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Tribunal Advisory Committee, 5 September 2018

Head of Tribunal Services Report

### Executive summary

This paper provides an update to the committee on key areas of activity relating to the Health and Care Professions Tribunal Service (HCPTS), including:

- Summary of activity
- FTP/HCPTS work updates
- PSA learning points
- Panel training
- Partner complaints, recruitment and feedback
- Training and resource update

### Decision

The Committee 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

Appendix 1 – Head of Tribunal Services Report

Appendix 2 - Deliverable matrix Panel induction and refresher training

Appendix 3 – Update on adjourned and part heard cases

### Date of paper

22nd August 2018

## **Tribunal Advisory Committee, 05 September 2018**

### **Head of Tribunal Services Report**

#### **1. Introduction**

1.1 This paper summarises a number of key areas of relevant activity relating to the Health and Care Professions Tribunal Service (HCPTS).

1.2 It is intended that this summary provides a useful context to the Tribunal Advisory Committee (TAC), and follows a similar format of previous reports.

#### **2. Summary of Tribunal Services activity**

2.1 Set out below is a summary of our key statistics between April - July 2018:

<b>Cases concluded at final hearing</b>	122
<b>Final hearings Adjourned/ Part-heard</b>	19
<b>Review hearings concluded</b>	76
<b>Cases in review cycle</b>	220
<b>Interim order applications considered</b>	74
<b>Interim orders reviewed</b>	
<b>Ongoing Post-ICP cases</b>	316

2.2. Between Apr –July 2018, 19 cases were part heard or adjourned. The rate year to date is 13% which is in line with the forecast. We continue to review every case that does not conclude as expected, in order to make any improvements to pre-hearing preparation. For information on adjourned and part heard cases is appended to this report.

2.3 The HCPC/HCPTS Decision Review Group (DRG) meets on a quarterly basis to review the quality of case management and decision making by HCPTS Panels. The purpose of the group is to support proactive organisational learning with particular emphasis on issues affecting key elements of the case management and tribunal processes. The group conduct regular reviews of decisions made by HCPTS Panels.

The last meeting took place in August where the group undertook a review of not well founded cases (facts and grounds), the learning from which will be fed back to our case management teams and legal

services provider. The group also reviewed learning from decisions in 5 cases. Where applicable, recommendations or feedback will be sent directly to panel members.

### **3. FTP/HCPTS activities - progress update**

3.1 Following the PSA's decision last year that the HCPC had not met six of the 10 fitness to practise Standards of Good Regulation, a programme of improvement work was initiated, aimed at addressing the concerns raised by the PSA. The project continues as planned. To date, a significant number of improvements have been made, and the current key areas of activity include:

- Review the human resources needed to manage our future fitness to practise work
- Developing a policy on the new threshold criteria – to be considered by Council in September 2018
- Pilot the use of Investigating Committee Panel specific chairs
- Reviewing the Proceeding in absence Practice Note
- Developing phase 1 (pre-ICP) of the Case Management Manual
- Developing the risk assessment e-learning module
- Developing a case progression strategy for 2018/19 – to be considered by Council in September 2018
- Developing operational key performance indicators

3.2 As previously advised, the HCPC have been developing a new policy in relation to the investigation of health allegations. This is in response to concerns flagged by the PSA that HCPC had not always identified and sufficiently investigated where there may be an underlying health issue, which might impair a registrant's fitness to practise. The development of the new policy forms part of the FTP improvement plan and was approved by Council in May 2018. The new policy sets the context for the wider work that is being undertaken in developing the support and guidance provided to HCPC decision makers.

In light of this, the existing practice note on Health allegations has also been expanded to provide enhanced guidance for panel members when deciding:

- Whether a matter should be referred to a Health Committee;
- When allegations should be cross-referred between the Health and Conduct and Competence Committee

3.3 As part of the Fitness to Practise improvement plan project, the department is undertaking development of the Investigating Committee process. This includes the exploration of the use of Panel Chairs who specialise in Investigating Committee panels.

