

## **Tribunal Advisory Committee**

### **Public minutes of the 2<sup>nd</sup> meeting of the Tribunal Advisory Committee held on:-**

**Date:** Tuesday 12 September 2017

**Time:** 1pm

**Venue:** Room D&G, Health and Care Professions Council, Park House,  
184 Kennington Park Road, London SE11 4BU

**Present:** Graham Aitken  
Catherine Boyd  
Philip Geering  
Shelia Hollingworth  
Alan Kershaw  
Marcia Saunders (Chair)

### **In attendance:**

Claire Amor, Secretary to the Committee  
Claire Baker, Tribunal Services Manager – Hearings  
Brian James, Acting Head of Tribunal Services  
Teresa Haskins, Director of Human Resources  
Deborah Oluwole, Tribunal Services Manager – Scheduling  
Katherine Timms, Policy Manager

## Public

### **Item 1. Chair's welcome and introduction**

- 1.1 The Chair welcomed Committee members and the Executive to the second meeting of the Tribunal Advisory Committee
- 1.2 The Chair provided an update on engagement activity following the previous meeting of the Committee.
- 1.3 It was noted that the Chair's nomination was ratified by the Council in July 2017
- 1.4 The Chair outlined the matters discussed with the Chair and Chief Executive of the HCPC at a recent meeting.

### **Item 2. Apologies for absence**

- 2.1 No apologies were received.

### **Item 3. Approval of agenda**

- 3.1 The Chair called attention to the importance of considering panel members' assessment and appraisal as part of a whole system with training implications at each stage, and this would need to be borne in mind as the relevant agenda items were considered, starting with the competency framework. She also explained that the Indicative Sanctions paper would be taken at approximately 2.15pm and the agenda re-ordered accordingly. With these changes the Committee approved the agenda.

### **Item 4. Declarations of members' interests**

- 4.1 Graham Aitken, Catherine Boyd and Philip Geering declared an interest in the contents of the agenda, due to their role as HCPC Panel Chairs. The Committee agreed that this would remain a standing declaration of interest due to the nature of the Committee's remit. There were no other declarations of interest.

### **Item 5. Minutes of the Tribunal Advisory Committee meeting of 31<sup>st</sup> May 2017 (report ref: TAC 10/17)**

- 5.1 The Committee received the draft minutes from its meeting held on 31 May 2017.
- 5.2 The Committee **agreed** the minutes.

### **Item 6. Matters arising (report ref: TAC 11/17)**

- 6.1 The Committee agreed that it did not consider that point 4 regarding ethnicity data is complete. It was noted that data is recorded for Partners and it was **agreed** that an analysis of this data against UK population will be provided in the Partner update in February 2018.
- 6.2 The Committee noted that a project aiming to enhance the demographic data (including ethnicity) held for registrants is currently being scoped. It was **agreed** that the lead for this project would attend a future Committee meeting to outline the HCPC's proposed approach.

**Item 7.i Head of Tribunal Services report, September 2017 (report ref: TAC 12/17)**

- 7.i.1 The Committee received a report from the Acting Head of Tribunal Services. The report provides a summary of a number of key areas of work relating to HCPTS hearing activity.
- 7.i.2 During discussion the following points were noted:-
- the trend of shorter and more frequent reviewable sanctions imposed at both final hearings and ongoing review stages continues. For these cases the Executive has provided a chronology of engagement of the registrant to better illustrate engagement to Panels. Also included, where appropriate, is any indication by the previous panel of material that future reviewing panels may find helpful;
  - in the reporting period learning points have been provided by the PSA relating to Panel decisions being inappropriately brief and linking final hearing decisions to the duty of candour. These will be incorporated in the Panel training programme;
  - work has started on analysing existing conditions of practice, with a view to producing a bank of conditions that may assist panels in the future;
  - as part of the ongoing independence of the Tribunal Service case managers will no longer present to ICP and Panel training will include enhanced guidance on the role of the ICP in quality assuring allegations before a Case To Answer decision is made;
  - work on enhancing the instruction process continues with consideration of a longer pre instruction stage to ensure the right information is obtained prior. Cases are also being assessed and 'streamed' as to documentation requirements as these vary considerably; and
  - a skype-style technology is being piloted to improve access to video conference evidence giving to hearings.

