

HCPC Committee Review 2020

Committee	Tribunals Advisory Committee
Committee Chair	Marcia Saunders
Committee Members	Graham Aitken, Catherine Boyd, Philip Geering, Sheila Hollingworth, Alan Kershaw

What are we looking to achieve?

HCPC is going through a period of change – it is time to reflect, review and refresh. This review aims to ensure that;

- Our Committees are working, adding value and are relevant
- The right committee structure is in place for the next 3-5 years
- Committees are focused on the right areas of work to support the HCPC Council in its governance role
- Committees have the right skills to support its work and cognisant of succession planning

1. Reflect on the Committees work over the last 12-24months and in line with your terms of reference:

- Has the Committee been doing what it is supposed to do?
- Has the Committee been doing things that are not within its terms of reference? If so what? Should they be within the Committees remit or sit elsewhere?
- Has the Committee found it difficult to carry out the fullness of its remit - if so in what way?
- What value has the Committee added?

A significant value that the Tribunals Advisory Committee (TAC) brings is the underpinning of the independence of the adjudicatory arm of HCPC from its remaining functions (particularly the standard setting and investigatory/'prosecution' functions of the HCPC). This indeed was the key driver for Council's decision to establish the Committee which commenced work in May 2017.

With adjudicatory work, actual and perceived independence is perhaps more important than people realise at first blush and when the casework is relatively easy going. It is when the HCPC may be in greatest peril, with difficult and/or controversial cases, that separation and independence pay dividends. It's why the independence of the adjudicatory function is a key aspect of the rule of law and of fair trial processes. Organisations underestimate the value of this at their peril.

Key to the TAC's work has been the role of providing a central point, within the governance structure, for oversight and coordination of policy in relation to the work of the tribunals. Examples are cited elsewhere in this paper. In view of the independence of the Tribunal Service, it would be inappropriate for the Council itself to exercise that role. In the

absence of a mechanism such as TAC, the casework of the tribunals would be coordinated efficiently by the office team, as it is now; but there would be a vacuum as regards independent oversight and coordination of policy. That is a key gap that is filled by TAC.

The Committee has done what it is supposed to do and has not gone beyond its terms of reference, which were expanded at the outset, through delegation by Council, to enable the Committee to oversee the preparation, maintenance and timely review of the Practice Notes which guide tribunals on matters of law and procedure.

TAC reports through minutes to Council meetings and presents an Annual Report to Council.

Three 'stand out' achievements of TAC would include:

- Standardising the format of Practice Notes and undertaking a rolling programme of review, ensuring that they are responsive to internal and external feedback, legislation, PSA guidance and 'lessons learned,' and best practice. This has upped their value, usability, timeliness, consistency and accessibility – accessibility being of particular value in support of the HCPC's commendable culture of enabling Registrants, particularly unrepresented Registrants, to engage with the FTP process.
- Driving the preparation of comprehensive competency frameworks for those engaged in tribunal work, including legal assessors; overseeing the preparation and introduction of a modernised appraisal system for tribunal members and legal assessors; promoting the development of an iterative 'loop' guiding the link between competencies, recruitment, training, assessment and (re) appointment.
- Supporting the move towards a digital portal enabling training to be undertaken online, opening the way to better supporting panellists to deliver high quality hearings and decisions.

TAC has also addressed a number of specific questions arising in connection with conflicts of interest and the management of cases involving not only unrepresented respondents but also victims and families requiring special support.

The TAC has reviewed recruitment documentation for panellists, feedback mechanisms such as post panel questionnaires, observed panel and training sessions and is promoting the establishment of a panel chairs' reference group.

OUTSTANDING ISSUES

The point at which TAC is consulted within any decision making cycle should be clarified to ensure that the earliest and best use is made of TAC members' experience and expertise.

The TAC has supported initiatives to promote a more diverse pool of panel members, but these have been hampered by the information system's ongoing lack of access to ethnic monitoring data of registrants that is required to establish an effective and measurable system of recruitment and retention.

A key approach of TAC has been to enable, support and guide the executive team, careful to stay within areas of priority, rather than burden it with additional work that overstretches resources. We are aware of the impact of high levels of staff turnover on the FTP process as a whole.

