

Tribunal Advisory Committee

Public minutes of the 11th meeting of the Tribunal Advisory Committee held on:-

Date: Tuesday 12 November 2019

Time: 1pm

Venue: Room K Health and Care Professions Council, Park House,
184 Kennington Park Road, London SE11 4BU

Present: Graham Aitken
Catherine Boyd
Philip Geering
Sheila Hollingworth
Alan Kershaw
Marcia Saunders (Chair)

In attendance:

Claire Amor, Secretary to the Committee
Brian James, Head of Fitness to Practise
Zoe Maguire, Department Lead -Tribunal Services
Deborah Oluwole, Tribunal Services Manager – Scheduling
Uta Pollmann, Partners and HR Manager

Public agenda

Item 1. Chair's welcome and introduction

- 1.1 The Chair welcomed Committee members and the Executive to the tenth meeting of the Tribunal Advisory Committee.
- 1.2 The Chair noted that the meeting had been preceded by a productive workshop held between the Committee and Executive on the future focus of the Committee's work.
- 1.3 The Chair noted that Marc Seale had announced his decision to leave the HCPC at the end of 2019. The Chair and the Committee recorded their thanks to Marc for his support of the Committee's work.
- 1.4 The Committee noted that John Barwick, whose substantive role was the Executive Director of Regulation, had been appointed as the Interim Chief Executive and Deputy Registrar. The Head of Governance had been appointed as an alternate Deputy Registrar.
- 1.5 The Chair provided the Committee with an overview of her recent meetings with the Chair of similar Committees of the other regulators. It was noted that the importance of registrant representation had been discussed in particular. Also discussed was the currency of registrant panel members' practice and the impact this may have on the quality of decision making.
- 1.6 The Chair noted that there was an appetite among the regulators to explore how joint panel members' training could be taken forward.
- 1.7 The Committee noted the recent launch of the NMC's registrant support service. The Committee agreed this was an interesting initiative to monitor for learning. It was also noted that the initiative would be important and resource intensive.

Item 2. Apologies for absence

- 2.1 No apologies were received.

Item 3. Approval of agenda

- 3.1 The Committee approved the agenda.

Item 4. Declarations of members' interests

- 4.2 Graham Aitken, Catherine Boyd and Philip Geering have declared a standing interest as sitting panel chairs due to the nature of the Committee's remit. There were no other declarations of interest.

Item 5. Minutes of the Tribunal Advisory Committee meeting of 17 September 2019 (report ref: TAC 24/19)

- 5.1 The Committee agreed the minutes from its meeting held on 17 September 2019.

Item 6. Matters arising (report ref: TAC 25/19)

- 6.1 The Committee noted the matters arising from its meeting of 17 September 2019.

Item 7. Forward planning session feedback

- 7.1 Members and Executive fed back to the group on the focus of their sub-group's workshop discussions. The following points were noted:-

Regulatory reform

- the reforming regulation response from government contained a strong emphasis on harmonisation whilst also expressing a wish to provide regulators with the powers to innovate and diverge;
- legislative change options desirably should be prioritised for maximum benefit to the HCPC's FTP performance
- Social Work England was a test case for the more modernised legislation and the effectiveness of its processes would be tested once regulation went live;
- automatic strike off orders for serious criminal offence convictions were a possibility;
- regulatory reform would have an impact on the HCPC's partner skillset needs;
- there may be a role for the Committee in providing oversight of innovative regulatory changes if the HCPC is provided the powers to make such changes itself;
- the Committee may wish to recommend to Council that it be mandated to provide consultation advice on legislative reform

Practice Notes

- the purpose of PNs needed to be kept in mind and their need to be accessible to different audiences involved in hearings;
- a common format to the PNs would assist in this, and make them easier to update;

- there was a desire to have guidance and information running alongside the PNs to underpin them;
- the sustainability of internal resource and TAC capacity to continue along the same PN review as before process was challenging;
- the TAC could recommend that the Council invests in a 'big bang' rework of the entire PN suite. This could also be done gradually bearing in mind resource availability and the cost of elongating the work;
- a proof of concept approach to a new PN format was discussed;
- the Tribunal Service Lead would put together options for an all in one rework and a phased approach for the Committee to consider;

Training and performance

- the group focused on reflecting on the progress already made in this area and how outcomes could be measured and fed back into the system to drive improvement; and
- the group identified the need for Committee qualitative quarterly reporting in this area. The Partner Manager would draft template proposals for this reporting.

