

Tribunal Advisory Committee, September 2017

Update on Legal Assessors and panellist performance management

Executive summary and recommendations

Introduction

1. The purpose of this paper is to update the Committee on progress in the Executive's consideration of the areas listed below.
 - Legal Assessor competency framework and appraisals
 - More regular panelist performance feedback
 - Mandatory feedback from Chairs after each hearing

Legal Assessor competency framework

2. At its last meeting the committee advised that a new competency framework for Legal Assessors was needed and that appraisals should be extended to cover Legal Assessor roles. We would like to take this work forward and have looked into how this might be achieved.
3. Research has been carried out to establish how Legal Assessors' performance at other regulators is assessed. Of the six regulators contacted, none had a specific competency framework in place for Legal Assessors. As a result, a first draft competency framework for HCPC Legal Assessors has been developed in collaboration with the Head of Tribunal Services by modifying the standard HCPC panelist competency framework.
4. The first draft of the Legal Assessor competency framework is attached at Appendix 1.

Legal Assessor appraisals

5. Of the six regulators contacted, only one regulator, the GOsC (General Osteopathic Council) currently appraises Legal Assessors. The process used is a generic annual appraisal and self-appraisal process covering all non-executive roles.
6. Two of the regulators (the NMC and GDC) use quality assurance systems, as opposed to peer/self-appraisal systems, to monitor the performance of Legal Assessors. Quality assurance metrics shared with us included; sitting days, High Court feedback regarding incorrect legal advice, concerns raised and upheld, cancelled sittings, late attendance.

7. At HCPC appraisals for panelists are currently competency-based. Our preference at this stage would be to adapt our existing competency based appraisal system once a new competency framework for legal assessors is in place, although the Tribunals Services team is considering supplementing this with some statistical data on events planned, events sat , number that did not conclude on time, etc.
8. We are aiming to deliver biannual peer and self-appraisal for Legal Assessors in accordance with the following timetable:

TAC considers first draft of a new competency framework for legal assessors	TAC meeting September 2017
TAC finalises new competency framework plus appraisal criteria for legal assessors	TAC meeting 16 November 2017
Council approves new competency framework for legal assessors	Council meeting 7/8 February 2018
Appraisals start to be implemented	February/March 2018

More regular panelist performance feedback

9. At its meeting in May 2017 the Committee advised that in the longer term it would be beneficial for the performance of panelists to be monitored more frequently. Two possible options emerged;
 - (i) peer feedback to be provided to panelists after every hearing
 - (ii) a full-scale anonymized 360 degree appraisal system that would draw feedback from every hearing
10. It is recognised that either of these systems would have the potential to bring significant benefits in terms of enhancing performance, encouraging development and informing learning needs for panelists. Either type of system, and in particular a 360 degree appraisal system, would need very careful design and implementation in order to meet its objectives. Either type of system would also require significant additional resources. An assessment has been carried out to determine the extent of resources needed.
11. The current system of self/peer feedback appraisals involves gathering of feedback from panel members and the panel Chair which is fed back to the appraisee. Around 300 appraisals are run each year involving the gathering and collation of around 1200 feedback submissions and requiring a resource of 20 hours per week covering administration, advice and support. Once efficiency gains have been realised through increased automation (the new CoreHR information system), the work will reduce to 18 hours per week.
12. If we were to move to a system of gathering and communicating peer feedback for every panel then the number of appraisals or 'feedback events' would increase significantly and would require additional resource. In a year we run 1644 hearings or events as follows: 540 final hearings, 420 Interim Orders, 360 Substantive reviews, 144 ICPs and 180 miscellaneous matters.

Estimates of additional resource needed are set out in the table below and are also informed by the sizes of teams at other regulators (e.g. the NMC has a team of 4 to run panelist performance management and quality assessment).