The aim of the development work is to address issues raised by the Professional Standards Authority (PSA) around the quality of the

drafting of fitness to practise allegations, and ensuring that allegations reflect the full facts of the case. The aim is to also improve decision-making at ICP stage, reducing the numbers of cases that are remitted to a subsequent ICP for allegations to be amended and to potentially reduce the number of not well found and discontinued cases at final hearing.

At this early stage, we are considering running a pilot for a 6-9 month period to assess the benefits of adopting such an approach. We have asked for expressions of interest and feedback from our existing Panel Chairs.

- 3.4 Following formal agreement, the General Chiropractic Council (GCC) have started to use HCPTS facilities at 405 Kennington Road for all of their professional conduct hearings. Their first hearing took place on 9<sup>th</sup> July 2018. We will continue to liaise closely with the GCC to ensure the smooth running of all hearings taking place at the HCPTS.
- 3.5 Work is well underway for the tender for the provision of recording and transcribing services. The successful bidders are due to commence work from September/ October 2018 onwards.

#### **4. PSA Learning points**

- 4.1 No new learning points have been received from the PSA since the last TAC meeting in May.

#### **5. Training programme**

- 5.1 The existing training programme for all panellists, Panel Chairs and Legal Assessors continues as planned. Since the last TAC meeting, panel refresher training has taken place
- 5.2 The feedback from panel training has continued to be positive. At the end of 2017, revised panel member induction and refresher training was launched, being a deliverable for the FTP improvement project. To ensure that the project deliverables are of good quality and achieve the overall objectives of the project, a quality assurance process is produced. The quality assurance of the revised training has now been completed with all the objectives having been met. The outcome of the review is attached to this paper and highlights a number of key areas of good practice and demonstrates a collaborative approach across all teams within FTP, Learning and Development and Partners. A copy of the quality assurance report has been attached.
- 5.3 In conjunction with our learning and development consultant for FTP we are looking at creating an E-learning module for new panel members. The aim of which is to enable panellists to get a good understanding of the work of the HCPC, fitness to practise and HCPTS

prior to attending their induction training session in person. We hope that this blended learning format will enhance and improve our existing training format.

## **6. Partner complaints, recruitment and feedback**

6.1 We continue to work with the Partners team to respond to any complaints or concerns raised about individual Panel Members. There is currently one matter that is being dealt with by the Tribunal Services Manager (Hearings) and the Partners team.

6.2 There has been no partner recruitment since the last TAC meeting.

## **7. HCPTS training and resource update**

7.1 No team training has taken place since the last TAC meeting.

7.2 Following a recent successful recruitment campaign, the hearings team is now at full complement.

7.3 The scheduling team is currently at full complement.

## **Appendix 2**

## FtP Improvement Project

### Objective

Achieve consistent and high quality deliverables

<b>Deliverable Title:</b>	9. Revised Panel Member Induction and Refresher Training, focusing on the ICP role
<b>Deliverable Owner:</b>	Training Adviser/Head of FtP Operations
<p><b>Relevant PSA Standards:</b></p> <p>3. Where necessary, the regulator will determine if there is a case to answer and if so, whether the registrant's fitness to practise is impaired or, where appropriate, direct the person to another relevant organisation</p> <p>5. The fitness to practise process is transparent, fair, proportionate and focused on public protection</p> <p>6. Fitness to practise cases are dealt with as quickly as possible taking into account the complexity and type of case and the conduct of both sides. Delays do not result in harm or potential harm to patients and service users. Where necessary the regulator protects the public by means of interim orders.</p> <p>7. All parties to a fitness to practise case are kept updated on the progress of their case and supported to participate effectively in the process</p> <p>8. All fitness to practise decisions made at the initial and final stages of the process are well reasoned, consistent, protect the public and maintain confidence in the profession</p> <p>9. All final fitness to practise decisions, apart from matters relating to the health of a professional, are published and communicated to relevant stakeholders</p> <p>10. Information about fitness to practise cases is securely retained.</p>	
<p><b>What was the aim of the revision to the training?</b></p> <p>Training objectives and programme has focus on the ICP powers, role and responsibilities.</p> <p>Objectives as follows:</p> <ol style="list-style-type: none"> <li>1. Recognise issues to consider when deciding on a CTA/NCTA decision or otherwise (sufficient information) and providing adequate reasons in decisions</li> <li>2. Recognise issues in relation to amending allegations and the importance of ownership of cases, allegations and decision</li> <li>3. Describe what factors to consider when conducting registration panels</li> <li>4. Recognise the key attributes of well written Fitness to Practise determinations (focus on structure and detail)</li> <li>5. Identify factors to consider when deciding on length of sanction, particularly short suspensions</li> </ol> <p>The above aims have been taken from the FTP Improvement Plan Quality Log.</p>	
<b>QA Review:</b>	

