need to be undertaken in relation to the resource implications of the project.

### **Financial implications**

Further work will need to be undertaken on the financial implications which will be informed by the outcomes of discussions relating to the setting of the 2016/17 budget.

### **Date of paper**

26 January 2015

## **Independence in Adjudication – update**

### **Introduction**

The Council will recall that at its meeting on 25<sup>th</sup> September 2014, it endorsed the need for greater separation between the Health and Care Professions Council's investigative and adjudication functions and agreed that the option of establishing a separate Health and Care Professions Tribunal Service should be pursued further.

In March 2015, Council discussed and approved papers regarding the initial proposals relating to the operational and governance arrangements that would underpin a separate HCPC tribunal service, as well as a paper outlining details of the HCPC's current adjudication facilities. Since this date, a significant amount of work has been undertaken in relation to the procurement and fit out of a dedicated site for fitness to practise hearings at 405 Kennington Road. The adjudication team moved into the new building on 25<sup>th</sup> January 2016.

The move to new, dedicated hearing facilities that will serve as a 'hearings centre' is the first step towards a greater degree of separation between the investigation and adjudication of fitness to practise cases, this being a major public facing element of the work of the Fitness to Practise Department. The next step is the establishment of a separate hearing/ tribunal service which is a distinct project in itself and will need to be managed separately to the physical move by the Fitness to Practise adjudication team.

### **Project to establish a Tribunal Service**

In June 2015, EMT considered a business case and agreed that this piece of work should be allocated project resource and dealt with as a major project for the HCPC. The project is now in the detailed planning stage with project initiation expected in February. It is anticipated that this will be a nine month project, with expected completion in quarter 3 of 2016.

The Council will recall, from previous papers on this topic, that the proposed tribunal service would function from an operational perspective in much the same way as we currently do, but with a greater degree of perceived independence and enhanced processes and procedures. The service would continue to be responsible for:

- ensuring high standards of decision-making by panels
- appointing, training and appraisal panellists and legal assessors
- scheduling hearings and appointing independent panellists to sit at each hearing
- providing information about forthcoming and concluded hearings to the public
- facilitating pre-hearing arrangements

- providing administrative support to panels during hearings
- liaising effectively with all stakeholders and hearing participants

The key activities of the project are set out below:

<b>Activity</b>	<b>Description</b>
Adjudication/ hearings video	Update to existing hearings video/ guidance to include an interactive hearing room
Brochures	Changes to information for witnesses brochure and creation of new brochure
Case Management System changes	Review of any necessary amendments to ensure independence
Communications	Devise internal and external communications plan
Creation of new HCPTS website	Creation of separate website, with own distinct identity and layout to provide all relevant hearings/ tribunal related information
E-mail addresses	Change to team e-mail addresses
Identity	Create a separate logo and identity for the Tribunal service, including relevant signage. Options for the logo and identity of the service are currently being considered
Internal guidance, practice notes and standard letter templates	Review and amendment of all existing operational guidance, practice notes and letters. Creation of new guidance as necessary
Job titles	Review and make minor amendments to adjudication team job titles to accurately reflect hearings service
Operating Protocol	Develop a protocol with case management – to agree working relationship
Operational Framework Agreement	Sets out main responsibilities of a new hearings service, its scope and how it interacts with other parts of the HCPC.
Scheme of Delegation	Revise and amend the scheme of delegation to reflect changes
Tribunal Advisory Committee	Define roles and responsibilities, recruitment and selection of new committee members

The expected benefits of the project are:

- Increased confidence in the fitness to practise process by the public, registrants and other stakeholders;
- greater use of enhanced pre-hearing case management;
- Enhanced independence of decision making by fitness to practise panels;
- Enhanced independence and oversight of the recruitment, training and appraisal of fitness to practise panel members;
- encouraging greater engagement and participation with the fitness to practise process by registrants, particularly those that may be unrepresented;
- To enable us to further modernise and improve our existing processes.

In this project we intend to follow a model which is broadly similar to that of the Medical Practitioners Tribunal Service (MPTS), the hearings service of the General Medical Council (GMC). 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). As part of its management of fitness to practise and interim order panel hearings, the MPTS has responsibility for all key hearings activity. There is 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.

As with the HCPC's proposed tribunal service, the MPTS was initially established on a non-statutory committee basis. However, in order to strengthen and protect its independence, the MPTS has now been established as a statutory committee of the GMC. The necessary legislative changes (introduced by an Order under section 60 of the Health Act 1999) have also given the GMC the right to appeal to the courts against decisions of the MPTS; a power similar to that of the Professional Standards Authority.

The GMC legislation was only introduced by the Department of Health (DH) after the MPTS had been successfully established and operated on a non-statutory basis. It is likely that the DH would adopt a similar approach if the HCPC wished to move to a statutory model in the future.