
Review of Tribunal Services

Executive Summary

This paper is to update the Council on the following areas within the Health and Care Professions Tribunal Service (HCPTS):

1. The purpose of the HCPTS
2. Continuous improvement and quality assurance
3. Our key priorities for 2024-25

The Council is already aware of the activity and progress of the Fitness to Practise (FTP) Improvement Plan. On 1 February 2024 Claire Baker took up the new role of Head of Adjudication Performance, leading the tribunal services function.

This update seeks to enhance the Council's understanding of the work undertaken by the HCPTS, which has assisted us in achieving and maintaining the Professional Standards Authority's Standards of good regulation.

We will continue to update the Council on the progress of our improvement activities at each meeting as part of our FTP performance report. In addition, we will provide the Council with an annual review of HCPTS's activities and its contribution to overall FTP priorities.

Previous consideration	This report was considered by the ELT at its meeting on 14 May 2024.
Decision	The Council is asked to note the report.
Next steps	Updates on progress will be provided through the FTP performance report and in annual reviews of HCPTS's activities.
Strategic priority	Strategic priority 1: Continuously improve and innovate
Financial and resource implications	None
EDI impact and Welsh Language Standards	No additional impact

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Review of Tribunal Services

1. Introduction

- 1.1. The Health and Care Professions Tribunal Service (HCPTS) was established in April 2017. It is the fitness to practise adjudication service of the HCPC. Although it is part of the HCPC, the distinct identity of the HCPTS seeks to emphasise that hearings are conducted and managed by independent panels which are at arm's length from the HCPC.
- 1.2. This paper provides the Council with an overview of the activity of the HCPTS, and its core role in ensuring Partner quality and performance, and the quality and timeliness of fitness to practise (FTP) outcomes. The paper also outlines the next stage of FTP improvement activities led by the HCPTS.

2. Purpose of the HCPTS

- 2.1. The HCPTS is responsible for the listing and running of all FTP hearings held by one of our three practice committees (Investigating Committee, Conduct and Competence Committee and Health Committee). Details of the types of hearings we hold are listed in Appendix A. Our core purpose is to ensure that hearings are concluded efficiently and that our panels reach high-quality regulatory decisions that are fair, consistent, proportionate and compliant with our procedures and legislation. We also have a key role to play in supporting registrants, witnesses and other participants through the hearing process.
- 2.2. The HCPTS is structured into three main areas:
 - 1) Health and Care Professions Tribunals
- 2.3. These are the panels that hear and determine cases on behalf of the HCPC's Practice Committees.
- 2.4. FTP Partners are independent of the case management function of the FTP directorate. They play an important role in protecting the public, maintaining public confidence in the professions and maintaining proper professional standards and conduct. They are recruited by the HCPTS, working with our Partner team. The HCPTS has responsibility for the ongoing training and development of all FTP Partners.

- 2.5. Partners are supported in their decision-making by Practice Notes, which provide guidance on procedure, case law and HCPC processes. They are subject to regular review and revision at least every three years, and more often where changes may be required to reflect new case law, a change in process, to address themes in FTP cases or following recommendations arising from the quality assurance activity (as explained in 3.8 below).
- 2.6. We engage with internal and external stakeholders on changes to our Practice Notes and development of new Practice Notes. New Practice Notes we are currently developing based on stakeholder feedback include adverse inferences, registrant admissions and freedom of expression.

2) Scheduling Team

- 2.7. The scheduling team is responsible for the listing and coordination of all fitness to practise hearings. This includes providing support and guidance to witnesses and others attending hearings who may be distressed or vulnerable.
- 2.8. The management of risk at hearings is an essential part of planning a safe and effective work environment for all parties involved in the hearing process. Although rare, there will be circumstances in which participants in FTP hearings pose a risk of disruption or harm. It is likely that signs of this behaviour will be displayed during the investigation stages of any complaint. The scheduling team are responsible for conduct hearing risk assessments to ensure any reasonable adjustments and special measures are put in place.

3) Hearings Team

- 2.9. The hearings team is responsible for facilitating the fair and efficient progress of all events, including managing complex hearings with various stakeholders. This includes providing support to witnesses, some of whom are vulnerable and require additional assistance.
- 2.10. We have a clear process in place to manage risk during a hearing, adopting a proactive approach to ensuring any potential risks are assessed before a hearing (as mentioned above). However, there may be occasions where, despite all planning and risk assessments undertaken by our scheduling team, an unforeseen event occurs during a hearing. If an unexpected situation occurs we have clear protocols in place to assist the hearings team in dealing with such events.

