

Agenda Item 11 (ii)

Enclosure 11

**Health and Care Professions Council
04 July 2019**

**Annual report of the Tribunal Advisory
Committee 2018-19**

For discussion

**From Marcia Saunders, Chair of the Tribunal
Advisory Committee**

Tribunal Advisory Committee – Annual Report to Council

Executive Summary

Upon its establishment in May 2017, it was agreed that the Tribunal Advisory Committee (TAC) would provide an annual update to Council on its work and achievements.

The attached paper sets out the key areas of work where the Committee has been able to provide valuable advice and insight during its first year of operation, in the following areas:

- Partner competences and selection
- Training and assessment
- Panel Feedback
- Guidance on practice and procedure

The report also sets out the planned areas of future work for the Committee.

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| Previous consideration | Earlier iterations of the forecast have been considered by SMT and Audit Committee as a basis for the financial forecast. |
| Decision | The Council is asked to discuss the report |
| Next steps | The registration and application numbers will be monitored over time and any significant changes will be highlighted to SMT and the Audit Committee in the first instance. |
| Strategic priority | Strategic priority 1, Improve our performance to achieve the Professional Standards Authority's Standards of Good Regulation Strategic priority 4: Make better use of data, intelligence and research evidence to drive improvement and engagement |
| Risk | Strategic Risk <ul style="list-style-type: none">• 1. Failure to deliver effective regulatory functions• 5. Failure of leadership, governance or culture Risk appetite <ul style="list-style-type: none">• The Council takes a minimal approach to public protection risks. |

Financial and
resource
implications

None as a result of this paper.

Author

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Tribunal Advisory Committee Annual Report 2018-19

- 1.1 This is the second Annual Report of the Tribunal Advisory Committee (TAC) to the Health and Care Professions Council (HCPC). It sets out the Committee's work and achievements during the period May 2018 – May 2019, and identifies further issues and areas of focus.
- 1.2 The Health and Care Professions Tribunal Service (HCPTS) was launched in 2017 to support the separation between the investigation and adjudication of the HCPC's fitness to practise cases and to enhance independence in decision making by fitness to practise tribunals.
- 1.3 The TAC is a non-statutory advisory committee supported by officers of the HCPC and HCPTS. It is subject to the Council's strategic decisions as well as its high-level policy in respect of fitness to practise and to the HCPC's [Code of Corporate Governance](#). It meets four times a year and reports direct to Council on the basis of the following terms of reference:
 - To advise the Council on
 - the qualities, abilities and competences required of Tribunal panel members, chairs and legal assessors (partners);
 - the arrangements for the merit-based selection, by fair and open competition, of Tribunal panel members, chairs and legal assessors;
 - the arrangements for the training and assessment of Tribunal panel members, chairs and legal assessors;
 - Subject to any policy established by the Council to provide guidance to the Tribunal on matters of practice and procedure, in order to assist the Tribunal to conduct proceedings fairly, proportionately, efficiently and effectively.
 - Under this TOR, the Council has specifically delegated the review and approval of [Practice Notes](#) for the conduct of tribunals to the TAC.
- 1.4 [Members of the TAC](#) were appointed in 2017 through open competition on the basis of competences and relevant experience for a period of two terms of up to four years each. Membership has not changed during the course of the year. In line with Council's standing orders for committees there are three serving Fitness to Practice (FTP) panel chair members and three independent members. Its members are remunerated by a daily fee agreed by Council for all committees. The Chair is currently one of the independent members.
- 1.5 In addition to the TAC's own meetings members have participated in [Professional Standards Authority \(PSA\)](#) events as HCPC delegates. These include consultations on Duty of Candour and Public Confidence, and a conference in which the PSA sought feedback from professional regulators on current issues such as system failures, assessing insight and remediation, issues relating to unrepresented registrants and vulnerable witnesses, and on

research it is undertaking following the Williams commission into public confidence.

