

Tribunal Advisory Committee

Public minutes of the 5th meeting of the Tribunal Advisory Committee held on:-

Date: Wednesday 30 May 2018

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
Alan Kershaw
Marcia Saunders (Chair)

In attendance:

Claire Amor, Secretary to the Committee
Claire Baker, Tribunal Services Manager – Hearings
Olivia Bird, Policy Officer
Amanda Johnson, Hearings Team Manager
Zoe Maguire, Head of Tribunal Services
Uta Pollmann, Partners and HR Manager

Public

Item 1. Chair's welcome and introduction

- 1.1 The Chair welcomed Committee members and the Executive to the fifth meeting of the Tribunal Advisory Committee.
- 1.2 The Committee noted that a development session with the Chair of Council and other key members of the Executive would be arranged for the weeks following the Committee's September 2018 meeting.

Item 2. Apologies for absence

- 2.1 Apologies were received from Shelia Hollingsworth.

Item 3. Approval of agenda

- 3.1 The Committee agreed to consider the findings of the PSA's lessons learned review into the Nursing and Midwifery Council's handling of concerns about midwives' fitness to practise at the Furness General Hospital. This item would be considered following the Head of Tribunal Services report.
- 3.2 The Committee approved the agenda.

Item 4. Declarations of members' interests

- 4.1 Graham Aitken, Catherine Boyd and Philip Geering declared an interest as sitting panel chairs in the meeting on 16 November 2017. 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.
- 4.2 The Committee agreed that a declaration of interests form would be circulated to members annually. It is the responsibility of individual members to keep the interests register up to date.

Item 5. Minutes of the Tribunal Advisory Committee meeting of 19 February 2018 (report ref: TAC 09/18)

- 5.1 The Committee received the draft minutes from its meeting held on 19 February 2018.
- 5.2 The Committee agreed that 'discountenance' should be amended to 'discontinuance' in paragraph 8.4.
- 5.3 The Committee agreed the minutes.

Item 6. Matters arising (report ref: TAC 10/18)

- 6.1 The Committee noted the matters arising from its meeting of 18 February 2018.
- 6.2 The Committee discussed the matter arising on health and character declarations being extended to Panel members. It was noted that this would be addressed in the Partner newsletter. The Committee agreed to receive an update at its meeting in September 2018. *Action*.
- 6.3 The Committee requested that the draft of feedback guidance for Partners be circulated to members when ready. *Action*.
- 6.4 The Committee noted that the action point five, the effect of discountenance legal clarification, is still awaiting legal clarification and an update will be provided when this is complete.
- 6.5 The Committee noted the report.

Item 7.i. Head of Tribunal Services report (report ref: TAC 11/18)

- 7.i.1 The Committee received a report from the Head of Tribunal Services.
- 7.i.2 The Committee noted the following points:-
- slightly fewer final hearings concluded in 2017-18 than the previous year. However, overall 59 more hearings concluded in 2017-18 compared to last year, this relates to the increase of interim order and review activity;
 - HCPC's policy on investigating health allegations was approved by Council on 24 May 2018. A revised Practice Note on this area is being developed, it will be presented to the Committee for approval in September 2018; *Action*:
 - in March 2018, the team successfully piloted a day of preliminary applications assessments at the HCPC's offices. These applications would ordinarily be considered by e-mail by the Panel Chair and Legal Assessor. The pilot's premise is that dealing with applications in-house could be more efficient. Initial feedback is that the pilot system is effective. The pilot will continue
 - as part of the FTP improvement plan a formal review of the feasibility of using ICP specific Panel Chairs will initiate shortly. The review will look at what the legislation allows, identifying what the operational and resource impact may be as well as the risks and benefits; and

- the Fitness to Practise quality compliance team will produce a report on the feedback from all recent panel training. This will be considered by the Committee in September 2018. Action:

7.i.3 The Committee discussed the planned review of ICP specific Chairs. The Committee noted that such a role may better suit some working patterns and identified both benefits and potential concerns: albeit broadly supportive of the review, members urged some caution, for example concern was raised that ICP specific Chairs should have experience of final hearings to contextualise their role.

7.i.4 The Committee noted the update.

Item 7.ii. PSA Lessons Learned Review – The Nursing and Midwifery Council’s handling of concerns about midwives’ fitness to practise at the Furness General Hospital

7.ii.1 The Committee noted that the recently published PSA lessons learned review had been circulated to members as an addition to the meeting’s agenda.

7.ii.2 The Committee noted the following points:-

- in February 2017, the Secretary of State for Health asked the PSA to undertake a ‘lessons learned’ review of the Nursing and Midwifery Council’s (NMC) handling of concerns about midwives at the University Hospitals of Morecambe Bay NHS Foundation Trust Furness Hospital;
- the review identifies lessons for the NMC and other regulators about its handling of the cases in question and its approach to relationships with witnesses (e.g. complainants, patients, bereaved families) and other stakeholders;
- emphasis is given to failings in the NMC’s approach to the value of evidence from and communication with witnesses and the NMC’s commitment in practice to transparency;
- the PSA have stated that its lessons are drafted widely because they contain points for all regulators to bear in mind; and
- the Fitness to Practise team will be reviewing the report and identifying learning for the HCPC, including Tribunal Services. HCPC’s response and identified learning will be considered by Council in July 2018.

