

Tribunal Advisory Committee, 19 February 2018

Head of Tribunal Services report

1. Introduction

- 1.1 This update paper summarises a number of key areas of work relating to the planned hearing activity, which is being delivered through the Health and Care Professions Tribunal Service (HCPTS).
- 1.2 It is intended this summary provides a useful context to the Tribunal Advisory Committee (TAC), and follows the format of the previous reports, presented in May, September and November 2017.
- 1.3 This, and previous reports have been written by the Head of Case Preparation and Conclusion, who has been covering the maternity leave of the permanent Head of Tribunal Services. This maternity leave ended in January, and future reports will be written by the substantive postholder.

2. Progress of HCPTS

- 2.1 The Tribunal Service was established in April 2017. We have now concluded around 369 final hearings, and a further 204 review hearings. The transfer of systems to operate an independent tribunal listing system continues to be smooth, with no significant operational issues, or adverse operational feedback from stakeholders.
- 2.2 As previously advised, a review of systems and outputs is being undertaken by the Head of Tribunal Services, following her return from maternity leave. A progress update to TAC will be made in May 2018.

3. Summary of Tribunal Services activity

- 3.1 We have concluded our testing of skype enabled video conference for complex hearings. The approach and use of technology has been such that we have now gone live, and have used it in a number of hearings. We envisage reduced costs and fewer technical disruptions when getting video evidence to Panels. We also envisage greater satisfaction or reduced anxiety of vulnerable parties when participating in future hearings.
- 3.2 We continue to review the levels of part heard and adjourned activity. Year to date, there have been 24 cases adjourned, 2 cross referred between committees and 46 where there has been insufficient time to complete the planned activity. The rates have varied over the year, and with the age and complexity of the cases, with a return to expected levels in January (where 2 cases adjourned in advance and 6 cases went part heard).

- 3.3 We have commenced a review of the multivariant factors that need to be accounted for in listing final hearings. These include age of the case, number of (sub) particulars of the allegations, the number and vulnerability of the witnesses, the time elapsed since the case was referred, ready to fix or listed, and whether the registrant is represented. We will be finalizing this review and making changes to our operational guidance, and the externally facing website, in the coming months.
- 3.4 An emerging trend is for the number of cases, when not concluding, for Panels to direct panel only days, and then for the volumes of resuming days. We are looking at these on a case by case basis, and discussing the issues with the Chairs and Legal Assessors. We have introduced a proforma checklist that will be completed by the Hearing Teams Managers for every adjourned or part heard case. This will form the basis of future analysis, and may prompt contact and engagement of the Chair to any review of the circumstances of the case.
- 3.5 A summary of the usual statistics relating to fitness to practice activity can be found in the public papers going to Council (see link below – will be updated after 16 February with data up to the end of January 2018). The number of open post-ICP cases awaiting a hearing is, at time of writing 388. We anticipate the year ending on between 380 and 390 cases, depending on the number of new referrals. This is nearly 20% down on the figure of 465 cases open in April 2017, and the lowest number of open cases since June 2014.

<http://www.hcpc-uk.org/aboutus/council/councilmeetings/>

4. Health cases policy

- 4.1 An area of the PSA Performance Review which we have been developing is in relation to HCPC's policy on investigating health allegations. HCPC's Special Counsel has conducted research into what constitutes an activity or omission that should be considered as a direct factor or attribute of a registrant's health, versus matters that may be considered as mitigation of their misconduct or lack of competence.
- 4.2 The policy will be presented for discussion at the March Council. We are working with colleagues in the Case Management functions to prepare for any guidance or training that may be required for Panels as a result of this.

5. Reviewable sanctions update

- 5.1 Following from the previous TAC report, we continue to review the trend of numerically more, and more frequent reviewable sanctions imposed at both final hearings and ongoing review stages continues.
- 5.2 We have concentrated on the impact short reviewable sanctions have on both the registrant (and their representative), and on the HCPTS in the Partner Newsletter, and in the Panel training sessions.