Training documents have been reviewed and overall these are of a high standard. The training is well structured with a variety of methods used including presentations, video, discussions, quizzes and practical examples. It was noted that some of the material is time-relevant and therefore care needs to be taken to ensure that prior to delivery this information is updated.

The focus of the first half of the session focuses on the role and responsibilities of the ICP. The information is accurate, relevant and linked to the PSA Standards of Good Regulation (SoGR).

The use of practical examples for the delegates to work through in groups were relevant and representative of the cases they will see when sitting on an ICP. There are helpful notes for the facilitator(s) on how to guide these discussions but currently do not link the points raised to the PSA standards. The extent to how well these examples will meet objectives 1 & 2 will be impacted on the availability of sufficient facilitators. It will also be important to review these examples on a regular basis to ensure they remain relevant and representative and that they are not repeated with the same delegates.

An 'evidence matrix' is included in the pack for delegates to use during exercise 2. This is designed to assist delegates in working through the decision making process and capturing their reasons. It is not clear whether this is to be used within ICP meetings or is just intended for use during the training. This would appear to be a useful tool for ICP meetings.

Within the pack the delegates receive, there are a number of ICP decisions with comments regarding the quality. Again, these might benefit from including reference to the relevant SoGR. These are provided to delegates but are not discussed during the session. These would be useful examples to discuss but additional time would be needed to cover these. It may be that other aspects of the session could be reduced/provided to the panel before or after the session to enable discussion of these decisions (eg TAC video). This would help the delegates appreciate what is expected of their decisions and assist in meeting objective 4.

The information presented on Registration Panels is accurate and well structured to meet the objective 3. Delegates are provided with clear and concise information about their role and powers and the factors they need to consider when making their recommendation. The need to articulate clearly within their recommendation their reasons is clearly presented.

Activities 4 and 5 are well organised and designed to assist delegates in knowing how to structure a decision and knowing the level of detail required. They also deal with important factors to consider when thinking about sanctions, adjournments etc. The examples provided are relevant and representative of the types of hearings delegates will sit on. The facilitator notes assist the facilitator in guiding discussions and point to relevant SoGR.

## **Conclusion**

Training objectives and programme has focus on the ICP powers, role and responsibilities. **MET**

Objectives as follows:

3. Recognise issues to consider when deciding on a CTA/NCTA decision or otherwise (sufficient information) and providing adequate reasons in decisions **MET**
4. Recognise issues in relation to amending allegations and the importance of ownership of cases, allegations and decision **MET**
4. Describe what factors to consider when conducting registration panels **MET**
5. Recognise the key attributes of well written Fitness to Practise determinations (focus on structure and detail) **MET**
6. Identify factors to consider when deciding on length of sanction, particularly short suspensions **MET**