Resource estimates: all Tribunal Service events			
	Number of events per year	Number of feedback submissions per year	Resource required (hours per week)
Current peer review appraisal system	300	1200	18
Peer review for every event (4 reviewers)	1644	6500	97
360 degree appraisal for every event (6 reviewers)	1644	9864	148

Resource estimates: final hearings only			
	Number of final hear per year	Number of feedback submissions per year	Resource required (hours per week)
Current peer review appraisal system	300	1200	18
Peer review final hearings only (4)	540	2160	35
360 degree appraisal final hearings only (6)	540	3240	50

13. If we were to introduce an anonymous 360 degree style appraisal system, then it is likely that development of further technology would be needed. Council approval for a departmental or major project and funds would be necessary.
14. In order to take this work forward, it would be necessary for the TAC to advise the Council to allow for significant additional resources in the 2018/19 budget and/or in budgets for subsequent years.
15. In the shorter term, we are focussing on enhancing existing systems though the introduction of appraisals for Legal Assessors covered above, improvements to the self-assessment for reappointment process set out in a separate item, and looking at options for mandatory feedback from Chairs as set out below.

Mandatory feedback from Chairs after each hearing

16. At the previous TAC meeting, we specifically discussed the importance of increasing the feedback from Panel Chairs. This feedback would allow us to identify areas of individual performance that may need to influence development of pre-hearing preparation; guidance for Panels; the Panel training programme; or individual Partner performance management.

17. It was recognised that resources would not allow the development of a tailored system within the current budget year, and that the HR Partners electronic system which is currently in development, may be a suitable mechanism to help future data collection. In the meantime, the Head of Tribunal Services has explored a low cost, highly adaptable survey mechanism to cover the period until the HR Partner system is tested and implemented.
18. We would like to demonstrate the proposed survey online to TAC members in the meeting, and to get input and advice on the design and content. Once developed and agreed, we would like to engage TAC members who are current Panel Chairs to pilot the survey on some of their own hearings.
19. If this approach works, we would like to engage TAC members in the communications with other Chairs to explain the purpose and aim of the feedback, and to strengthen the participation of non-TAC Chairs. It may assist TAC members ahead of the presentation, for us to set out the assumptions made, and operational limitations considered. These can be summarised as:-
 - The mandatory feedback would be completed by Chairs online, after the hearing has concluded. The survey has been constructed to take only a few moments to complete. Automatic population of fields will be explored to decrease further any data input (such as name of Chair, date and details of hearing etc.).
 - The feedback is from the Chair only, and covers four areas to help development work. The feedback is not a joint Panel feedback mechanism. Other participants can continue to use the existing paper based mechanism, or raise concerns via the Hearing Officer, or direct to the Tribunal Services team as appropriate.
 - Feedback will be piloted on final hearings only in the first instance. This is to recognise that final hearings are generally more complex, and can have more complex evidence or dynamics between participants. They are also potentially longer and more complex to manage to conclusion within time. Operationally, we hold up to 45 final hearings per month. If we were to pilot from October to December, we would have 135 elements of feedback to assess.
 - Similarly, resources within both FTP and Partners' team limit collating significantly more feedback from other types of hearing, if we are to meaningfully analyse and take action. We have no evidence to say that the behaviours, individuals or issues would not be represented within final hearing activity alone. We would not be able to manage feedback from more than 5000 hearing events per year, and the limited pool of Panel Chairs may not be willing to engage in this level of feedback.

- Feedback is mainly by categorical answers, and free text responses are limited. We aim to use the feedback as a trigger mechanism for the Chair to alert us that there may be concerns regarding the pre-hearing organisation, the Legal Assessor input, the abilities of the lay or registrant Panel Members, or the Chair's own self-assessment of their own abilities. The feedback can incorporate multiple concerns raised from one hearing.
- If any of these triggers are present, we propose to contact the Chair for more details. We expect that the largest majority of hearings would have no, or few, issues to raise. The recording of triggers can show patterns over time with individuals (or combinations of participants), but also does not rely on laborious data input and possible misinterpretation of the issue.