- 7.i.3 The Committee discussed the demographic statistics outlined in the report. It was noted that the proportion of male registrants with an open fitness to practice case is significantly greater than the proportion of male registrants in England. The Committee **agreed** that focusing on trends in the types of allegations raised, competence or conduct, may be helpful in evaluating the data.
- 7.i.4 The Committee discussed the PSA learning point on the duty of candour. It was noted that this had been included in a recent partner newsletter.
- 7.i.5 The Committee discussed the issue of repeated short term sanction reviews. It was **advised** that the lack of continuity of Panels makes clear reasoning and expectation setting particularly important so that the next Panel can build on progress accordingly.
- 7.i.6 The Committee noted the report.

#### **Item 7.ii Partner team update (report ref: TAC 13/17)**

- 7.ii.1 The Committee received a report from the Director of Human Resources. It was noted that the report will form a standing item at future meetings; its purpose is to update the Committee on the work of the Partner team and key statistics relating to Panellists.
- 7.ii.2 During discussion the following points were noted:-
- the outgoing Partners and HR Manager left the HCPC in early August. A replacement has been recruited and they will start work at the HCPC in early October;
  - the major project to implement a partner information system is progressing towards the go-live date of 15 November 2017. In July over 100 partners volunteered to carry out system testing and review draft training materials. Feedback was very positive overall;
  - upcoming Partner recruitment activity intends to replace those Panellists who recently left due to the 8 year rule; and
  - exit data is collected by the Partner team and reasons for leaving are monitored. Turnover remains low as a proportion of the overall Partner population.
- 7.ii.3 The Committee **requested** that the Partner team update for the November 2017 meeting provide narrative analysis of the statistics. It was noted that when the new Partner manager is in place, the report will be developed further to suit the Committee's specific need to focus on HCPC Panellists.
- 7.ii.4 The Committee noted the report.

## **Item 8. Review of Practice Notes (report ref: TAC 14/17)**

- 8.1 The Committee received a paper from the Head of Tribunal Services.
- 8.2 The Committee noted that according to the timetable agreed in May 2017, there were eight Practice Notes (PNs) that were due to be reviewed in September 2017. However the Executive has recently received the draft PSA performance review.
- 8.3 As the draft performance review references all of the scheduled PNs for review, an operational decision has been taken to postpone the review of these PNs until a consideration of the performance review has been made, and presented at Council.
- 8.4 However, following two recent High Court appeals, it is recommended that the Interim Orders PN be reviewed due to legal advice received. The advice relates specifically to the reasoning given by final hearing panels when imposing an interim order during that hearing, and references directly the difference between cases where there was an interim order in place directly before the final hearing, when compared to those cases where an order may be required where one did not previously exist.
- 8.5 The Committee discussed the proposed change and **agreed** that the wording provided in the legal advice should be included in the Interim Orders PN. The Committee also stressed the importance of information to registrants to ensure that they were aware of the possibility and implications of an IO being imposed at a final hearing.
- 8.6 The Committee discussed their remit when reviewing PNs. It was suggested that following a cycle of PN reviews (annual) the Committee will have a clearer idea of any gaps or broader changes, e.g. format, it feels are required.
- 8.7 The Committee discussed the recommendation that a PN is not produced specifically for professional indemnity. It was **recommended** that wording on the consequences of failing to obtain appropriate insurance including the case scenarios outlined in guidance be reproduced on the appropriate section of the HCPC website for clarity.
- 8.8 The Committee noted the paper and **agreed** the revised Interim Orders PN.

## **Item 9. Review of the Indicative Sanctions Policy (report ref: TAC 18/17)**

- 9.1 The Committee received a paper from the Policy Manager. The paper outlines the approach the executive intends to take when reviewing the indicative sanctions policy.
- 9.2 During discussion the following points were noted:-

- the Executive considers it appropriate to undertake a more comprehensive review of the policy following a number of years of amendments due to change in case law;
- the review will aim to ensure the policy is up to date, reflects public opinion and continues to ensure panels make fair and proportionate decisions;
- it is anticipated that a public consultation will be held at the beginning of 2018 with the policy coming into effect at the end of 2018;
- to develop the scope of the review, the Executive has reviewed the policies and guidance of other regulators, before holding workshops with HCPTS employees. The review and consultation document will be further informed by a number of engagement activities, including market research;
- members of the committee have been interviewed by the market researchers to help shape the questions used;
- a range of views will be sought to ensure balance; and
- the scope includes the development of a list of sanctions to include in the policy and a conditions bank as an annex to the policy.