7.2 The Committee discussed holding a workshop of the approach to panel performance and feedback monitoring methods. The aim of this would be to consider how best to integrate the intelligence gathered on performance to improve training and other guidance such as PNs. It was agreed this would take place at 1pm on 3 March 2020 before the Committee's formal meeting.

Item 8. Head of Tribunal Services report (report ref: TAC 26/19)

8.1 The Committee received a report from the Department Lead - Tribunal Services.

8.2 The Committee noted the following points:-

- hearing activity in October was high at 51 final hearings concluded;
- the numbers of hearings that were not well found increased significantly In October compared to previous months. This could be linked to the number of older, complex cases that were concluded;

- there would continue to be a high level of hearings activity in November in order to ensure social work cases were concluded prior to the transfer on 2nd December; and
- one learning point was received from the PSA in October. The learning point related a decision determination being too brief.

8.3 The Committee requested more qualitative data within the report to accompany the quantitative data.

Item 9. Partner team operational report (report ref: TAC 27/19)

9.1 The Committee received a paper from the Partners and HR Manager.

9.2 The Committee noted the following points:-

- the resignation of a key employee had resulted in resource challenges to the partner portal project;
- the risk to the project would be mitigated by appointing a new analyst to support the delivery of the project and more intensive involvement of the Partner Manager;
- information security eLearning training had been launched at the point of reporting completion rates across all partners was over 90%;
- administrative preparation for the end of social work partner contracts was underway;
- the contract for the performance review system was on hold whilst appropriate data protection assessments were undertaken.

9.3 The Committee discussed the pilot of the future feedback system. It was noted that a period of user acceptance testing would take place before the pilot and that identified Partners had volunteered to take part in the pilot.

9.4 The Committee discussed a recent employment tribunal case brought by a GMC panel member claiming employment status. The Partner Manager noted that this was a reminder of the need to be clear and consistent in the HCPC's relationship with its Partners.

Item 10. Fitness to Practise Final Hearing Decisions Audit (report ref: TAC 28/19)

10.1 The Committee received a paper from the Department Lead - Tribunal Services.

10.2 The Committee noted the following points:-

- the HCPC's Quality Assurance function had undertaken an audit of Final Hearing decisions, the purpose of which was to assess the quality of the decisions made and recorded by the HCPC's Practice Committees;
- the audit looked at 30% of decisions made between October and December 2018; and
- the audit identified that the majority of decisions met or exceeded the threshold standard for each of the key elements of the decision-making process.

10.3 The Committee noted the positive outcomes of the study but expressed concern at the delay in publication of the results, noting that the Decisions were reviewed in January 2019, and the audit report was dated as such. It was noted that the DRG received the report for consideration in October 2019. The Committee asked that feedback be given as to the detriment to the report's usefulness due to this delay.

10.4 Members of the Committee with professional experience of quality audits and compliance queried the use of the term "audit," which implied independence, and suggested it was better described as an internal review.

10.5 The Committee expressed concern at the disconnect between the positive findings of the audit and the ongoing failure to meet FTP PSA standards.

10.6 The Committee noted that some of the PNs referred to in the report were updated more recently than reported. The Executive noted that the review would have looked at the version of the PN live at the time of the decision determination.

10.7 The Committee noted that the statement in the report that standards are drawn from the PNs, while PNs reflect standards, they are not the source.

Item 11. Practice Notes (report ref: TAC 29/19)

11.1 The Committee received a paper from the Department Lead - Tribunal Services.

11.2 The Committee noted that the Finding Fitness to Practise Impaired and Drafting Decisions PNs had been updated taking into account member feedback following the Committee's September 2019 meeting.

- 11.3 The Committee agreed that the title of Finding Fitness to Practise Impaired should be amended to simply Impairment as the former implied a prejudgement as to the finding.
- 11.4 The Committee felt that the character evidence section of the Impairment PN required clarification for understanding.
- 11.5 The Committee considered that the list of quality indicators for decisions included in the final hearing decision audit report could be appended to the Drafting Decisions PN for quick reference.
- 11.6 The Committee noted that the section on credibility of witnesses in the Drafting Decisions PN should instead refer to reliability as the two were different.
- 11.7 The Committee agreed that the last bullet point of section 2 of the Drafting Decisions PN should read ‘...protect the public and the wider public interest’.
- 11.8 The Committee agreed the revised Impairment and Drafting Decisions PNs subject to the amendments outlined above.

Item 12. Any other business

- 11.1 There was no further business.

Item 13. Future meetings:

- 3 March 2020
- 9 June 2020
- 15 September 2020
- 10 November 2020

Chair.....

Date.....