

Fitness to Practise Committee 24 May 2012

Adjourned/ part heard/ cancelled final hearings

Executive summary and recommendations

**Introduction**

The attached paper sets out the reasons for cases not concluding as expected between April 2011 and May 2012.

**Decision**

The Committee is asked to discuss this paper

**Background information**

None

**Resource implications**

Cases that do not conclude need to be rescheduled. Partners, rooms and other resources need to be rearranged for any days booked to resume proceedings. The impact on resources is explained in further detail in this paper.

**Financial implications**

Financial implications stem from the need to reschedule cases and the effect this has on the budgeted number of hearing days scheduled per annum. This paper sets out the associated costs for hearings that do not conclude as expected.

**Appendices**

None

**Date of paper**

14 May 2012

**Adjourned/ part heard/ cancelled final hearings, in the period April 2011 to March 2012**

**1 Introduction**

- 1.1 This report provides information about final hearings that did not conclude as expected between April 2011 and March 2012.
- 1.2 The FTP Committee has previously received regular papers analysing the reasons for hearings not completing as planned. This forms part of the wider programme of quality assurance undertaken by the fitness to practise directorate
- 1.3 The Fitness to Practise (FTP) management pack reports on the length of time that cases take to pass through different parts of the process. Final hearings that do not conclude can extend the average length of time it takes for cases to conclude. These data are prepared using standard data analysis. Future analysis will be generated from data from the new Case Management System that went live in April 2012.

**2 Statistics**

- 2.1 Between April 2011 and March 2012 405 final hearings were scheduled. 289 of those cases concluded as expected within the days allocated. The table below shows the percentage of cases that did not conclude between 2009-10 , 2010-11 and for 2011-12.

	<b>Apr 2009- Mar 2010</b>	<b>Apr 2010- Mar 2011</b>	<b>Apr 2011 – Mar 2012</b>
Hearings that concluded	256	314	289
Hearings that did not conclude	103	132	116
% of hearings concluded as expected	71%	73%	71%

- 2.2 The table below lists the reasons for the 116 cases that did not conclude as expected in April 2011 to March 2012.

<b>Reason for not concluding</b>	<b>Number of hearings</b>
Cancelled administratively	16
Postponed by the HPC (more than 14 days before hearing)	1
Adjourned by the panel chair (less than 14 days before hearing)	12
Adjourned on the day by the panel	35
Part heard	52
Referred to health	0
Referred to conduct and competence	0
<b>Total</b>	<b>116</b>

- 2.3 The largest number of hearings that did not conclude were those that went part heard. More detail about why hearings went part heard are detailed later in this paper.
- 2.4 Of the 35 hearings adjourned on the day, 9 were due to circumstances where the panel identified that another panel should hear the case, and 11 were due to unexpected or unplanned lack of availability of parties on the day. This includes registrants, representative and other parties such as key witnesses. The main cause of lack of availability was illness, though in one case one party was deceased. There were 4 cases where there was an administrative/evidential issue that prevented continuation of the case, and one case where a registrant applied for a judicial review.

### **3 Scheduling final hearings**

- 3.1 Concluded HPC hearings lasted for an average of 1.9 days in this period, compared with 1.8 days in the previous full year. If the number of days estimated for a case is too short, hearings will not conclude in time, if it is too long, facilities will have to be cancelled and partner fees will still need to be paid in accordance with their expense policy. The Scheduling team work closely with our external legal team to assess the assumptions for the time required at final hearing. This is based on whether the registrant is represented, is attending, and the number of witnesses/the nature of the evidence they are giving.
- 3.2 Scheduling final hearings involves the coordination of a number (average eleven separate individuals) of parties and usually becomes more protracted in accordance with the number of witnesses called.
- 3.3 During 2011-12 there was an average of two final hearings scheduled per working day, as in previous years though the nature of scheduling and availability means there was significant variation in this. In addition to the final hearings ICPs, interim orders and substantive reviews were also scheduled to take place alongside these hearings. This means that there may be days where there are few (or no) final hearings scheduled as the expiry date of reviewable sanctions means that resources are used to hear

these cases. On other days, there may be as many as five final hearings scheduled, some of which take place outside of London.

- 3.4 The earlier part of 2011-12 had a high rate of final hearings. This number dropped in the latter part of the year, due to a number of factors. Those factors include that the number of available cases to schedule dropped due to the effects of a lower case to answer rate from Investigating Committee and that better communication and revised service level agreement with our external legal team resulted in more cases being returned in the earlier part of the year, and fewer remaining in investigation.

## 4 Notice period for proceedings

- 4.1 Hearings are currently scheduled between three to four months in advance. Currently, the Scheduling Officers are already fixing cases in July and August 2012. The proximity of the Olympic Games and the addition of Social Workers (England) to HPC's register makes this scheduling more complex. It is likely that financial costs of accommodation, travel disruption and parties' availability during this period means that scheduling rates may be affected during this period. We have forecasted required activity to stay on target, brought forward hearings (where possible) to miss this period, and are using non-London venues as appropriate.
- 4.2 The system of scheduling continues to allow a generous period of notice of proceedings for registrants to prepare their case, thus minimising requests for applications to adjourn in order to prepare. Registrants will also have been aware of the allegations they face since their Investigating Committee Panel date, when allegations are notified to them. Registrants and their representatives also receive the bundle for their hearing at least 42 days prior to the start of that hearing. We encourage early dialogue with parties around issues that may affect the final hearing and meet with registrants' union representative groups quarterly to understand these. We also use preliminary meetings to get directions prior to the final hearing, sometimes this may result in the final hearing being rescheduled.