7.ii.3 The Committee noted that engagement early in the fitness to practise process impacts on subsequent stages. Support for the complainant and / or bereaved families throughout the fitness to practise process, including during the tribunal stage, was discussed.

- 7.ii.4 It was agreed that expectation management is a key part of witness support, with clarity about the part a witness plays in the process being essential as well as wider public understanding about the scope of professional regulators thus the conduct of their hearings.
- 7.ii.5 The Committee noted that in at least one case included in the review, the hearing Panel made a positive impression on a bereaved parent and this was encouraging. It was agreed that empathy is a key quality required of Panel members, as they control the tone of the hearing. It was agreed that a clear statement to all parties regarding behaviour, respect and other expectations at the beginning of a hearing can help set this tone.
- 7.ii.6 The Committee discussed witness support. The Committee received a reassuring verbal summary of the provision in place at the HCPC. The Committee agreed that Practice Notes relating to this area would be reviewed urgently in light of the review's findings. *Action.*
- 7.ii.7 The Committee considered the HCPC's tribunal culture to be deliberately non-adversarial, which is a strength that needs to be protected when introducing change.
- 7.ii.8 The Committee considered that Panel members should support and bolster each other in difficult cases, to ensure they are confident in challenging inappropriate behaviours towards vulnerable witnesses. The Committee agreed that the Hearings Officer can also play a helpful role in discreetly alerting the Panel to signs of distress from a witness.
- 7.ii.9 The Committee agreed that Panel members should receive a pre warning of a particularly distressing case or distressing evidence, as well as a briefing on any sensitivity issues that required management.
- 7.ii.10 The Committee noted that the findings of the review will be incorporated into upcoming Panel training, as well as internal training for fitness to practice employees.
- 7.ii.10 The Head of Tribunal Services advised the meeting that a draft report from FTP to the next Council was being developed, and she would incorporate a summary of TAC's discussions and advice in that report. It was agreed that Zoe would provide a brief draft and circulate it to TAC members for consideration, refinement and confirmation. *Action.*

Item 7.ii. Partner team operational report (report ref: TAC 12/18)

- 7.ii.1 The Committee received a report from the Partners and HR Manager.
- 7.ii.2 The Committee noted the following points:-
- the Partner portal is now being used for recruitment purposes, two smaller campaigns have been run successfully through the portal.

Refresher training sessions can now be booked through the portal. Additional functionality is currently being tested;

- the reporting period saw higher overall turnover than previous months. The main reasons for resignations have been other work commitments, ill health and retirement;
- recruitment has been challenging for hearing aid dispenser Partners. During a recent campaign only one applicant was shortlisted. A second campaign followed during which all hearing aid dispensers were contacted directly. This resulted in five candidates being interviewed; and
- the new self-assessment form has been successfully implemented. Five Panel members have been selected to complete their self-assessment through the portal as a pilot.

7.ii.3 The Committee requested that future reporting on Partner turnover is more granular, as the term 'voluntary turnover' did not give a clear picture of the reasons behind resignations. Additionally the Committee advised that those partners leaving due to the eight year rule should not be classed as 'compulsory' leavers but that instead a term more fitting be used so as to provide more meaningful information about departures.

7.ii.4 The Committee noted the contents of the report.

Item 7.iii. Update on Legal Assessor recruitment (report ref: TAC 13/18)

7.iii.1 The Committee received a report from the Partners and HR Manager.

7.iii.2 The Committee received a report summarising the recent Legal Assessor recruitment campaign. It was noted that the campaign had drawn significant interest and a high quality candidate pool.

7.iii.3 The Committee discussed the equality and diversity information regarding applicants. Concern was expressed at the small number of non-white applicants reaching the interview stage of the process. It was noted that shortlisting is anonymous, and that at the interview stage the success rate for non-white candidates was relatively high. The HCPC requires a 10 year practising certificate which inherently limits the diversity profile of the pool available to draw from. Diversity has increased considerably during that period and monitoring should reveal better results in coming years. Meanwhile scrupulous attention to equality issues in recruitment must continue.

7.iii.4 The Committee noted the contents of the report.

Item 8. Selection and Appointment Policy and Procedure (report ref: TAC 14/18)

- 8.1 The Committee received a paper from the Partners and HR Manager.
- 8.2 The Committee noted that the policy provides the framework for good practice in Partner recruitment in order to attract high quality candidates from diverse backgrounds.
- 8.3 It was noted that the intended audience for the policy and procedure is HCPC employees. A shorter tailored version will be produced for applicants.
- 8.4 The Committee expressed concern that members of Council are currently involved in shortlisting for Partner recruitment. It did not consider this proportionate and it could be seen to conflict with the concept of independence. The Committee supported the concept of a recruitment Partner role for tribunal roles, as the HCPC currently has a recruitment Partner for registration Partner roles.
- 8.5 The Committee discussed and approved the policy.