9.3 Committee members made the following **recommendations** for consideration during the review:-

- an understanding of the starting point of finding impairment is required and should be set as context for a reader of the policy;
- consideration should be given as to how the public distinguish between apology, remorse and empathy;
- 'remediation' is open to interpretation and its meaning to the HCPC may differ significantly from the public understanding;
- mediation is not a sanction and should form its own section;
- a list of a mitigating and aggravating factors for illustration and guidance would be useful;
- a section on reviewable sanctions would help guide Panels to avoid the current trend of inappropriate short term reviewable sanctions;
- the section on insight and remorse begins with equality and diversity considerations which gives undue prominence;

- the structure of the guidance requires thought to ensure it addresses the audience(s) clearly and enables better flow;
- include a section outlining that when making decisions about what sanction, if any, to impose panels should consider the least restrictive sanction first, working upwards only where that sanction is not appropriate;
- thought needs to be given as to how to communicate to stakeholders during the consultation that the main factor for Panel sanction decisions is risk of public harm. Risk is not consistently referred to in the policy for all sanctions and it should be highlighted at the beginning of the policy;
- ‘child pornography’ is not the accepted terminology and should be changed to ‘images of child sexual abuse’; and
- serious offences should not just be framed in terms of their impact on public confidence but also public safety and protection.

- 9.4 The Committee discussed the PSA’s recent public survey findings on dishonesty. The Committee noted that the survey’s engagement was limited and **advised** caution in introducing ambiguity as to the seriousness of dishonesty as a regulator’s role is to be clear and consistent in setting standards.
- 9.5 The Committee discussed mandatory feedback from Panel Chairs as agreed in May 2017. It was **advised** that the new pilot system could be utilised to gain insight into the use of the policy by Panels.
- 9.6 The Committee discussed the inclusion of whistleblowing in the review scope. It was noted that the executive did not expect that it would be appropriate to include but wished to explore the area as it had not been considered before. The Committee **advised** caution regarding registrants’ and public perception of its inclusion in the consultation.
- 9.7 The Committee **advised** that an important message during the public consultation period is that the policy does not stand alone and that extensive training is undertaken by Panellists,
- 9.8 The Committee discussed members’ experience of the market research interview. Some concern was raised about the contextual knowledge of those conducting the interviews and the intensive focus on equality and diversity considerations to the exclusion of other issues. The Committee **requested** that this be fed back and monitored by the Executive.
- 9.9 The Committee thanked the Policy Manager for her very helpful report and **agreed** that an update on the review be included in the Head of Tribunal Services’ report in November 2017 and that any significant developments will be reported to the Committee by the Policy Manager.

## **Item 10. Revised Competency Framework for HCPC Panellists (report ref: TAC 16/17)**

- 10..i.1 The Committee received a paper from the Director of Human Resources.
- 10.i.2 The Committee noted that it considered a first draft of the revised competency framework for Panellists at its meeting in May 2017. Following the May meeting Committee members provided detailed comments and suggestions by email. All feedback received has been collated and incorporated into a revised version of the competency framework now presented for recommendation to Council.
- 10.i.3 The Committee noted that a wider holistic review of the Partner recruitment, selection and appraisal principles will be discussed at the November 2017 meeting. However it remains important to ensure processes are simplified and improved quickly where possible.
- 10.i.4 The Committee **agreed** that the interaction between the competencies of Legal Assessor and Panel Chair required consideration during the wider review.
- 10.i.5 The Committee **agreed** that the heading 'Skills & Abilities' should be changed to 'Competencies'. It was noted that the examples given in the right column are behaviours to illustrate the competency as well in some cases as 'sub competencies' but the focus should be on the six competencies.
- 10.i.6 The Committee **agreed** that the competency 'demonstrates familiarity' should be changed to 'demonstrates compliance' and that throughout the framework 'possession' and 'has' do not mean that someone is competent and should be amended to 'demonstrates'.
- 10.i.7 The Committee **agreed** that 'without discrimination' should be amended to 'without improper discrimination'.
- 10.i.8 The Committee **agreed** to recommend to Council the revised competency framework for HCPC Panellists, noting that it was a large improvement on the version presented in May.

## **Item 11. Mandatory feedback from Panel Chairs**

- 11.1 At its meeting in May 2017, Committee members stressed the importance of feedback from panel chairs following each hearing and advised that it should be mandatory.
- 11.2 The Committee received a demonstration from the Head of Tribunal Services of a feedback tool developed using Survey Monkey to gather mandatory feedback from panel chairs
- 11.3 During discussion the following points were noted:-

- the system represents a significant change for the Executive and therefore its pilot is scoped to ensure it remains manageable within existing resources;
- it is intended that the system is piloted for all final hearing Panels until the end of 2017. This will include part heard hearings;
- it is proposed that feedback is mandatory as part of the Panel Chair role;
- a link to the system will be shared with members to test; and
- a full 360 degree appraisal system involving gathering of feedback from all panel members at all hearings would require significant additional resources. Council approval for a departmental or major project and funds would be necessary.