<b>Content Reviewed</b>		<b>QA Commentary</b>
Panel Member Refresher – Presentation Slides Including notes for presenters.	Sides for presentation including notes for presenters.	<p>The content is generally of a high standard. There is a mixture throughout of information, questions, exercises and discussion.</p> <p>Some of the information is time-relevant and therefore care will need to be taken to ensure that information is relevant and up to date and the time of delivery.</p> <p>Although the PSA Standards of Good regulation are briefly discussed at the beginning of the morning session that focusses on ICP, there could be more references to the PSA standards and reminders for the presenters of when to mention the relevant standard throughout the discussions/exercises (see comments regarding facilitator notes for HCPTS exercise 5).</p> <p>Optional slides should be clearly marked within the notes to ensure the content is delivered as expected.</p>

		There is some inconsistency in language within the section related to Registration Panels (Recommendation v Decision).
'Session plan for presenters – Ref PM-PC'	Provides instructions for presenter on how to manage the Exercises by setting out what they involve, instructions to be given to delegates, and the purpose of the exercise.	As above, the content is helpful to ensure the smooth running of the exercises. As mentioned above it might be useful to include at this stage the relevant standards to these exercises and to remind the delegates of the SCPE.
Investigating Committee panels - case study 1 - drafting allegation	Focus on case study 1 is on evidence to look out for in a bundle and making correct decision based on that (send it back for further info). Delegates are given case background and allegation. (PSA S3, 5, 6, 8)	<p>The exercise and case study chosen allows for the delegates and the facilitator(s) to discuss the importance of having the correct information/evidence in order to make a robust decision.</p> <p>The exercise includes the need to provide clear reasons for requesting further information is included.</p> <p>The Exercise also covers the Panel's role in assessing risk and the potential need for interim measures (PSA Standard 6)</p> <p>The effectiveness of this session will be dependent, in part, by the availability of the facilitator(s) to engage with the groups during their discussions. These will provided the facilitators the opportunity to provide challenge, reiterate the relevant messages. Without this level of interaction, the benefits of the exercise may not be fully realised.</p>
Investigating Committee - case study 2 - ICP decision drafting	Focus on case study 2 is on the evidence matrix, going through the RPT on each particular with the evidence (using a sample bundle). Reminder of well reasoned decisions at ICP stage (PSA S8)	The Focus of the activity is in the application of the realistic prospect test to the three parts of the allegation. The example provided is well chosen to encourage discussion.

		In respect of the drafting of a well reasoned decision. Whilst this is mentioned at the end of the exercise, there was no opportunity for the delegates to set out how they would draft the decision or to perhaps analyse an example provided for the case.
'ICP Decisions – Comments' Included within the delegates pack	Examples of decisions with comments on the quality.	This is a valuable resource. As it provides real examples of some of the issues referred to in internal and external audits of decisions. It is provided as a handout and therefore not discussed during the training. This is perhaps a missed opportunity and arguably there are other aspects of the session that might be better suited home reading pre/post the training event (eg TAC video)
HCPTS Decision making - activity 4	This activity focuses on structure and detail of final determinations (improve efforts to write well reasoned determinations that protect public - PSA S8) and clearly articulate the panel's decision and reasons to all interested parties (PSA S5, 7, 9,)	At the outset, the presentation highlights that PSA Standard 8 relates to the structure and detail of the final Hearing decisions.  The activity focuses on the detail required in decisions and that the document needs to stand-alone. There is reference to the lack of detail in decisions being the most common learning point from the PSA. Whilst the facilitator notes refer to the PSA standard in relation to public and personal components of impairment, it might be useful to provide more markers throughout the session where the role of the delegates in ensuring we meet the standard(s) can be reiterated.
HCPTS Sanctions - activity 5	This is a scenario based activity. 5 scenarios for discussion on lack of insight/engagement, short susp, not complying with conditions, proceeding in absence, dishonesty (PSA S8)	This is a very practical activity that should pull together all the factors that have been discussed throughout the day in relation to structuring a decision with sufficient detail. The Facilitator notes provide very useful instructions to help the