- 1.6 TAC meetings are supported by the HCPC Head of Governance, the Head of Tribunal Services and the Partner and HR Manager. They are attended by HCPC and HCTPS officers to participate as presenters, contributors and observers, and are open to the public. Agendas, minutes and papers are published on the HCPC website.
- 1.7 The TAC's approach to its work has been informed throughout the year by its terms of reference and by:
 - the Council's primary objective of protecting the public.
 - the TAC's own role in assisting the Council to assure itself of the separation of the investigation and adjudication of fitness to practise cases, and of the independence of decision-making in all fitness to practise tribunals.
 - ensuring its objectives align with the Council's priorities to focus its work effectively. The TAC has devised a forward planning framework to keep its own progress on track and under review.
 - paying close attention to reviews undertaken by the PSA both of HCPTS related matters and of other regulatory bodies where relevant, including its regularly published 'lessons learned' reviews.

Partner competences and selection

- 2.1 The HCPC uses competence frameworks to outline the skills, experience and attributes required of partners involved in HCPTS fitness to practise tribunals. In its first year the TAC commenced a full review of the frameworks. Over the past year the TAC:
 - completed its review and overhaul of the competence framework for panel members and chairs. This framework has been used systematically for recruitment and selection of partners and to help identify their development and training needs, and it is now the basis for performance monitoring and review. It also informs the TAC's reviews of Practice Notes (below).
 - ensured that a competence framework for legal assessors was developed and put in place. This is now used for the recruitment of new Legal Assessors. Feedback from the recruitment and selection process has been positive and has resulted in greater diversity.
 - reviewed the [information and guidance documentation](#) for applicants for partner roles;

- reviewed the strategy adopted for advertising partner roles;
- promoted [routine surveys](#) of successful and unsuccessful applicants for partner roles so as to provide ongoing insight into recruitment and selection processes.

2.2 In addition to reviewing material provided to prospective partners, the TAC has advised on changes in the ways in which the HCPC interacts with them. In particular it has considered and helped inform changes to two sets of policies and procedures, [Dealing with Partner Complaints](#) and [Conflicts of Interests](#).

Training

3.1 In February 2019 TAC viewed a demonstration of the new *FTP Partner e-learning module for new Panel Members and Panel Chairs*. The new module aims to assist with panellists' understanding of the work of HCPC/HPCTS, of the PSA's 10 standards of good regulation for Fitness to Practise, and of their role as partner within the overall HCPTS structure and fitness to practise processes. The new module supports the existing two-day face to face induction training and was created following feedback from HCPTS panel members. The TAC will continue to advise on any further digital learning initiatives for FTP partners.

Performance Review

4.1 An [option paper](#) outlining possible approaches to improving the current performance review process for partners was submitted to the TAC in September 2018. TAC agreed a proposal to develop a 360 degree review approach. This was taken forward by an FTP Working Group which, having secured early input from panel members and chairs, recommended to the TAC that the current process be replaced by 360 review, including self-review. The TAC recommended that the Council discontinue the lengthy self-assessment exercise required for panellists to renew for a second term. This was subsequently [approved by Council](#) in March 2019.

4.2 Going forward, all partners including legal assessors will be included in the 360 feedback review process; the frequency of reviews will be more closely aligned with the frequency of services provided; and the learning from performance reviews will be used to enhance partner training as well as to identify both outstanding and unsatisfactory performance.

Guidance

5.1 The TAC continues to monitor whether Practice Notes and other guidance issued by the HCPC and HCPTS are inclusive and in line with HCPC's equality and diversity inclusion policies. TAC members are conscious of the need for

documents to be accessible for all those who might refer to them, irrespective of their background or their prior knowledge of the HCPC, including its fitness to practise processes and its recruitment and employment arrangements.