HEALTH AND CARE PROFESSIONS COUNCIL

Competence Framework for Legal Assessors

Introduction

This Competence Framework is based upon the *Judicial Skills and Abilities Framework 2014* for the Courts and Tribunals Judiciary and adapted specifically to the role of HCPC Legal Assessor. Competencies are grouped under six headings:

- Advising effectively;
- Working with others;
- Exercising judgement;
- Possessing and building knowledge;
- Managing work efficiently;
- Communicating effectively.

Skills & Abilities	Legal Assessors
1. Advising effectively:	
Provides balanced, proportionate and pragmatic advice to identify and clarify essential issues in a range of tribunal settings	Demonstrates the ability to quickly absorb, recall and analyze information, facts and legal argument.
	Identifies and focuses on the real issues in order to provide clarity and facilitate decision making
	Independently applies legal rules and principles to the relevant facts.
	Weighs evidence in order to make findings of facts and reach a reasoned decision.

2. Working with Others:*		Legal Assessors
<p>Ensures proceedings are conducted appropriately, values diversity and shows empathy and sensitivity in building relationships.</p> <p><i>*Others refers to all users, colleagues, staff, advocates and witnesses.</i></p>	Treats people with respect, sensitivity and in a fair manner without discrimination.	
	Ensures that all parties have a fair opportunity to present evidence and participate fully in the hearing.	
	Has an awareness of diversity and of the obligation to ensure the requirements of those with differing needs are properly met.	
	Works constructively with others to encourage co-operation, collaboration and identification of solutions	
	Is able to recognise and deal appropriately with actual or potential conflicts of interest.	
	Demonstrates familiarity with HCPC policies on expected behaviours including the HCPC Partner Code of Conduct	
3. Exercising Judgement:		
<p>Demonstrates integrity and applies independence of mind to ensure that the panel makes fair decisions in line with the Health and Social Work Professions Order 2001</p>	Exercises sound, pragmatic judgement and is demonstrably fair and neither biased nor prejudiced. Demonstrates integrity and independence of mind.	
	Supports the panel in an appropriate and timely manner to reach clear and reasoned decisions which are fair, objective and based upon relevant law and findings of fact.	
	Is aware of and advises panel appropriately on requirements for public and private hearings	

4. Possessing and building knowledge: Legal Assessors	
Possesses an expert knowledge of the relevant law and procedure and demonstrates an ability and willingness to learn and develop.	Possesses an expert knowledge of the relevant law and its underlying principles and procedure.
	Demonstrates a willingness and ability to identify and apply relevant changes in Case Law
	Shows an ability and willingness to learn and develop.
	Keeps up to date with changes in the law and procedure in particular through engaging with HCPC support and training
	Embraces new processes and procedures.
	Demonstrates openness to feedback.
	Possesses a sound understanding of the policy environment with a focus on regulation.
	Demonstrates a clear understanding of, and is able to articulate clearly, public interest and public protection concepts.
5. Managing Work Efficiently	
Assists the Chair to work effectively and collaboratively making the best use of time available.	Works collaboratively and contributes to the fair, efficient and effective management of cases and the conduct of hearings.
	Responds calmly and flexibly to changing case/hearing circumstances.
	Assists the Chair to run hearings efficiently and effectively taking responsibility for the use of the panel's and tribunal's time and resources
	Undertakes necessary preparatory work, manages time and tasks and minimises delays and irrelevancies.

6. Communicating Effectively: Legal Assessors

Demonstrates clear and succinct oral and written communication skills.

Adopts a clear and succinct communication style, both orally and in writing, which is appropriate to the intended audience.

Listens attentively and provides clarification where necessary.

Demonstrates courtesy through effective communication.

Tailors language and communication style to meet individual needs and circumstances.

Supports the panel to ask clear, concise, relevant and understandable questions without unnecessary technical jargon

Assists the panel to draft clear, proportionate, reasoned decisions

Remains calm and authoritative even when challenged.