Item 9. Conflict of Interest Policy and Procedure (report ref: TAC 15/18)

- 9.1 The Committee received a paper from the Partners and HR Manager.
- 9.2 The Committee noted that the Partner team plans to introduce a Conflict of Interest Policy and Procedure. A draft was presented setting out the expectations regarding real or potential conflicts of interest and the process for dealing with a conflict of interest raised in relation to a Partner.
- 9.3 The Committee agreed that the 'aims' section of the document should be in the introduction.
- 9.4 The Committee agreed to recommend the policy to Council for approval.

Item 10. Indicative Sanctions Policy Consultation (report ref: TAC 16/18)

- 10.1 The Committee received a paper from the Policy Officer.
- 10.2 The Committee noted the following points:-
 - the scope of the review was discussed at its September 2017 meeting;
 - based on the findings of market research, extensive revisions have been made to the policy. The market research provided insights into the types of cases which participants considered to be particularly serious, as well as indicated factors which would be considered aggravating or mitigating;;

- the Council approved the draft policy for consultation at its meeting in May 2018; and
 - the consultation is expected to run from 4 June 2018 to 31 August 2018. The results of the consultation will be presented to Council at their meeting in December 2018.
- 10.3 The Committee noted that following legal review the section on service user harm has been removed from the draft policy as service user harm is the basis of all considerations. The Committee disagreed with this decision and urged the importance of its inclusion, particularly in light of the key messages from the PSA's lessons learnt review discussed earlier on the agenda.
- 10.4 The Committee agreed that the seriousness of dishonesty should not be diluted, it was agreed that the policy does not provide much guidance on dishonesty that is not at the highest end of seriousness.
- 10.5 The Committee agreed that Practice Notes should be referred to within the policy where relevant.
- 10.6 The Committee agreed that the paragraph regarding strike off orders required revision for clarity.
- 10.7 The Committee expressed concern about the extent to which mediation was discussed within the policy.
- 10.8 The Committee agreed that the paragraph on community orders required legal review as it did not appear to be accurate.
- 10.9 The Committee agreed that the section on insight should be revised to emphasise that insight must be demonstrated and evidenced.
- 10.10 The Committee agreed that the list of sanctions within paragraphs 82 and 72 should be consistent.
- 10.11 The Committee agreed that a framework for pulling together a TAC response to the consultation would be devised by Panel Chair member CB. This would include a comments column and circulated for members to contribute their views. It would then be edited and consolidated by CB/MS into one the TAC's response, recirculated and signed off by the Chair. ACTION: TAC Members.

Item 11. Practice Note review - (report ref: TAC 17/18)

- 11.1 The Committee received a paper from the Head of Tribunal Services.
- 11.2 The Committee noted that the cycle of review for Practice Notes (PNs) has been temporarily amended to ensure that the areas of work linked to the FTP improvement plan project are prioritised.

- 11.3 The PN 'Review of Sanction Orders' has been reviewed and is presented to the Committee for approval.
- 11.4 The Committee noted that the main revisions to the PN were as follows:-
- inclusion of overview of general provisions of Article 30 (1) mandatory reviews;
 - revision to paragraph concerning the discretionary power of Article 30 (2);
 - inclusion of paragraph relating to extending orders; and
 - revisions and clarification regarding panels powers and the issues to be addressed at review hearings.
- 11.5 The Committee agreed that page 5 of the PN should clarify that the starting point of a review hearing is that the registrant has been found unfit to practise and that the persuasive burden is on the registrant to prove they are no longer unfit to practise.
- 11.6 The Committee agreed that the second bullet point on page five of the PN should be amended to ensure that insight is demonstrated.
- 11.7 The Committee agreed that article 30 reviews should have a title within the PN to separate this area.
- 11.8 The Committee agreed that footnote 3 on page 5 of the PN requires revision for clarity
- 11.9 The Committee discussed and approved the revised PN, Review of Sanction Orders, subject to the amendments agreed being applied.

Item 12. First Tribunal Advisory Committee annual report to Council (report ref: TAC 18/18)

- 12.1 The Committee received a draft from the Chair. The Committee noted that it was one year since its establishment and that the Committee had agreed to report to Council annually on its operation. The Chair thanked members who had contributed to an earlier draft.
- 12.2 The Chair of the Committee will present the report to the Council at its meeting on 4 July 2018.
- 12.3 The Committee approved the report subject to the inclusion of its current meeting being incorporated.

Item 13. Assurance framework (report ref: TAC 19/18)

13.1 The Committee received a paper from the Secretary to the Committee. It was noted that the document was a work in progress and would be further refined.

Item 14. Any other business

14.1 There was no further business.

Item 15. Date & time of next meeting:

15.1 Thursday 5 September 1pm.

Chair Marcia Saunders

Date 05/09/2018