

Tribunal Advisory Committee, 15 September 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 - Practice Notes format and purpose

Date of paper

07 September 2020

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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:

March – August 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
57	6	53	92	45	133	422

As a result of the pandemic there has been a reduction in the hearing activity. In order to fulfil our core public protection function and meet our statutory obligations we have continued to undertake all interim order activity, as well as reviews of substantive conditions of practice or suspension orders. These hearings have been taking place remotely, either on the papers or using Microsoft Teams to facilitate a virtual hearing.

Investigating Committee activity has also continued as usual since 23 March, albeit with a reduced agenda, using MS Teams. Over July and August, we phased in an increase to the number of cases that can be heard per Investigating Committee panel back to pre-COVID-19 levels.

The scheduling of new full final hearings was also temporarily paused in March to allow us to explore how this activity could be undertaken remotely, as well as to allow us to prioritise the continuation of interim order and review activity. This also allowed us to develop and test the logistical aspects of conducting hearings remotely, with the benefit of activity that involved minimal participants and could be concluded within a short space of time (usually one day). The learning from this has helped inform our approach to conducting the more involved, longer substantive hearings remotely.

From May, we were able to re-commence some substantive hearing activity that did not require a full hearing, namely consensual disposal, voluntary removal and discontinuance cases, as well as resuming hearings that had adjourned part-heard before 23 March. Our first non-consensual substantive hearing concluded in July and we have since held a small number of hearings with factual witnesses.

3. FTP/HCPTS activity update

Remote Working

Since the last report, there have been a number of process developments that have assisted in accommodating an increase in virtual hearing activity. We currently have over eighty cases with a future substantive hearing date, which is in line with the numbers we would expect to have listed outside of a pandemic. We are well underway with identifying new hearing dates for cases that were previously postponed and have progression plans in place for a small number of cases that require further pre-hearing case management. For the cases that are ready to be rescheduled, we aim to have a provisional hearing window communicated to all participants by the end of September.

We have outlined our approach to managing hearings in our Hearings Protocol document, which was published in July. The purpose of the document is to clarify how HCPTS plans to continue holding hearings during the pandemic, the factors that will be considered at the listing stage and how we will manage registrant, witness and public accessibility to our hearings. The document will be reviewed at regular intervals and we will continue to adapt our approach in line with restrictions imposed or lifted by the Government.

We are also seeking to amend our Rules in light of the ongoing pandemic and we wish to include the express provision of holding Fitness to Practise hearings remotely during an emergency, as well as including a provision to serve notices via email. We have launched a consultation survey with key stakeholders on our proposals, which will close on 08 September.

To increase the accessibility to our hearings, we will be identifying and converting a number of suitable hearings to hybrid hearings over the next few months. The Tribunal Centre is being repurposed as a video conferencing centre for participants that either cannot connect from home and for hearings where it has been identified that some of the parties should be in the same venue. Risk assessments will be taken at various pre-hearing stages to identify which cases may be suitable and attendees will be provided with health and safety guidance ahead of arrival.

We assisted colleagues in Case Management with developing and deploying an electronic document sharing portal for panel members and Legal

Assessors in August. There were a number of internal and external stakeholders involved in the testing prior to the launch, including Fitness to Practise Partners. The portal is now being used for all hearings and replaces the former method of sending large bundles via post and email. There are a number of benefits to using the portal, which include enhanced data security, a recovery of costs associated with printing and a more streamlined way of sharing multimedia files.

4. 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 meeting took place in July 2020. Key areas of discussion included:

- Case referrals
- PSA learning points
- ICP audit

The group discussed four decision referrals in total which related to a declaration case and 3 ICP decisions. The referral rate was slightly lower than usual given the level of activity in this time period due to the pandemic. In two of the cases the group felt it was necessary to provide direct feedback to the panel regarding the quality of their decision. The group also agreed that guidance was needed to assist panels in relation to requests from registrants for an ICP extension to ensure consistent and appropriate decisions are being made.

The several action points agreed from the group will be reviewed and followed up again at the next meetings.

The terms of reference for the DRG has been amended since the July meeting to reflect the restructure of the department and ensure the right level of seniority and engagement is involved in the meetings.

5. PSA feedback

We received five observations from PSA in April – June which were also discussed at the DRG in July.

