

Tribunal Advisory Committee, 12 September 2017

Head of Tribunal Services report, September 2017

Executive summary

## **Introduction**

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).

It is intended this summary provides a useful context to the Tribunal Advisory Committee (TAC), and follows the format of the previous report, presented at the inaugural meeting in May 2017.

## **Decision**

The TAC is asked to consider the paper.

## **Progress of HCPTS**

The Tribunal Service was established in April 2017. We have now concluded around 200 final hearings, and a further 100 review hearings. The transfer of systems to operate an independent tribunal listing system has been smooth, with no significant operational issues, or adverse operational feedback from stakeholders.

A review of systems and outputs is planned for completion by December 2017, and initial feedback and discussion is planned at the next TAC meeting.

## **Summary of Tribunal Services activity**

We are currently contributing to the HCPC consultation on the indicative sanctions policy, which is taking place over the summer months.

We are about to start a pilot using skype-style technology to bring more user friendly and cost effective access to video conference evidence giving to hearings. This will allow easier set up of video conferencing (requiring only a laptop or tablet with a camera and basic internet connection that is connected via a third party, direct to the existing technology in the Tribunal service hearings suite).

Initial tests of the technology show promising ease of setup, and quality of sound and vision. The benefits are lower cost access to the technology, and no requirement to book or attend a specialist video conference location. This is especially useful for

witnesses that have specific vulnerabilities, or those who are located geographically far from this specialist technology.

We will complete trials by Christmas 2017, and aim to roll out to hearings in the early part of 2018 if satisfactory.

We have continued to work on enhancing our existing approach to sensitive data handling and transmission processes. Specifically, we have been working with a range of stakeholders in Tribunals who share and receive sensitive materials and evidence before the hearing (including large bundles, those containing health matters, or recipients who live in remote locations and therefore have logistical issues with receiving safely hard copies of bundles via the post). We will be revising our advice to panels on the use of these approaches over the next 3 months.

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). We are broadly on activity for scheduled and completed hearings, and continue to focus on older cases. The adjourned and part heard rate of hearings remains low, due to pre-hearing quality checks.

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

### **Reviewable sanctions update**

As reported at the initial TAC meeting in May 2017, an emerging trend of more numerically more, and more frequent reviewable sanctions imposed at both final hearings and ongoing review stages continues.

Since April 2017, at final hearings, 20 conditions of practice and 49 suspensions have been imposed. Of the conditions, 3 were for less than 6 duration, 10 for 12 months duration, and 7 for more than 12 months.

Of the 49 suspensions imposed, 11 were for less than 6 months, 3 for 7 to 11 months, and 35 for 12 months.

Of the 93 reviews of existing conditions or suspension orders that have concluded since April 2017, 20 cases had continued conditions, and 36 had continued suspensions.

The trend of short suspensions continues, with 21 of the 36 cases being imposed for less than six months.

Our analysis indicates that these short duration reviewable orders continues to relate to panel intentions to allow registrants one final opportunity to engage with the regulatory process, despite the fact that in more than sixty percent of the cases, there is no previous or recent engagement since the order was imposed or last reviewed.

Since the last TAC, we have reviewed every open review case, and compiled a chronology of engagement of the registrant, and – where appropriate – any indication by the previous panel of material that future reviewing panels may find helpful. When

informing the registrant of the next review, we are using this information to remind them of their role in presenting material to demonstrate they have remediated any previous fitness to practice concerns, and also the powers available to the next review panel.

We have also – using a proforma – attempted to further consolidate the way we prepare HCPC's case to the panel on whether we consider the registrant's fitness to practice being impaired.

We have started the process of analyzing existing conditions of practice, with a view to producing a bank of conditions that may assist panels in the future. We will continue to develop this until the end of 2017, and will disseminate any guidance through the existing newsletters, induction and refresher training.

### **Stakeholder engagement**

In preparation for the next stakeholder engagement with union and representative bodies, a quarterly bulletin of significant issues has gone out in August, including: a caselaw digest; update on research by University of Surrey (relating to Social Worker and Paramedic fitness to practice cases) which will go to Council in September; and updates on Practice Notes and the existence of the TAC.

The next meeting (scheduled every six months) is November 2017.

### **PSA Learning points**

There have been only four cases where learning points received since last TAC meeting.

There are a number of common themes: Panel decisions being inappropriately brief; specifically the public component of decision-making, explanation of the Panel's ruling out of dishonesty, explaining the deviation from the baseline of a 3 year caution, and linking their final hearing decision to the duty of candour.

All will be incorporated in revised training programme, and we are writing to those specific panels to share the learning point, including our response to PSA.

### **Training programme**

There is a busy training programme planned, with dates set for refresher and induction training between now and March 2017.

We have had an offer from PSA to provide input, particularly relating to decision-making, and how PSA use their learning points and Section 29 powers when reviewing both HCPC and other regulators' decisions. We think this would be a helpful addition to the approach we use in training, but would welcome TAC's views on this.

We would also like to explore further how we could get input from TAC into the training and newsletter updates. We think that possibly a short pre-recorded video section that could be played in the training, or even sent via email to Panel members might be a

proportionate approach that could be seen as innovative and proportionate. Again, we would welcome TAC's view on this.