Summary of HCPTS hearing activity 2023-24

2.11. The HCPTS manages over 1,500 different tribunal events each year. The table below sets out a summary of the key activity between April 2023 and March 2024:

Cases concluded at final hearing	Cases concluded by consent	Review hearings concluded	Current cases in review cycle	Interim order applications considered	Interim order reviews	Number of cases considered at ICP
194	37	88	81	162	469	601

2.12. During the last year we have seen a significant increase in Interim Order applications hearings, which have increased by 45% on the year before, and consequently Interim Order review hearings. This increase reflects the overall increase in the number of FTP concerns that we received last year, as well as the work delivered over the last two years to improve the quality of risk management in FTP investigations.

2.13. Most of our hearings are held remotely, rather than in person. As the Council will be aware, in March 2022 we consulted on permanent changes to our Rules to give us the express permission to hold hearings remotely. This formalised the emergency powers granted to us during the pandemic. The permanent Rules came into effect on 9 November 2023.

2.14. Our decision to continue to offer remote hearings post-pandemic does not mean that hearings will take place remotely in all cases and we have retained the facility to hold hearings in person or using a hybrid format. We adopt a consensual approach and work with registrants and/or their representatives to make sure the most appropriate format for a hearing is agreed. For final hearings, the format of the hearing is decided on a case-by-case basis. This decision is informed by a number of factors, which take into account issues raised in the consultation.

2.15. Our monitoring of hearing activity in 2023, the first full year in a post-pandemic world, shows that the majority of registrants prefer to have a remote hearing across all hearing types. Last year we received 14 requests from registrants for an in-person hearing, of which 11 related to a final hearing and three related to other hearing types. We granted the requests in all cases.

2.16. Where a registrant requests an in-person hearing, or we identify this as suitable, we have been able to work with registrants and representatives to accommodate this, with no disagreements or disputes. There has been no

indication of any adverse impact on hearing outcomes due to the format of the hearing. We have also seen a positive benefit in terms of increased registrant engagement, particularly in relation to shorter one-day hearings.

- 2.17. We will undertake a formal review of remote hearings in early 2025, one year after the permanent Rules came into effect. This follows a commitment made in our response to the consultation. This review will be shared with the Council.

3. Continuous improvement and ongoing quality assurance

- 3.1. We have delivered significant changes as part of the FTP improvement programme, focused on the timeliness of hearings and the quality of panel decisions. This work contributed to us achieving Professional Standards Authority (PSA) Standard 16 (decision-making) last year.
- 3.2. In April 2021 we introduced the role of a legally qualified Chair for our Investigating Committee Panels, with the aim to improve the quality of Investigating Committee Panel (ICP) decisions, the quality of allegations referred to a final hearing and ensure ICPs are chaired effectively.
- 3.3. Our review process has identified a noticeable improvement in the quality of the ICP Chairs' written decision-making. We have also seen a decrease in the Case to Answer rate at ICP over the last two years, from an average of 51% prior to the introduction of legally qualified Chairs to 38% after. This means that panels are not referring cases to a final hearing that do not have a realistic prospect of success, and such cases are being closed earlier in the process.
- 3.4. As part of our work to introduce frontloaded investigations with our external legal providers, we developed a more streamlined scheduling process for those cases which are prepared to be hearing ready at the ICP stage. As a result of this process frontloaded cases are being concluded at a final hearing within 26 weeks of the ICP decision on average, which is significantly less than our KPI of 39 weeks for this stage of the process.
- 3.5. The HCPTS leads the recruitment and training of all FTP Partners with support from the HCPC Partner team. Over the last two years we have enhanced the training we provide to all panel members, with a particular focus on the training for panel Chairs and legal assessors.
- 3.6. Training for these roles focuses on the key areas from PSA feedback, themes coming out of our internal quality review group, any case law updates (including learning from High Court appeals) and any changes to HCPTS

Practice Notes. We deliver training more frequently enabling us to be more agile in terms of content and updating Partners on key themes or current trends they need to be aware of in their decision-making.

- 3.7. The training has been well received and the level of engagement has been high. Following these training sessions, we have seen a reduction in PSA feedback and learning points relating to the quality of our panel decisions, as seen in the key performance indicators reported to the Council.