Case 1: Case management issues resulting in an action point following discussion at DRG.

Case 2: Social Work case which was case specific and therefore the DRG was unable to discuss following the transfer to Social Work England.

Case 3: This was regarding a preliminary point which the DRG felt the legal assessor could have raised in advance of the hearing rather than on the day. Scenario to be used in legal assessor training.

Case 4: Whilst the PSA agreed with the outcome of the hearing, they considered that the panel had made an error on a procedural irregularity. The DRG agreed with the PSA and decided that direct feedback would be provided to the panel and legal assessor.

Case 5: An issue with PSA receiving a copy of the final hearing decision, the process for this has since been clarified with PSA.

5. Training programme

Following a successful round of virtual interviews, new panel member training will take place via MS Teams at the end of September.

Refresher training for existing panel chairs, panel members and legal assessors will also recommence this month via videoconference. Existing training material and activities have been adapted for a virtual environment and feedback on initial experiences will assist with future enhancements. PSA will attend the refresher Panel Chair training in September.

6. Practice Notes

There are five Practice Notes which are due to be reviewed in November. The process for the review have been attached to the appendix. The five practice notes which need to be reviewed are:

Practice Notes
Conduct of Representatives
Conducting hearings in private
Health Concerns
Interim Orders
Proceeding in the Absence of the Registrant

Appendix 1

Practice Notes format and purpose

1.0 Introduction

- 1.1 This document sets out the principles that should be applied to the ongoing development and review of the HCPTS practice notes.
- 1.2 The primary purpose of the practice notes is to provide guidance to panels on relevant areas of procedure relating to fitness to practise proceedings. They also provide useful guidance and context for registrants subject to a fitness to practise allegation or those with an involvement in fitness to practise proceedings. It is important to note that a large percentage of registrants attending a hearing will be unrepresented.
- 1.3 As well as setting out procedure, they provide HCPC's interpretation of its overarching legislation and rules as well as setting out relevant case law. They are dynamic documents that are subject to regular review and revision.
- 1.4 They can be viewed and downloaded from the HCPTS website and can therefore be accessed by anyone who has an interest or involvement in proceedings.
- 1.5 They are not intended as exhaustive guidance and do not provide legal advice, although the nature of the Practice Notes means that they must encompass relevant points of law.
- 1.6 In May 2017, under provisions within Article 3 (12)(b) of the Health and Social Work Professions Order 2001, the Council delegated powers to TAC in relation to providing guidance to the Tribunal, including the review of all Practice Notes. TAC's terms of reference sets out that the committee shall:

'subject to any policy established by the Council, provide guidance to the Tribunal [i.e. the Health and Care Professions Tribunal] on matters of practice and procedure, in order to assist the Tribunal to conduct proceedings fairly, proportionately, efficiently and effectively.'

- 1.7 Any Practice Notes made (newly created) following the establishment of TAC in 2017 should set out that they have been issued by TAC. All pre-existing Practice Notes prior to the establishment of TAC will have been issued by the Council upon their creation.

2.0 Format and content

- 2.1 The format of the Practice Notes should aim to be consistent and follow the principles set out below:
 - Ensure clarity and simplicity of language;

- Focus on the relevant issue, when the issue could occur, the legal context and what this means in practice for the hearing;
- Ensure paragraph numbering, cross referencing and clear headings for ease of reference;
- Issues addressed in Practice Notes should be ordered so that the most frequent / relevant elements take prominence;
- Aim to avoid unnecessary legalistic language and ensure they are accessible as guidance to Panels and registrants or the wider public who may have an interest in proceedings.

3.0 Process of review

- 3.1 The Executive will incorporate TAC's advice in relation to the review and development of the Practice Notes. However, due to the legal context of the content and their use by panels during fitness to practise proceedings they are also subject to final legal review and sign off.
- 3.2 Some Practice Notes may also contain guidance that is relevant to the management of the case at the earlier stages of the fitness to practise process.
- 3.3 In all cases, the HCPTS will initiate the process of review, undertake initial re-drafting and provide input and guidance to TAC throughout the review process, including proposals for change by TAC. HCPTS will ensure appropriate and relevant operational input at the early stages of review.
- 3.4 Legal review and sign off will then be sought and any further changes communicated electronically to TAC members.