		facilitator guide the group discussions. It might be useful to extend this level of detail in the notes for the previous activities earlier in the day to help support the presenters.
<b>Delivery</b>		<b>Commentary</b>
<ul style="list-style-type: none"> <li>• Training delivered in positive manner.</li> <li>• All delegates are encouraged to engage in discussions.</li> <li>• Speakers provide clear and consistent messages throughout and champion best practice.</li> <li>• Feedback is sought from delegates, and is used to develop training.</li> </ul>		<p>As mentioned above the effectiveness of the exercises is dependent in large part to the ability of the facilitators to guide the discussions and remind delegates of the key messages. This will be significantly impacted if there is only one facilitator is present.</p> <p>Observed speakers were engaging and provided clear messages.</p> <p>The focus of the material is on identifying areas of improvement etc. Examples of good well-reasoned decisions might assist delegates in appreciating that this can and is being achieved albeit not consistently.</p> <p>There are opportunities throughout the session for the delegates to ask questions and feedback is sought at the conclusion of the session.</p>

**Response:**

We would like to invite the Project Board to sign off this deliverable as complete. The improvements identified above will be shared with the FTP Training Consultant and Head of Tribunal Services for consideration and inclusion in future training.

Kellie Green, 24 July 2018

## Appendix 3

### Claire Baker – Tribunal Services Manager - Hearings

#### Adjourned and Part Heard Hearings update

This is an overview of all adjourned (no evidence heard) and part-heard hearings from 01 January – 31 July 2018.

#### Adjourned (no evidence heard) January – July 2018

Hearing Type	Total hearings	Adjourned on the day	%
Final Hearing	265	8	3%
Interim Order Application	134	11	8%
Interim Order review	324	12	4%
Substantive Review	132	7	5%
Total	<b>855</b>	<b>38</b>	<b>4%</b>

#### Reasons for adjournment

	Final Hearing	Interim Order Application	Interim Order Review	Substantive Review	Total
Health of registrant	5	3	0	0	8
Financial hardship and unrepresented	1	0	0	0	1
Error in bundle	0	3	0	0	3
HCPC withdrawing case	0	2	0	0	2
Jurisdiction issues	0	1	2	0	3
Referred to oral hearing	0	0	4	0	4
Lack of time	0	0	3	0	3

<b>Inadequate time to prepare/ seek representation</b>	<b>1</b>	<b>2</b>	<b>1</b>	<b>3</b>	<b>7</b>
<b>Registrant unable to attend on given date</b>	<b>1</b>	<b>0</b>	<b>2</b>	<b>2</b>	<b>5</b>
<b>Error with notice</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>1</b>	<b>1</b>

The majority of final hearings adjourned with no evidence heard due to the health of the registrant. This type of application is outside the control of the HCPTS and one which can't be anticipated. The granting of such applications remains consistent and based on the strength of supporting medical evidence.

There are also a number of hearings which adjourned due to inadequate time to prepare/seek representation. The work we are commencing in relation to unrepresented registrants (see below) may help to reduce these numbers.

Four interim orders on the papers adjourned in order to refer the case to an oral hearing. This is in line with our approach to these types of reviews and we stress to panels that if they are unsure whether to proceed they should refer the matter to an oral hearing can be listed. The total number of IOP's listed in this period is 154 so the adjournment rates are low and in line with anticipated activity.

Over this period, 3 interim order applications adjourned due to bundle issues. This is partly due to the tight turn around with these types of hearing, there is often insufficient time to deal with issues in advance of the hearing. These decisions are all referred to the Decision Review Group to review and feedback was provided to the relevant case management team.

Three interim order reviews adjourned due to lack of time. This is due to previous cases listed on the day overrunning.