Quality assurance activity

- 3.8. We are not complacent about the improvements we have delivered, and have put in place a number of mechanisms to assure ourselves of the quality of our pre-hearing case management, case presentation and panel decisions, and to ensure we continue to identify areas for further improvement. Our Decision Review Group (DRG) is a cross-organisational group of colleagues who review panel decisions and PSA learning points and feedback to identify opportunities for improvement. This includes learning and development opportunities for our panel members as well as case management team and external legal providers.
- 3.9. Over the last year the DRG has taken the following action.
- Four of the case outcomes discussed in this period were fed into refresher and new induction training for panel members.
 - We provided direct feedback to panels and legal assessors in relation to decisions on 11 cases.
 - We updated panel guidance following discussions on six separate cases. This has included the development of a new Practice Note on professional boundaries, following the group tracking themes in these types of allegations.
 - We had 12 separate actions around feedback/guidance and training to FTP case management teams. This feedback formed content for refresher training for both the FTP investigations and presenting officer teams.
- 3.10. When the DRG has concerns that a panel decision is not sufficient to protect the public, the decision can be referred to our Decision Appeal Group (DAG). The DAG is a senior management group which will review the decision and consider whether action should be taken within our limited powers to refer a decision back to the ICP or to the PSA for consideration under section 29 of the National Health Service Reform and Health Care Professions Act 2002.

- 3.11. The DAG was established in 2021 and to date has considered five cases, none of which have been referred back to the ICP or referred to the PSA. However, the learning from these cases has informed training, guidance and process development.
- 3.12. The Adjudication Development Group is an operational continuous improvement forum that monitors quantitative and qualitative data relating to hearing outcomes and activity to identify opportunities to improve our ways of working.
- 3.13. A focus for the group over the last year has been around the adjournment rate, which was higher than we would have liked during 2022-2023. Following an evidence-based analysis of cases that have adjourned or gone part-heard, the group has delivered operational changes to reduce the number of adjournments for quality reasons. These have included the implementation of a guidance document for estimating the hearing duration, a pre-hearing checklist across the case management and hearings teams and updates to the relevant HCPTS Practice Notes. We have seen a 7% improvement in the adjournment rate for FTP final hearings and will continue to monitor this over the next financial year.

4. HCPTS priorities for 2024-25

- 4.1. On 1 February 2024 Claire Baker took up the new role of Head of Adjudication Performance, leading the tribunal services function.
- 4.2. Our priorities for this year are aligned with those of the wider FTP directorate, and are focused on timeliness, enhancing the support we provide to participants at the hearing stage and continuing to monitor and embed changes we have delivered in the earlier phases of the improvement programme. The key improvement activities led on by the HCPTS this year are summarised below.
 - Further optimising our scheduling and pre-hearing case management processes with the aim to reduce the time taken to list a matter for a final hearing. This will be informed by the learning from our direct listing process for frontloaded cases.
 - Continuing to improve the support offered to unrepresented registrants through the FTP process, developing the work we have delivered in relation to tone of voice and our registrant support service to the specific requirements of registrants who are navigating the FTP process without representation.

- Developing the support and guidance we offer to witnesses throughout the FTP process, building on the lay advocacy and intermediary support services we introduced last year. Ensuring witnesses feel supported and prepared to participate in a hearing helps them to provide their best evidence and makes the process less stressful.
- Reviewing our sanctions policy to ensure our guidance for panels is up to date and continues to support them to make decisions that are fair, consistent and transparent.

5. Next steps

- 5.1. We will update the Council on the progress of our improvement activities as part of our FTP Performance report.
- 5.2. In addition, we propose to provide the Council with an annual review of our tribunal services activities, to provide Council with an overview of the performance of the tribunal service and its contribution to overall FTP priorities.

Appendix A: Table showing FTP hearings and purpose

Hearing Type	Purpose
Final (substantive) hearing	<p>Hearing that concludes a fitness to practise investigation to determine whether a registrant's FTP is impaired and if so, what sanction should be imposed.</p> <p>Witnesses may be called to give evidence. Registrant and/or their representative may attend and may give evidence and/or make representations to the panel.</p>
Substantive review hearing	<p>Hearing to review a suspension or conditions of practice order imposed at a final hearing.</p> <p>A substantive review hearing must take place before the order expires otherwise the HCPC will lose jurisdiction of the matter.</p>
Interim Order hearing	<p>Risk assessment conducted by a panel to determine whether interim measures need to be imposed to restrict or prevent a registrant from practising whilst an FTP investigation is carried out.</p> <p>Hearing is convened at short notice due to the urgency.</p>
Interim Order review hearing	<p>Hearings to review an interim suspension or interim conditions of practice order imposed at an Interim Order hearing.</p> <p>Review hearing must take place at regular intervals during the order.</p>
Preliminary hearing	<p>Case management hearing to ask a panel to make directions prior to a substantive hearing or review hearing, amend allegations or admit evidence.</p>

Consensual disposal hearing	A final panel decision is required on any case we want to resolve by consent with the registrant. This includes voluntary removal, discontinuance of the case or consent to a sanction.
Restoration hearing	A registrant may apply to be restored to the Register a minimum of five years after they were struck off the register.
Investigating Committee Panel (ICP) hearing	These are private meetings in which the panel determines whether the registrant has a case to answer or not by deciding if the HCPC has a realistic prospect of proving the allegation.