

Tribunal Advisory Committee, 12 September 2017

Review of Practice Notes

Executive summary and recommendations

Introduction

Practice Notes exist to provide clear guidance to all parties with an interest or involvement in a Fitness to Practise investigation or Hearing. As our processes change, or there are case law or learning issues, it is necessary to review these documents. The following provides an update about the ongoing programme of review of these key documents.

There are currently 30 Practice Notes. These documents are available on HCPTS' website, and are actively referred to during the investigation and hearing processes.

We aim to review each Practice Note on an annual basis. The review has three stages: firstly, HCPC review any relevant case outcomes, complaints or learning points from bodies such as the Professional Standards Authority. Any changes to content or wording are then added. The second stage is for a review by HCPC's Special Counsel, to ascertain if any legislative changes are required. The third and final stage is to review the readability of the document prior to consideration at Council.

In most cases, there are little or no changes, or there is the requirement to edit the document to make it easier to understand or use.

The Practice Notes are not reviewed in isolation. Most relate to an element of an HCPC policy, so the review cycle of the Practice Notes is linked to the review of policies, or any operational guidance for HCPC or HCPTS team members.

The review cycle and number of documents is such that we envisage approximately three revised Practice Notes per Council meeting. We have prioritised the review based on operational impact on Fitness to Practise case activity, time elapsed since the previous review, and the volume of review time by Council.

Decision

The TAC is asked to:

- i) consider the attached paper; and
- ii) agree the proposed approach and timescale .

Background information

On the timetable presented and agreed at the last TAC meeting in May 2017, there were eight Practice Notes that were due to be reviewed in September 2017.

These Practice Notes are: Case Management and Directions; Case to Answer Determinations; Unrepresented Parties; Proceeding in the Absence of the Registrant; Postponement and Adjournment of Proceedings; Discontinuance of Proceedings; Disposal of Cases by Consent; and Interim Orders.

However, at the time of writing, we have just received the draft performance review report from the Professional Standards Authority (PSA). This report assesses HCPC (and HCPTS) performance against their Standards of Good Regulation.

This draft performance review document references all of the above areas, so an operational decision has been taken to postpone the review of these Practice Notes until a consideration of the performance review has been made, and presented at Council.

Following this discussion and review, there may be changes that need to be made to the Practice Notes. We have, in preparation for the TAC, reviewed the Practice Notes above, and considered if there were any significant changes in case law, or any important learning points, complaints or operational issues that would require immediate changes to the Practice Notes.

We have concluded in seven of the eight areas of guidance, that there is no immediate change required. Any changes following the performance review would be included with the next Practice Notes in December. TAC is reminded that all Practice Notes, were reviewed in March 2017, as part of the preparation for the HCPTS transition, and the need for wholesale review is therefore unlikely.

However, legal advice following a case in relation to interim orders has suggested a small addition to the Practice Note on Interim Orders. 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.

A discussion of the legal advice will form part of the TAC meeting.

The current version of the Practice Note on interim orders can be found at the link below:

<https://www.hcpts-uk.org/aboutus/publications/201704071110-interim-orders>

TAC are drawn to the existing section Interim Orders during the appeal period, which will form the basis of the discussion for enhanced guidance that will take place in the meeting.

Practice Notes for cases relating to allegations of sexual motivation, and advising registrants on the need to hold indemnity insurance

At its meeting in May 2017, TAC asked HCPTS to consider whether a separate and stand-alone Practice Note was required in the two areas above.

On reflection, and taking legal advice, it is HCPTS' view that the two areas certainly would benefit from further supportive advice, but – as this is information, and not procedural guidance, then a separate Practice Note would not be necessary.

Rather, the guidance for sexual motivation would be best to feature in the ongoing revision of the refresher training for all Panel Members, and also for some targeted awareness raising for Chairs and Legal Assessors, using direct mailing and use of the existing Partner Newsletter.

Advice directly to registrants on the need for indemnity insurance is best placed as separate to the Practice Notes on the website. We will consider how this is best signposted on the HCPTS website, or whether it is more appropriate on the HCPC general information website, as it applies to those registrants not currently involved in open fitness to practice hearings.

We will undertake this in the period between now and December 2017.

Resource implications

The review process is managed through the existing FTP processes and existing resources.

Financial implications

The review of Practice Notes is part of the FTP workplan for 2017-18. Any deviations from the proposal may require review of the resources allocated to the workplan.

Appendices

None

Date of paper

1 September 2017