## 5 Part heard hearings

- 5.1 Of the cases that didn't conclude in April to March 2012 52 (45%) of them went part heard. This rate has increased from the 56 cases (42%) of cases scheduled in the previous 12 months. If a hearing goes part heard the Hearings Officer details reasons for any delay. The table below details some common areas that affected cases that went part heard. Many hearings were affected by more than one area which led to them running out of time:

Areas highlighted	Number of cases affected
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Dedicated deliberation days requested by Panel	8
Lengthy evidence or discussion	10
Issues with witness attendance, numbers or length of evidence	5
Lengthy submissions by representative or registrant	17
Hearing was planned to finish at later date	6
Allowing registrant to seek further evidence	3
Preliminary or administrative issues	3
<b>TOTAL</b>	<b>52</b>

- 5.2 There has been a change in the proportion of part heard cases where the registrant is represented. In 12 cases (23%) the registrant represented themselves. In 33 cases (63%) the registrant had a representative. In seven cases (13%) no-one attended. This compares to 27%, 71% and 0% in the same categories for the previous year.
- 5.3 These changes can have an impact on the predicted time required for hearings, and how the proceedings are managed on the day. Registrants who represent themselves often require more time to present their arguments as they are unfamiliar with the legal framework. If no-one attends, Panels may spend more time assuring themselves that it is the interests of the public and that of the registrant to proceed in their absence.
- 5.4 Panels are working flexibly in order to manage their workload, and to prevent hearings from going part-heard. This includes sitting after 5pm, or managing the order of witnesses to make best use of the day. Panels are reminded as part of their refresher training of the impact of extending the day, and the effect it may have on participants (or external perception of fairness), and are encouraged to include any rationale in their decision making. The most common cause of extending a day is to conclude witness evidence so they do not have to be re-called or to complete their evidence within limited availability.

## 6 Postponement and Adjournment

- 6.1 Panels and parties to the hearing have access to the Postponement and Adjournment Practice Note. The Practice Note has been in place since 2008, and has been revised in 2010 and is publicly available via the HPC website.
- 6.2 Applications received by the HPC 14 or more days in advance are classified as Postponements, those received less than 14 days before the hearing are Adjournment applications. The number of postponement and adjournment requests received before hearings were due to take place are detailed in the table below:

	<b>2009-2010</b>	<b>2010-2011</b>	<b>2011-2012</b>
No. of hearings scheduled	351	433	405
No. of postponement/ adjournment requests before hearing date	58	53	30
Average number of requests per month	5	4.5	2.5
No. of requests granted	14	19	5

- 6.3 A paragraph was added to the Notice of Hearing to the Registrant in early 2011, highlighting scheduled cases will only be adjourned on an exceptional basis, and that applications that are not sufficiently well described or grounded may be rejected. This appears to have affected the number of requests made. Panel training (induction and refresher) now also contains a section on the logistical and financial impact of not concluding cases as planned.
- 6.4 Where possible alternatives to postponement are made, e.g. requests can be made by representatives who say they are unable to get the registrant's witnesses to attend on the hearing date. The request would be declined and a suggestion made to use the time available and break at the appropriate juncture should witnesses be essential. Alternatively a video-link may be offered so witnesses can appear
- 6.5 Where hearings do go ahead as planned, they may not necessarily be able to conclude, e.g. the registrant's witnesses may not be able to attend the hearing dates, and may add to numbers of part heard hearings. Having the hearing going part heard is preferable to any adjournment costs and means HPC witnesses are able to give their evidence as planned and there are less parties to coordinate for the resuming hearing. The Executive has planned a number of hearings this way in 2011-12 in order to get witness evidence recorded. We are careful to ensure cases go part heard at an appropriate point and the Hearings Officer works with the Panel Chair and Legal Assessor to do this.
- 6.6 Panel training and feedback from CHRE learning points has also improved the recording of decisions in part heard cases so that future sittings have good information, and that it is clear to observers where the hearing started and stopped, and when decisions were made.

## **7 Actions taken to increase the number of completed hearings as scheduled**

7.1 Outcomes of hearings are kept under constant review, and changes to processes, information or guidance changed as necessary. A summary of activity is as follows:

- The reasons for cases going part heard continue to be recorded and analysed. These reasons are included in forecasting and resource management.
- Induction and refresher training for Panel members has been reviewed in advance of the latest round of recruitment of Chairs and lay/registant panel members. This will be delivered in May and June 2012. Training for existing panel members also continues to focus on practical aspects of hearings management, including clarification to panels of their responsibility to work flexibly with HPC and other parties to complete planned work.
- Scheduling and Hearings Officers assess any vulnerabilities of hearings participants, or any requests for information about our processes. Hearings Officers make pre- and post-hearing calls to parties to ensure they have no remaining questions or concerns, or know the outcome of the hearing if they could not stay until the end. This has had excellent feedback from those contacted so far.
- Changes to the information available for parties attending hearings (written and online) has been (and continues to be) reviewed to ensure they continue to answer the most frequently asked questions. Feedback from users continues to be positive.
- The resources at Park House have been used more efficiently, meaning more hearings have been able to be arranged. We are looking at resources around the UK, and planning future activity with a mind to major events (such as the 2012 Olympics). We have started a review of services provided, quality of venue and associated costs for all UK venues as part of a review of quality.
- The service level agreement with external investigators has been reviewed to ensure they allow adequate time for representatives, particularly those who are likely to be unfamiliar with HPC processes.

## **8 Conclusion**

8.1 The Executive proposes that as a result of this review, hearings that do not conclude as expected should continue to be monitored. The implementation of the electronic case management system in April 2012 will assist in the production of future reports.