

Agenda Item 25

Enclosure 24

**Health and Care Professions Council
06 December 2018**

**Minutes of the Tribunal Advisory Committee
meeting of 14 November 2018**

To note

From Claire Amor, Secretary to Council

Council, 6 December 2018

Minutes of the Tribunal Advisory Committee Meeting 14 November 2018

Executive Summary

The Tribunal Advisory Committee (TAC) met for the seventh time on 14 November 2018. The draft minutes of this meeting are provided for information.

A summary of business considered is set out below. The Committee held a planning session following the meeting, the resultant framework for 2019 is attached as an appendix.

Head of Tribunal Services report

This is a standing item. Discussion from this paper focused on the FTP case progression strategy. TAC felt that profession specific knowledge in the earlier investigation of a case could reduce the number of no well-founded decisions at final hearing.

TAC also focused on PSA learning points and how learning from these is used in Partner training.

Partner team operational report

This is a standing item. The Committee discussed the working group formed to begin to review the self-assessment system used for Partners.

Practice Notes format and consistency

TAC discussed how Practice Note usability could be improved and agreed to implement a new consistent structure when future PNs are reviewed in the cycle.

Review of Practice Notes (PNs)

The Committee agreed amendments to the Conduct of Representatives, Conducting Hearings in Private and Special Measures PNs.

Any other business

The Committee reiterated its advice to Council that measures should be taken to improve diversity monitoring for the registrant population.

Tribunal Advisory Committee

Public minutes of the 7th meeting of the Tribunal Advisory Committee held on:-

Date: Wednesday 14 November 2018

Time: 12pm

Venue: Room D & G 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
Claire Baker, Tribunal Services Manager – Hearings
Zoe Maguire, Head of Tribunal Services
Deborah Oluwole, Tribunal Services Manager – Scheduling
Uta Pollmann, Partners and HR Manager
Sarita Wilson, Head of Case Reception and Triage

Public

Item 1. Chair's welcome and introduction

- 1.1 The Chair welcomed Committee members and the Executive to the seventh meeting of the Tribunal Advisory Committee.

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

- 4.1 Members were reminded to regularly review their declarations of interests register.
- 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 5 September 2018 (report ref: TAC 29/18)

- 5.1 The Committee received the draft minutes from its meeting held on 5 September 2018.
- 5.2 The Committee agreed the minutes subject to a typographical amendment.

Item 6. Matters arising (report ref: TAC 30/18)

- 6.1 The Committee noted the matters arising from its meeting of 5 September 2018.

Item 7. Head of Tribunal Services report (report ref: TAC 31/18)

- 7.1 The Committee received a report from the Head of Tribunal Services.
- 7.2 The Committee noted the following points:-
 - there was a significant increase in the numbers of hearings adjourning, concluding part heard or being not well found in October. The reasons for this increase are being reviewed;
 - at its meeting in September Council approved the new Threshold Policy for Investigations and the FTP Case Progression strategy;

- a pilot of ICP specialist Panel Chairs has initiated, this will run over a period of six months;
 - the Tribunal Service has been working on new and detailed guidance and information for registrants many of whom may be unrepresented. This guidance will be presented to the Committee at a future meeting; and
 - 15 PSA learning points were received in October relating to the period between July- September 2018. A number of these relate to cases that were not well found.
- 7.3 The Committee discussed the FTP Case Progression Strategy, noting that it did not address a lack of clinical knowledge in assessing concerns prior to final hearing. The Committee considered that using registrant specific knowledge post ICP in investigations could reduce the number of not well-founded final hearing outcomes. It was noted that a pilot is in development for profession specific knowledge input into investigations, social workers will be the pilot group.
- 7.4 The Committee noted that the PSA attended recent legal assessor refresher training to give an overview of its scrutiny work. The Committee welcomed this input and encouraged ongoing PSA involvement in Panel training.
- 7.5 The Committee discussed how PSA learning points inform Panel member learning. It was noted that the PSA does not respond to the HCPC's responses to their learning points. The Committee agreed that it would be beneficial to Panel member learning for the PSA to respond and 'close the loop' on opportunities for learning.
- 7.6 The Committee noted recent HCPTS engagement with paramedic students from London Ambulance Service. Students visited the tribunal suite and spoke to employees about HCPTS hearings, feedback from students was positive. The Committee welcomed this engagement and encouraged wider student involvement.
- 7.7 The Committee noted the report.

