

Tribunal Advisory Committee, 9 June 2020

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

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 –Tribunal Services Report

Date of paper

27 May 2020

Tribunal Advisory Committee, 09 June 2020

Tribunal Services Report

1. Introduction

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

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

Set out below is a summary of key statistics:

Nov 2019 – Apr 2020 activity:

Cases concluded at final hearing	Final hearings adjourned/ part heard	Review hearings concluded	Current cases in review cycle	Interim Order applications considered	Interim Orders reviewed	Ongoing Post-ICP
107	21	42	98	57	135	362

As a result of the departure of Social Workers in December there has been an associated reduction in hearing activity since January. We had a slightly higher rate of adjourned and part heard hearings between December - February which has now reduced as a result of the current situation. In January we had a high number of cases that were not well found at final hearing, 5 of these (21%) were not well found at impairment stage. The reasons for this will be reviewed and fed into learning.

The current Covid-19 pandemic has had a significant impact on hearing activity, and as a result the ongoing post-ICP caseload will increase in the coming months. Future planning to address the implications of the ‘backlog’ is ongoing but activity is being prioritised in a phased approach in order to manage risk and minimise delays in an appropriate manner. Further detail around remote hearing activity is set out below.

Following the transfer of Social Workers, the team have been working with business improvement colleagues who have developed a capacity and demand model that will assist with the monitoring of workflow across the FTP functions. The FTP department remains in a period of transformation and work remains ongoing to engage with employees and define departmental objectives and priorities for the coming year.

3. FTP/HCPTS activity update

Covid-19 Pandemic

The current pandemic has had a significant impact on hearing activity. As a direct result of the 'lockdown' and the social distancing measures instigated by the Government a number of hearings had to be postponed. High risk activity has been prioritised in order to ensure public protection, with no substantive orders lapsing and appropriate consideration given to interim order applications. A proportionate approach has been adopted to ensure that public protection considerations and the rights of registrants were appropriately balanced given the exceptional circumstances.

Following successful testing, substantive review and interim order activity has been undertaken by Panels virtually using MS Teams. Building on this we have adopted a phased approach and are now starting to use virtual methods for other hearing types such as part heard matters and final hearings (where suitable). In the first instance we will focus on straightforward /uncontested matters and those with no or minimal witnesses. A number of these cases now have proposed hearing dates / hearing window.

For any future final hearings where a decision is made to postpone whilst the pandemic is ongoing and restrictions are in place, a review will be undertaken which sets out the proposed progression of the matter to a final hearing listing. This will include an assessment of the impact of concluding matters via alternative virtual means – e.g. on witness credibility, quality of evidence, reasonable adjustments etc.

We continue to keep in touch with the adjudication functions of other regulators to share learning and to help to ensure our processes run smoothly.

As we learn from the new ways of working, there are a number of issues that we are currently working on addressing as set out below:

- Ensuring the wellbeing of Hearing Officers, Panel Members and other participants – particularly due to intensity of virtual activity and length of screen time
- Additional impact on length of time of hearings due to the use of technology – taking into account for future planning
- Panel Members have appropriate guidance and skill set for virtual activity
- Any impact of remote attendance on witness evidence, including quality of evidence. How to facilitate best evidence
- Ensuring adequate breaks
- Privacy considerations
- Appropriate support available pre and post hearing – ensuring follow up

- Assessment of vulnerability of parties – ability to undertake virtual hearings
- Ensure reasonable adjustment considerations
- Use of pre-hearing scheduling teleconferences and directions where appropriate to agree approach
- Learning from remote hearings in other regulatory contexts – e.g. local authority, family courts
- Minimising delays to cases - phased approach manages risk whilst ensuring appropriate activity does not halt.

It's important that we use the feedback from Panels, hearing participants and team members to inform our ongoing activities and ways of working at this time.

Work towards implementing an electronic bundle solution as a result of the pandemic has moved at pace. A preferred supplier has now been identified and testing is underway. It is envisaged that there will be a go live date of June. This supplier will be used initially for ICPs and then gradually rolled out to other hearing types.

Decision Review Group

The HCPC/HCPTS Decision Review Group (DRG) meets on a quarterly basis to review the quality of case management and decision making by 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 last meetings took place in January and April 2020. Key areas of discussion included:

- Case referrals
- PSA learning points
- Adjourned ICPs
- NWF analysis and action plan

Across both meetings the group discussed seventeen decision referrals in total which related to a range of issues, including concerns about conditions imposed following an interim order application, issues regarding a privacy application and decisions to adjourn cases at ICP. As result of the review and discussion several action points were agreed which will be reviewed and followed up again at the next meetings.

In January the group considered a paper regarding PSA feedback received between April – September 2019, this consisted of 25 quarterly observations and 4 learning points. The issues identified by the PSA are consistent with the feedback previously received, however, the PSA criticised hearing procedure

on two occasions, which is an area not previously highlighted. Most of the feedback continues to relate to issues surrounding the reasoning in Panel decisions and in particular, the provision of sufficient explanation to allow the reader to understand how a decision was reached. This aspect of drafting decisions already forms part of initial and refresher training given to panel members and the feedback provided by the PSA indicates that it should remain a point of focus in the training.

In the reporting period in question the PSA also chose to highlight a positive example and praised the Panel on a very clear, well-reasoned decision.

The DRG continued to discuss and update on the initiatives set out in the not well found action plan which are aimed at addressing the numbers of cases that are not well found. Updates included:

- Witness engagement enhancements by HCPC's external legal services provider
- Automatic review of older cases for suitability for consensual disposal
- Formal triggers for discontinuance to be assessed by the external legal services provider
- Piloting use of early profession specific input during case investigation
- Commencement of business improvement initiatives, including quality of bundles

Other

We have recently been engaging with the NMC and other regulators to join a shared framework which would provide lay advocacy support to individuals at all stages of an FTP case. For example, a support advocate may become involved during the fitness to practise process to meet the needs of individuals who require additional communication support as a reasonable adjustment. Individuals may also need input from a support advocate for emotional reasons such as the death of a loved one. The aim of the framework would be to provide access to a broad range of suppliers with areas of specialism under a common agreement and scope of service. It was hoped that all regulators would be in a position to sign up to the framework by the Summer.

4. PSA Learning points

In addition to the PSA feedback that was reviewed as part of the Decision Review Group, in January 2020, fifteen new learning points were also received from the Professional Standards Authority (PSA) and a further five in April. As an overview these learning points related to; potential amendments to allegations, panel reasoning around dishonesty, lack of background information into the circumstances leading to a conviction, lack of reasoning around sanction, lack of evidence of health assessment/ seeking independent medical advice.

The PSA also highlighted one case where they were impressed by the diligent, thoughtful and well-reasoned approach adopted by the Panel.

5. Training programme

As a result of the pandemic, upcoming panel training has been pushed out until later in the year and new methods of delivery are being explored. Suggestions and advice from TAC members in this area are welcome.