- 5.3 There is some evidence to show that there are changes in this pattern, although it is too early to conclude definitively whether there is a lasting change, and what the cause is.
- 5.4 In the period since April 2017, there have been 148 reviewable sanctions imposed at a final hearing. Of these, 53 have been conditions of practice, and 95 suspensions. There have been 34 short suspensions imposed, with 17 of these since October. The rate in the previous six month comparative period had doubled, so this figure has stabilized and in fact, declined slightly. It should be noted that this could also be affected by the age and nature of the cases that are concluded at final hearing, and the representations made to the Panel, as well as the support and guidance given to Panels on this subject.
- 5.5 Similarly, in existing substantive orders, where a review has been considered, 43 conditions have been imposed or confirmed since April 2017; 16 of these are for 9 months or less, with 6 of them (37%) being imposed since October. The same analysis for suspensions shows 75 being imposed or confirmed since April 2017, with 43 for six months or less. Of the 40 short suspensions, 15 (37%) were imposed since October. A further 5 suspensions have been imposed for 7 to 9 months duration, of which only one was since October.
- 5.6 We will continue to review the trend and impact for the next quarter, and use the data to inform Panel support, guidance and training.

6. Panel Chair feedback

- 6.1 Since the last TAC meeting, we have been using the SurveyMonkey tool, in order to get feedback from Panel Chairs. The feedback was deliberately focused on pre-hearing preparation, performance of Panel Members (individually and together), reflection on Chairs' own performance, and indications of any future areas for enhanced support and guidance.
- 6.2 The aim of this survey was to take a proportional and pragmatic approach to getting feedback. It was also to road test the mechanism, with a view to rolling out to other Panel Members, or setting the requirements for a more bespoke approach to surveying participants (possibly using the partner portal or other in house systems) at an appropriate time, likely in 2018/19).
- 6.3 The process of implementing the SurveyMonkey was not without its challenges. Each concluded hearing required a new survey to be set up, otherwise Chairs would not be able to be invited to contribute each time they sat on a hearing. Managing this process using data from the existing Case Management System (which was not designed to support survey technology, and required manual reporting), and the time taken to set up, send and monitor the surveys, was significant, especially in light of there being more than 40 final hearings each month.
- 6.4 The rate of compliance with the survey varied greatly from individual to individual. Some Panel Members – either intentionally or unintentionally –

opted out of receiving future surveys, meaning that on subsequent hearings, a survey could not be sent.

6.5 An analysis of the outputs of the survey will be presented and discussed in the TAC meeting. However, the following summarises progress to date:-

- There were no significant issues raised in relation to any individuals associated with the completed surveys
- Panel members continued to use the paper feedback forms and/or the direct HCPTS email address with operational issues.
- There were no significant issues raised about deficiencies in the support, guidance or training for Panels.
- There were no significant issues raised relating to self-assessment of Chairs themselves.

6.6 Given the labour intensive nature of the survey, and the lack of significant issues raised to date, it may be worth TAC considering whether a 100% sample of hearings remains appropriate. Initially, it was agreed that the focus would be on final hearings, and that the feedback would come from the Chair alone. It may be worth considering whether a focus on other types of hearing may also be appropriate, and also whether the existing survey could be usefully sent to all members of the panel, but on a random sample basis.

6.7 A final consideration may be whether an individual panelist may wish to invite the survey to go to all members of the hearing panel, if they considered there to be issues on which a range of views could be usefully sought. This may take us nearer to the 360 degree feedback model that was initially discussed by TAC.

7. Stakeholder engagement

7.1 The next meeting of the external stakeholder group is in early May. Amongst the usual updates in learning points and Practice Notes, there will be updates on HCPC's response to the Department of Health and Social Care's consultation on Promoting professionalism, reforming regulation.

7.2 TAC members may be interested to read the current HCPC position, set out on our website. Other regulators have responded, and have published their positions on their websites. A link to HCPC's position and the government consultation questions can be found at:

<https://www.hcpc-uk.org/mediaandevents/news/index.asp?id=858>

8. PSA Learning points

8.1 There have been two sets of learning points since the last TAC meeting. These continue the recent themes of the clarity of decisions, specifically in relation to setting out reasons for not applying a sanction or taking further action, and also where Panels agree to make minor amendments to the allegations on the day of the hearing.

- 8.2 We continue to respond to PSA on our view of their suggested learning points, sharing our response with the Panel Members who sat on the case. We also include in appropriately anonymized form, and generic lessons or guidance that can be applied to future cases, in the quarterly Partner Newsletter.