Item 8. Partner team operational report (report ref: TAC 32/18)

- 8.1 The Committee received a paper from the Partners and HR Manager.
- 8.2 The Committee noted the following points:-
- voluntary partner resignations have been low in the reporting period;
 - a project plan to upgrade the Partner Portal is in development; and

- recent recruitment campaigns have attracted a high number of applications, advertising was limited due to recent campaigns returning a high number of appointable candidates and the volume of potential applicants who have expressed interest for future roles.
- 8.3 The Committee discussed the limitation of advertising for the recent Lay Panel member recruitment. It was noted that diversity focused advertising was used.
- 8.4 The Committee noted that the working group to review the Partner feedback and self-assessment system has been established and will meet for the first time on 5 December 2018.
- 8.5 The Committee noted the report.

Item 9. Case reception and triage overview

- 9.1 The Committee welcomed Sarita Wilson, Head of Case Reception and Triage. Sarita provided the Committee with a verbal presentation on how the Case Reception and Triage team fits into the HCPC's fitness to practise process.
- 9.2 The Committee noted that the Case Reception and Triage team will formally apply the threshold and triage tests as part of the new standards of acceptance policy.
- 9.3 In response to a question it was noted that the HCPC does not require complainants to raise issues locally before the HCPC investigates their concerns. However the HCPC does ask if the issue has been raised locally both with the complainant and the registrants employer if applicable.
- 9.4 The Committee thanked Sarita for her presentation.

Item 10. Practice Notes format and consistency

- 10.1 The Committee discussed the principles that should be applied to developing a revised approach to the format of PNs. The following points were agreed:-
- simplicity and consistency are the overarching aims for a new format;
 - a PN should cover what issue it is focused on, when the issue could occur, the legal context and what this means in practice for the hearing;

- paragraph numbering, cross referencing and headings should be used for ease of reference;
 - PNs should be ordered so that the most frequently used elements take prominence;
 - some PNs are too legalistic and are not accessible as guidance to Panels and the public; and
 - the suite of PNs should be reviewed to identify where some areas should be merged or where any gaps in coverage may lie.
- 10.2 The Committee noted that the PNs are currently the guidance provided to all those involved in hearings. Consideration should be given to producing more concise guidance to registrants and members of the public involved in hearings. The Tribunal team is currently working on guidance for unrepresented registrants, signposting to further information within the PNs will be explored.
- 10.3 The Committee agreed that PNs would be reformatted in the review cycle and not all at once. However the Committee requested that a summary overview of all PNs be circulated to members to consider where subjects may overlap or areas that are not covered.
- 10.4 It was agreed that the Head of Tribunal Services would consider the Committee's feedback and develop a proposal for a new PN principles and structure.

Item 11. Review of Practice Notes (report ref: TAC 33/18)

- 11.1 The Committee received a paper from the Head of Tribunal Services.
- 11.2 The Committee noted that, in light of the PSA's lessons learnt review of the Nursing and Midwifery Council's handling of concerns about midwives' fitness to practise at the Furness General Hospital, relevant PNs have been identified for review. The most relevant PNs for review are Conduct of representatives, Conducting Hearings in Private and Special Measures.

Conduct of representatives

- 11.3 The Committee discussed the PN and agreed the following areas for revision:-
- the PN should include a more positive introduction acknowledging that poor conduct by representatives is rare and that representatives make positive contributions to the effective running of hearings;

- paragraphs 3 and 4 should introduce the PN, with reference to all representatives. Registrants' representatives should then be addressed specifically;
- reference to 'unfounded' personal attacks being unacceptable should be amended to just personal attacks being unacceptable;
- the PN is repetitive in places and should be reduced in length;
- the actions that the Panel Chair can take to address representative conduct should be strengthened. The role of the Legal Assessor should also be included; and
- specific reference should be made to respectfully cross examining complainants.
- It was noted that HCPC employees and contractors involved in hearings are expected to adhere to similar, high standards as a condition of employment.

Conducting Hearings in Private

11.4 The Committee discussed the PN and agreed the following areas for revision:-

- public interest immunity and national security are rare and should not first in the list of 'interests of justice' considerations.
- relatives of a person involved in a case should be listed as people who may need to be protected; and
- the term 'regarded as' is ambiguous and should be avoided in drafting.

Special measures

11.5 The Committee discussed the inclusion of the registrant as potentially a vulnerable witness, for example in health cases. It was noted that the HCPC's 'reasonable adjustments' policy would cover this situation. The Committee noted that the Tribunal team are working on a reasonable adjustments policy specific to hearings.

11.6 The Committee agreed to send specific drafting comments on the reviewed PNs to the Head of Tribunal Services by email, and to agree the three revised PNs by circulation. They would also be included in the overall review further down the line.