The work of TAC inevitably involves a degree of effort/work between meetings. The limitations of quarterly meetings are obvious when the work involves reviewing and refining draft guidance – ‘drafting by Committee’ has its limitations – and thus much of the essential drafting work may be out of committee with a near-final decision undertaken in Committee.

2. Committee membership:

- What skills are available across the committee membership?
- Are skills available being fully utilised and adding value?
- Are there any skills not currently within the membership that would be beneficial to the Committee?
- What are the tenure timelines for Committee members / Committee chair

We have benefitted from TAC membership that has included the following skills:

- three panel chairs who have a keen sense of the work of FTP panels. One is legally qualified and the others have backgrounds in management, audit and higher education. All have extensive experience of membership and chairmanship of (other) regulatory tribunals and a strong knowledge of casework.
- three lay members who do not serve on HCPTS tribunals but who all bring experience and perspective in breadth and depth from a wide range of frontline regulators across the key sectors – health care, law, finance, science, property, education - where they have served in executive and non executive capacities, chairing and sitting on boards, committees and panels handling policy, performance and casework.
- none of the TAC members is an employee of the HCPC and the lay members offer an additional element of independence in not being involved in panel operations.
- one of the lay members is the TAC chair, appointed by Council. The Chair focuses her skills and contribution in the areas of committee leadership, strategy and internal and external engagement with e.g. other such regulatory committees.
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The mix is a good one establishing a balanced Committee of workable size, skills and credibility.

TAC members were appointed to varying first terms (the max standard is four years) in order to ensure staggering of reappointments. At the end of year three two members’ final terms and two members’ first terms including that of the Chair come to an end in July. Anticipating that there may be change as a result of this committee review, new appointments and reappointments have not been made and extensions are being sought to take us through to the end of the year.

There are other skills required by general Boards but for this committee, working internally within HCPC in an advisory capacity and with the practical support and experience of the office, some of those skills (financial, marketing, communications) are of less relevance.

Suggestions for further membership have variously included a legal assessor, an additional lay member and a member of Council.

1. The inclusion of a Legal Assessor Member could help ensure that TAC decisions and recommendations also take into account the legal assessor perspective. It would also take into account the fundamental role that the legal assessors play in ensuring that panels complete their business, provide comprehensive reasons for their decisions and apply relevant legislation and guidance. There is also potential for using their legal knowledge when documents such as the Practice notes are reviewed.
2. There should be an additional Lay Member to enhance the independent and external contribution.
3. We would favour a mechanism being found to help the Council be more aware of the work TAC is doing. Whereas the Chair of TAC reports formally to the Council in presenting the Annual Report and has occasional ad hoc meetings with its Chair, we feel there is a case for a more formal and regular arrangement by nominating a Council member to take the lead in liaising with the TAC via its Chair on a more regular basis, helping both us and the Council be more aware of each other's needs and priorities. We have thought about a suggestion of a Council member becoming a member of TAC, but the Committee's independence is a strong argument against this and we would not support it.

3. *The Committee and the future:*

- Does the Committee recommend any changes to its terms of reference or constitution?
- What value will this Committee bring to HCPC in the next 3-5 years?

We recommend the TORs be changed as follows:

- (a) The TAC's delegated role in relation to Practice Notes should now be incorporated formally into TAC's Terms of Reference and expanded to cover other guidance related to the FTP decision making and adjudication process, such as the Sanctions Policy, in order that TAC is able to influence in a proactive and timely manner. This will enable TAC to maximise its ability to assist the Council with advice and assurance relating to the quality function, recognising that decisions made at the front end impact on case progression and ultimately outcome. TAC could for example examine trends, and provide specific input into how to reduce the number of adjournments and enhancing decision writing skills, and contribute to the effectiveness of elements in the new FTP operating model, e.g. case examiners, screeners, care programme specialists.
- (b) The TORs should stipulate that the Chair of the Committee should always be lay, to underline independence.
- (c) There is ongoing work to review the various sources of feedback on the FTP processes. These include Chair feedback, PSA feedback and the work

of the Decision Review Group (DRG). The DRG potentially could be a significant source of intelligence feeding into the work of TAC and consideration should be given to strengthening the DRG/TAC link by including this within the TORs.