Practice Notes

- 6.1 Practice Notes are issued both to guide panels and to assist those who appear before them. In line with its delegated responsibility for approval of the Notes, the TAC undertakes a cyclical review to ensure not only that they take account of experience in the handling of cases and any relevant new case law, but also that the purpose of each practice note is clear. This process of continuous review is intended to ensure that they are as up to date as possible while allowing for prioritisation of specific notes should the need arise through, for example, legislative change.
- 6.2 The TAC is committed to ensuring that Practice Notes provide improved guidance, including, where appropriate, reference to other guidance and case law, and is working with HCPTS Officers to develop a common format and improve their clarity for all those who use them. In reviewing the Notes the TAC is conscious of the importance of alignment with the Competency Framework for Partners, and has identified and advised on matters which relate to partner competencies and may have training implications.
- 6.3 This year the TAC has focused on those Practice Notes which have been identified as being unclear or requiring updating during the FTP improvement plan project, or through feedback from those using them.
- 6.4 Mindful of the Professional Standards Authority (PSA)'s *Lessons Learned Review of the Nursing and Midwifery Council's handling of concerns about midwives' fitness to practise at the Furness General Hospital*, TAC has prioritised and reviewed those Practice Notes which have a bearing on the way HCPTS panels and officers approach the treatment of witnesses, registrants and other stakeholders.
- 6.5 During the year the TAC has included in its review process the following specific Notes:
 - Health Allegations (now [Health Concerns](#)) – September 2018
 - [Proceeding in Absence](#) - September 2018
 - [Interim Orders](#) - September 2018
 - [Conduct of Representatives](#) – November 2018
 - [Special Measures](#) - November 2018
 - [Conducting Hearings in Private](#) - November 2018
 - [Unrepresented Registrants](#) – February 2019
 - Drafting Decisions – initiated
 - Finding Impairment – initiated

- 6.6 The TAC has, alongside this, advised on ongoing work to provide improved information and guidance to registrants, represented and unrepresented, thus to encourage greater engagement in FTP proceedings both by those subject to those proceedings and by witnesses.

Policy Reviews

- 7.1 In May 2018 the Acting Policy Manager informed the TAC about the process for the Council's planned public consultation on a revised Indicative Sanctions Policy. The TAC responded in detail during the consultation period. The [new Sanctions Policy](#) was approved by Council in December 2018.
- 7.2 The TAC is addressing with HCPC the timing of its involvement in any future consultations relating to the work of HCPTS panels so that it can contribute at an appropriately early stage to matters within its remit. In areas where consultation may fall outside the remit of the TAC the TAC might be well placed to offer information about the practicalities relating to proposals for change, to their possible training implications and to their potential impact on participants from different groups.
- 7.3 The TAC has raised with the Council its concern around the limitations on registrant diversity monitoring and the resultant limitation on the organisation's ability to monitor and demonstrate fairness in its application of policy and procedure, as well as the reputational risk. The TAC therefore welcomed the report to Council on [Data Intelligence and Research](#) (December 2018) and its accompanying legal advice that should assist efforts to take this forward.

Future work

- 8.1 The TAC will continue to provide independent input and advice on Fitness to Practice activities and ensure that this links to Council and HCPTS strategic objectives and priorities.
- 8.2 The TAC will continue its ongoing review of Practice Notes, prioritising those which are identified as lacking clarity, or where the HCPC/HCPTS consider that a review would be beneficial, or where changes might be necessary following HCPC policy change or new PSA guidance. The TAC is continuing to support the development of standard formatting of the Practice Notes to help improve clarity, ease of reference to specific points within them during tribunal decision making, and linkages where appropriate to other Notes and policy documents.
- 8.3 In the coming year, TAC will provide guidance to HCPC's ongoing review of the Investigating Committee process, primarily in relation to the use of specialist panel chairs (currently being piloted) and any differences in competences and training required for the role. More generally this also feeds into considerations of efficiency and value for money, a key priority for HCPTS in 2019-20.

- 8.4 TAC will continue to advise on and contribute to HCPTS strategies for increasing engagement from unrepresented registrants, ensuring that appropriate support mechanisms are in place and that relevant guidance and information is accessible.
- 8.5 TAC members will continue to develop their own understanding of wider policy and regulatory issues so that they can be proactive in identifying implications for Partners. This will include engagement with other organisations as appropriate and, specifically, with relevant PSA consultations or attendance at PSA events.
- 8.6 TAC will support the roll-out of the new Performance Review platform and the equality and diversity e-Learning modules. It will continue to advise on recruitment changes and reviews, and provide input into policy reviews.

In conclusion

- 9.1 Over the past year, the TAC has advised the HCPC/HCPTS as it has developed and improved policies, practices and the capacity of panel members in the delivery of an independent fitness to practise adjudication service. TAC has also sought to ensure that HCPTS panel members are equipped to demonstrate that in addition to public protection issues, they can fulfil their obligations to maintain standards and public confidence in the regulator.