9. Training programme

- 9.1 The existing training programme for Panel Members continues as planned, with three sessions for existing, and one for new panelists since the last TAC meeting.
- 9.2 HCPTS team members, in collaboration with colleagues from HCPC Case Management functions have reviewed the content and delivery of the training, making significant changes. The sessions are now based around interactivity (amongst the attendees and the presenters), and use real life examples taken from cases or our quality assurance mechanism, or from PSA learning points.
- 9.3 The two most recent refresher training events have scored very highly on participant engagement and enjoyment, and particular feedback has been given on the use of the evidence matrix for assessing and considering evidence during hearings, and the focus on interactivity. One Panel Member even took to twitter to express how pleased they are with the move to more practical sessions, including feedback to their peers.
- 9.4 There are further sessions in February and March planned to meet the changes in recruitment on new panel members, and to cover the key area of equality and diversity training.

10. Partner complaints, recruitment and feedback

- 10.1 We continue to work with Partners' Unit to respond to any complaints or concerns raised about individual Panel Members. There are two ongoing matters.
- 10.2 We are currently recruiting for Legal Assessors, with a view to the newly recruited individuals being available to sit on hearings from April onwards. This is a significant piece of work, due to the volumes of likely applicants, and the required number of successful candidates in order to meet our activity forecasts, but also because it is the first recruitment campaign that is being conducted using the new Partner online portal, and using the revised competency and application guidance documentation previously discussed in TAC. HCPTS and Partners' unit have worked closely on this. A verbal update will be given at the TAC meeting.
- 10.3 We continue to experience shortages with several of the professions (namely Practitioner Psychologist, Radiographer and Hearing Aid Dispenser). There are a number of focused recruitment campaigns planned later in the year to tackle these, and we are using the HCPC's various stakeholder sessions (such as Meet the HCPC) and the CPD awareness sessions to flag to

individuals in those professions that there are opportunities to get involved in regulation.

- 10.4 The latest quarterly Partner Newsletter has just been circulated, and has a range of key updates, including: a focus on interim order reviews; an update on the Fitness to Practise Improvement Project Plan; a reminder of data security and the responsibilities of individual panelists; and a brief update on progress with the changes recently implemented at Investigating Committee.

11. Investigating Committee review

- 11.1 We are in the midst of reviewing the changes to the process of administering the Investigating Committee. We have heard 83 cases since the changes were implemented in November.
- 11.2 It is apparent that Investigating Committee Panels are doing as we described in the recent training, in that there has been an increase in the number of cases where the allegations are revised and amended before being referred as case to answer, or where further investigation is directed.
- 11.3 The cases referred to Investigating Committee under this new approach have mostly been those in the system before the changes were made, and before the improved training for Case Managers on allegation drafting. We will continue the review process over the coming months, and bring an update to TAC in May.
- 11.4 We continue to develop our approach to the immediate handling of the case to answer decisions, with a view to ensuring that our external legal investigators have all of the information required to prepare the case for final hearings. We allow ourselves up to one month to do this (although cases are referred as soon as the information is completed). We have identified a number of cases that are simple convictions, or where consensual disposal is possible or requested; these cases do not need to be investigated externally, and are presented by Case Management team members.
- 11.5 We will have an appropriate number of these cases to review in detail during the summer, and will provide an update to this approach in a TAC meeting after the summer.

12. Reviews based on papers

- 12.1 The process of reviewing non-contentious interim orders on the papers alone continues. We have developed our systems to notify registrants and their representatives, of our intention to proceed on the papers alone. The benefits are in terms of efficiency and costs to all parties, where there is no new information, or where the registrant does not wish to challenge the existing order.
- 12.2 There are currently 172 open cases that have an interim order, either in the pre- or post-ICP stages. Of these cases, 35% (60 cases) are currently under an agreement to review on the papers alone.

12.3 We continue to monitor carefully these cases, but to date have had no significant concerns raised about the approach.

13. HCPTS training and resource issues

13.1 The HCPTS team completed a refresher in mental health awareness, in order to deal with parties that are anxious, or have a known mental health issue, and who are participants in our process. As HCPTS hearings are at the forefront of participant contact, and the impact of these issues can be personally difficult for both the participant and the HCPTS, and for the conclusion of the hearing itself, this training is valuable and appreciated.

13.2 One of the Hearing team Managers is about to return from maternity leave in March, and there are a number of vacancies in Scheduling and Hearings teams that are being recruited.

14. Other significant legal rulings

14.1 There have been no significant legal rulings or test cases since the last report.

Decision

The TAC is asked to consider the update.

Resource implications

There are no resource implications arising from this update paper.

Financial implications

There are no financial implications arising from this update paper.

Appendices

There are no appendices associated with this update.

Date of paper

7 February 2018