Next 3-5 years:

- (d) TAC is conscious of the unusual extent and complexity of the HCPC's role and believes it can offer valuable support in its anticipation of regulatory reform, where new rules and configurations come into place, using its knowledge and experience of current best practice, e.g. undertakings, disposals by consent, projects for support for complainants, witnesses and registrants.
- (e) TAC has begun to explore the impact of the large proportion of online hearings necessitated by the pandemic on the quality and pace of the decision-making process. Although borne of necessity and creating a large backlog, there are also some positive messages emerging that may lead to improvements that have been mooted in the past by the HCPC, and FTP panellists have speculated about remote hearings ICPS and paper Interim Order reviews being obvious first candidate for remote hearings. If there is to be a silver lining to the pandemic it is that the option of electronic case files and remote hearings is now pursued and embedded with advantages for efficiency, cost and resilience.
- (f) The question of future value brought by all committees could well form part of a strategic planning exercise by the HCPC, starting with a PESTLE (Political, Economic, Social, Technical, Legal, Environmental) analysis of future changes impacting on the HCPC. To take the three major impacts on the UK – Brexit, the ongoing and subsequent impact of Covid 19, and the anticipated down turn of the economy – the TAC could usefully support a review of the FTP adjudicatory function to help ensure it meets the challenges of the future.

4. Other Points:

- can the committee discuss and offer suggestions on how best to ensure effective oversight and scrutiny of finance and people for HCPC?

The TAC's ability to question the factors which lie behind any data could be made more effective if it was provided with historic comparators and other benchmarking information. This will be considered at the September 2020 TAC meeting where it will review the format and nature of information it would like in the future in order that it can undertake more thorough analysis of data and develop its ability to help forecast future impact.

We understand that there was previously a Finance and [Human] Resources Committee and that its reinstatement is being mooted. This would seem to be sensible.

See below (5) re committee engagement in strategic planning.

5. Cross-Committee Working:

What would support an appropriate level of connectivity and engagement across all HCPC Committees to the benefit of HCPC?

- Educations and Training Committee
 - Education Panel
- Audit Committee
- Remuneration Committee
- Tribunal Advisory Committee

We are not certain what processes are adopted to develop the HCPC/HCPTS strategic plans and business plans. However, the strategic planning process (under the leadership of the Board) should engage all the Committees and executive leads so that business planning for the organisation as a whole supports delivery of the overall plan and is coherent. TAC has hitherto not been substantially engaged in such a process and has quite properly developed its own priorities and plans within the HCPTS context and priorities but the assurance of these could be improved. An example might be the list that is kept of what Section 60 legislation might be sought given the opportunity and which it might be useful for TAC to consider.

Periodic informal meetings among the chairs of Council subcommittees to share information about e.g. priorities and concerns would be useful.

(See also Membership, final point in section (2) above. We would favour a mechanism being found to help the Council be more aware of the work TAC is doing. Whereas the Chair of TAC reports formally to the Council in presenting the Annual Report and has occasional ad hoc meetings with its Chair, we feel there is a case for a more formal and regular arrangement by nominating a Council member to take the lead in liaising with the TAC via its Chair on a more regular basis, helping both us and the Council be more aware of each other's needs and priorities.

6. Anything else?

(a) The TAC has received excellent support from the executive team. However one of our key anchors is departing and another is undertaking increased responsibilities as a result of restructuring. A key approach of TAC has been to enable, support and guide the executive team, careful to stay within areas of priority, rather than create extra work that overstretches resources. Governance structures must be properly resourced and obviously that will be borne in mind in this review. We are also aware of high levels of staff turnover and its impact on the FTP processes as a whole.

(b) The work of TAC inevitably involves a considerable contribution of time, effort and consultation, e.g. on line, between meetings. The limitations of

quarterly meetings are obvious when the work involves reviewing and refining draft guidance – ‘drafting by committee’ has its limitations – and thus much of the essential drafting work may be out of committee with a near-final decision undertaken in committee. This work is unremunerated – the TAC meets four times a year and members are paid a standard daily rate. Payment by appropriate, modest flat annual rate could be explored to incorporate this commitment.