11.4 The Committee provided the following feedback on the proposed system:-

- the Committee discussed the tone of some of the feedback fields and advised that Survey Monkey reporting limitations could make distinguishing positive and negative feedback difficult if these were not clearly separated;
- the purpose of feedback is to identify issues where they occur but also to reflect on good practice and what went well;
- the term 'assessment' should be amended as it could cause confusion with the appraisal process;
- a free text box should be included to allow expansion on specific issues;
- ambiguous terms and words should be avoided; and
- the pilot should include review hearings as some Panel Chairs do not sit on final hearing Panels due to availability.

11.5 The Committee **asked** if the system is mobile compatible as this would increase take up.

11.6 The Committee welcomed the auto population of the name and case reference fields as this would encourage participation.

11.7 The Committee welcomed this important initiative, suggested that an email be circulated to all chairs introducing the system, and the Panel Chair members of the Committee agreed to help promote the use of the feedback tool among fellow Chairs at appropriate events. TAC members

would be sent the next draft to try out on themselves and return with any further comments.

## **Item 12. Legal Assessor appraisals (report ref: TAC 15/17)**

- 12.1 The Committee discussed proposals for a Legal Assessor competency framework and appraisal system. During discussion the following points were noted:-
- one regulator currently appraises Legal Assessors. Two of the regulators use quality assurance systems, as opposed to peer/self-appraisal systems; and
  - the Executive's preference is to adapt the existing competency based appraisal system once a competency framework for Legal Assessors is in place.
- 12.2 The Committee **advised** that the proposed system appeared more complex than required for the purpose of identifying performance issues. It was noted that focusing on outliers of performance is appropriate for both Panellists and Legal Assessors none of whom is a formal employee of HCPC.
- 12.3 The Committee noted that Legal Assessor buy in to the new system is essential for its success. It was noted that at present addressing performance and behavioural issues is challenging as there is no formal guidance.
- 12.4 The Committee **agreed** the following points:-
- the six key competency headings are appropriate;
  - the right side of the framework outlining demonstrated behaviours should be removed to focus on the key competencies;
  - 'expert' knowledge should be amended to 'detailed';
  - 'possesses' is not a competency and should be amended to 'demonstrates';
  - 'clear and reasoned decisions' should be amended to 'clear and well-reasoned decisions';
  - IT skills are key to the efficiency of Panels; and
  - an understanding of the advisory nature of the role rather than decision making should be articulated.

- 12.5 It was noted that a 'here and now' solution would be beneficial in the interim. Members **agreed** to submit feedback to the Director of Human Resources on editorial amendments to the framework.

### **Item 13 Panellist self-assessment process for renewal agreement (report ref: TAC 17/17)**

- 13.1 The Committee received a paper from the Director of Human Resources
- 13.2 The Committee noted that, until other processes such as mandatory feedback from Chairs are fully established and embedded, there is a need to maintain a simplified version of the self-assessment process for agreement renewal.
- 13.3 It is proposed that the revised process is piloted in the autumn for a small number of Panellists. This would be in advance of a further cohort due to go through the self-assessment in March 2018.
- 13.4 The Committee **agreed** that the reference to the 'STAR' system should be removed but that brief guidance, i.e. reference to situation, action and outcome, should remain.
- 13.5 It was **agreed** that a maximum word count for each answer should be indicated.
- 13.6 The Committee **advised** that the scoring system required further consideration and simplification as at present it was not easily understood. It was noted that the intention is for a minimum score of two to be achieved for each competency which is not conveyed well.
- 13.7 In response to a question it was noted that there is no appeal process due to advice on keeping the process separate from an employer/employee arrangement. Extenuating circumstances are taken into account and borderline performance can be addressed by an improvement plan.
- 13.8 The Committee **noted** that the comments would be incorporated into the process before it was piloted with a small group of Panellists in October.

### **Item 14. Committee priorities, objectives and future agenda items**

- 14.1 The Committee **agreed** that at its meeting in November 2017 it will focus in the whole system of Partner recruitment, training, appraisals, self-assessment and reappointment, reflecting its Terms of Reference and priorities. When the new Partner head is in post in October a meeting would be arranged with her, the Chair and the Heads of Tribunal Services and HR to scope the strategy and prepare for an extensive discussion at the meeting. Members would be notified of the date and welcomed to attend if available.

**Item 15. Any other business**

15.1 There was no further business.

**Item 16. Date & time of next meeting:**

16.1 Thursday 16 November 2017, 1pm

**Chair Marcia Saunders**

**Date 16/11/2017**