Item 13. Any other business

13.1 The Committee reiterated its advice to Council that the HCPC's current limitations on registrant diversity monitoring information poses a reputational risk and should be addressed.

Item 15. Future meetings in 2019:

- 27 February
- 29 May
- 17 September
- 12 November

Item 14. Forward planning

14.1 The Committee discussed its priorities for 2019, focusing on its terms of reference.

Chair.....

Date.....

Unconfirmed

1. Competencies, qualities, abilities (panel members, chairs, LAs)

Summary 2017-18:

- Advice on best practice (members) - support recruitment of diverse and competent pool
- Revised competency framework (making it 'fit for purpose'); version agreed by Council and rolled out
- Developed new competency framework for legal assessors, harmonised with Partner framework, incorporated in guidance

Objective / Action (<i>what do we need to do</i>)	Supporting action	Who	When	Evidence
Undertake regular reviews of competence frameworks and update				
Devise monitoring system for changes (planned and their impact)				
Align to training needs assessment and training substance				
Incorporate explicitly into performance review system for panellists				
Incorporate explicitly into recruitment policies and processes				

2. Recruitment and selection of Panel Chairs, Members and Legal Assessors

Summary 2017-18:

- advised on new appointment and selection policy for all partners and assessors
- advised on guidance note for applications (transparency)

Objective / Action (what do we need to do)	Supporting action	Who	When	Evidence
Increase measurable diversity of panel population and membership	Analyse applicant results			
Support ethnic monitoring of registrants in view of importance to (a) fair/seen to be fair investigation and adjudication policies and processes and (b) seek to align with panel population and composition	Council			
Panel Chair recruitment from Panel Member population (policy change)				
Review Panel Chair selection process	E.g. assessment as well as interview			

3. Training

Summary 2017-18:

- advised on iterative use of feedback i.e incorporating into and eliciting from training* (*= ongoing)

Objective / Action (<i>what do we need to do</i>)	Supporting action	Who	When	Evidence
Ensure that all partners are on the learning hub	Monitor use of e learning modules, e.g. information security, EDI			
Tender for EDI consultant; review equalities training and incorporate				
Consider developing specific unconscious bias training				
Core training: practical focus on being a panelist, making case decisions. weighing evidence, writing up	Panel member involvement in training development			
Learn from other regulators including their chairs and panellists				

4. Assessment

Summary 2017-18:

- contributed to review and development of assessment processes
- advised on pilot
- advised on FTP Partner agreement renewal
- advised on Partner appraisal systems/self assessment streamlined process, now rolled out *ongoing for legal assessors
- advised on feedback survey tool for feedback from chairs, road test
- advised on further development (360 degree feedback model)*

Objective / Action (what do we need to do)	Supporting action	Who	When	Evidence
FTP panel self assesment: review and simplification	Working group to devise system for replacement of self assesment: tender for suppliers	Dec 5 working group		
Timely and focused identifcaiton of panellists	Develop a system for comprehensive coverage including identifying outliers			

5. Guidance (e.g Practice Notes, PSA Reviews and Learning Points, legislative change...)

Summary 2017-18:

Practice Notes:

- Restoration to the Register
- Discontinuance of Proceedings
- Disposal by Consent
- Review of Sanction Orders
- Commenced work on overall review and update of consistent model for Practice Notes*

PSA 'Lessons Learned' review into NMC, advised on incorporation of relevant advice into

- panel competencies
- training and assessment
- capture in PNs/Selection/Training/Assessment e.g competences non adversarial cultural, conduct towards witnesses*, guidance for hearing participants, voice of complainant/SU/Families, their engagement and understanding of regulator and FTP process

Objective / Action (what do we need to do)	Supporting action	Who	When	Evidence
Comprehensive Review of format and style of full suite of Practice Notes	Include identification of linkages, repetition, gaps, obsolescence etc			
Consider PSA learning points and trends, advise accordingly, incorporate where appropriate				
PSA reviews: identify issues relevant to TAC and advise Council accordingly				

6. Separation and Independence

Summary 2017-18:

- Delegations: approval of Practice Notes
- Addressing PSA guidance/lessons learnt
- Publication of separate annual report/presentation at Council
- Routine reports to Council

Objective / Action (<i>what do we need to do</i>)	Supporting action	Who	When	Evidence
Respond and where appropriate provide input to national reviews and Council responses, e.g. other regulators, PSA				
Consider findings from feedback from panel members and witnesses and advise on incorporation into training, assessment, recruitment				
Routine reports to Council via minutes and in relation to specific delegations, issues referred				
TAC Annual Report to Council				