#### **Part-heard hearings January – July 2018**

<b>Hearing Type</b>	<b>Total hearings</b>	<b>Part-Heard</b>	<b>%</b>
<b>Final Hearing</b>	265	27	10%

**Part-heard number of days for reconvened hearings and reasons**

FTP Number	Reg Present	Registrant Represented	How many days originally listed for	How many days required for reconvened hearing?	total hearing days	How many specific Panel only days listed in advance?	Reasons
FTP44262	Yes	Registrant had representative	2	3	5	0	to allow registrant time to instruct new counsel following recusal
FTP50010	Yes	Registrant represented self	4	7	11	0	reasonable adjustments required for registrant
FTP48872; FTP43184	Yes	Registrant represented self	6	2	9	1	Lengthy witness evidence
FTP52125	No	No reg or rep	4	4	8	0	Lengthy witness evidence
FTP49725	No	Registrant had representative	4	4	8	0	To allow witness to attend
FTP35453	Yes	Registrant had representative	5	7	12	0	reasonable adjustments required for registrant
FTP42219	Yes	Registrant represented self	5	3	10	2	Lengthy witness evidence
FTP51651	Yes	Registrant had representative	2	2	4	0	Not enough time scheduled
FTP45038	Yes	Registrant represented self	3	2	5	0	Preliminary issues
FTP46911; FTP46463	Yes	Registrant had representative	6	5	11	1	Half time submissions
FTP49206	Yes	Registrant had representative	6	2	8	0	Availability of registrant's witnesses
FTP46103	Yes	Registrant had representative	4	4	8	0	Lengthy witness evidence
FTP34782	Yes	Registrant represented self	8	10	18	0	various reasons
FTP53486	Yes	Registrant had representative	7	2	9	0	Evidence took longer than expected

FTP48227	Yes	Registrant had representative	5	3	<b>8</b>	0	Half time submissions
FTP50529	Yes	Registrant represented self	5	4	<b>9</b>	<b>2</b>	Lengthy witness evidence
FTP45258	Yes	Registrant had representative	3	5	<b>8</b>	0	Non-attendance of witness
FTP33245	Yes	Registrant had representative	5	4	<b>9</b>	0	Half time submissions
FTP50010	Yes	Registrant represented self	5	2	<b>7</b>	0	Registrant difficulties
FTP37244	Yes	Registrant had representative	7	12	<b>19</b>	0	To allow time for expert witness to be called
FTP52127	Yes	Registrant had representative	2	5	<b>7</b>	0	obtain statement from new witness
FTP41514	Yes	Registrant represented self	2	2	<b>4</b>	0	Witness evidence
FTP48802	Yes	Registrant had representative	3	3	<b>6</b>	0	Witness evidence and registrant bundle
FTP43679	No	No reg or rep	5	7	<b>12</b>	0	Lengthy witness evidence
FTP37573	No	No reg or rep	3	3	<b>3</b>	0	Various reasons
FTP49529	No	No reg or rep	2	1	<b>3</b>	0	Replacement lay required on the day
FTP47055	Yes	Registrant had representative	5	4	<b>9</b>	0	Lengthy witness evidence

\*Highlighted cases went part heard twice due to exceptional circumstances in relation to the registrant's mental health.

A number of hearings have gone part-heard due to lengthy witness evidence, in particular when the registrant was present but unrepresented.

The Scheduling Team works closely with the Case Preparation and Conclusion (CPC) team and Kingsley Napley Solicitors to highlight any changes to a case that may have an adverse impact on the allocated days set aside for the final hearing (e.g. registrant engagement since ready to fix notice).

As part of the Adjudication Development Group plan the Tribunal Services Management Team review every part-heard hearing. Feedback from all parties is helpful in identifying any issues relating to individuals or training needs.

In relation to final hearings, overall the numbers of adjourned and part heard hearings during this period has reduced from 48 hearings in the same period (Jan- Jul) last year compared to 35 this year.

A significant amount of work between the HCPTS and CPC teams has been undertaken to help to ensure that the numbers of adjourned / part heard cases remains low and within anticipated forecast levels. This work is ongoing and issues are kept under constant review.