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

We are working with Partners' Unit to respond to any complaints or concerns raised about individual Panel Members. Since the last TAC, two matters have been raised, and are in various stages of investigation and response.

We continue to work with Partners' Unit to reassess the needs for recruiting and training Panel Members, factoring in the outcome of the self assessment process, expiry of terms of office, and planned Tribunal Service activity. A verbal update will be given in the TAC meeting, linked to the agenda item papers on competency framework.

### **HCPC developments**

As part of the ongoing independence of the Tribunal Service, we have been working on examining the role of the Case Manager in presenting material at the Investigating Committee Panel. We have piloted a new approach that we think will improve allegation drafting, and we will be including this in the revised Panel Training material, which will have an enhanced section on the role of the ICP in quality assuring allegations before a Case To Answer decision is made.

### **Reviews based on papers**

We know that in many circumstances, registrants or their representatives may not wish to attend the review of an interim order, or of a substantive order. This may be because they consider that circumstances have not changed since the last review, or that work or other factors prevents their attendance. In these circumstances, they may ask the panel to proceed in their absence, and to review the order on papers only.

We have been conducting a pilot to formalize this approach, and to actively seek the views of registrants who may wish to take this approach in their future review hearings. We have concentrated on interim orders, and have held three pilot days so far.

We have had helpful feedback from the panel chairs, which can be summarized as:

#### **Template:**

The Panel asked for a separate decision template for these reviews.

#### **Drafting:**

The Panel have asked that further consideration is given to what needs to go in the decision template.

#### **Bundles:**

If we are thinking of listing up to 5 IORs in a day, we will need to reconsider if papers on the day is viable. The Panel have commented that serving them electronically and having hardcopies on the day would be fine – and would be especially useful for the LA. They have also commented that having a HCPC skeleton and an index is helpful.

### **Panel guidance**

They mentioned that something along the lines of a reviews on the papers PN for Panels would be helpful.

### **Registrants consent**

We are exploring how we formally document the registrant's agreement to current and future reviews being held on the papers, and how they can trigger any change from this.

### **Timetabling**

We are experimenting with how many cases per review panel. Given the engagement of registrants and their representatives before listing, we are aiming for five cases per day (compared to two or three oral reviews in front of Panels). Recognising that some cases may be more complex than others, we are looking at holding two parallel panels, amongst which 10 cases can be shared in the day. A Panel that deals with very complex cases may do less than five cases, with the other Panel doing more than five simpler cases. The Tribunal Services team will assist the Panels in their planning. We will be reviewing the appropriateness of extending the pilot to substantive order reviews before Christmas, and continuing to elicit feedback from Panels.

### **Profile of gender and age for open fitness to practice cases**

At the previous TAC meeting, there was discussion relating to providing some contextual information on the demographics of current open fitness to practice cases.

Cases at all stages of the process (both pre- and post-ICP) have been reviewed, and of the current 1507 open cases, 621 (41.2%) relate to male registrants, and the remaining 886 (58.8%) relate to female registrants. It should be noted that not all of these cases may progress beyond the standard of acceptance stage, and go on to be investigated or presented at a hearing; it is merely a snapshot of all current cases. Further analysis by stage of the case may be more helpful, and it would be useful to have TAC's view on this.

HCPC analysis of the whole register by gender is displayed on the main website, and is presented by profession, and by country. The link below leads to the data for England (searched on 1 September 2017), and is referenced as it is the largest UK country in terms of population. All other UK countries are listed separately.

Using England as a comparator, there are 67,725 male registrants (22.6%), 120 unclassified (0.04%), and 231,314 female registrants (77.3%) in England. The proportions of male registrants with an open fitness to practice case is therefore significantly greater than the proportion of male registrants in England.

Weblink to England stats

<http://www.hcpc-uk.org/assets/documents/10005135Registrants-by-gender-England-July-2016.pdf>

**Weblink to all UK country stats**

<http://www.hcpc-uk.org/aboutregistration/theregister/stats/>

We have also reviewed the age range of open fitness to practice cases. Of the 1507 open cases:-

0-18 years old: 0 cases

19-25 years old: 18 cases (1.2%)

26-35 years old: 254 cases (16.9%)

36-45 years old: 388 cases (25.7%)

46-55 years old: 508 cases (33.7%)

56-60 years old: 211 cases (14.0%)

61+ years old: 128 cases (8.5%)

The largest proportion of cases therefore relate to registrants who are 36 to 55 years old, and most likely corresponds with those who have been working for some time from qualifying.

### **Pre-instruction work for Case to Answer decisions**

We previously updated TAC on our work to perform pre-instruction works after a Case to Answer decision was made, but ensuring we had reviewed the availability of documentary evidence, and use of all of HCPC's powers, before the external legal investigation began.

Currently, we are taking two weeks to perform these checks and to write to chase any missing information. We are looking at whether – in certain circumstances – extending this to four weeks may be time well spent.

A verbal update will be given in the TAC meeting, to demonstrate our thinking, particularly in relation to cases that may be suitable for consensual disposal, or where information may be missing, which – if we fail to secure it – may make the allegation untenable.

### **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**

1 September 2017