

## **Tribunal Advisory Committee**

### **Public minutes of the 6<sup>th</sup> meeting of the Tribunal Advisory Committee held on:-**

**Date:** Wednesday 5 September 2018

**Time:** 1pm

**Venue:** Room K, Health and Care Professions Council, Park House,  
184 Kennington Park Road, London SE11 4BU

**Present:** Catherine Boyd  
Sheila Hollingworth  
Alan Kershaw  
Marcia Saunders (Chair)

### **In attendance:**

Claire Amor, Secretary to the Committee  
Claire Baker, Tribunal Services Manager – Hearings  
Melanie Harel, Hearings Team Manager  
Amanda Johnson, Hearings Team Manager  
Zoe Maguire, Head of Tribunal Services  
Deborah Oluwole, Tribunal Services Manager - scheduling  
Uta Pollmann, Partners and HR Manager

## Public

### **Item 1. Chair's welcome and introduction**

- 1.1 The Chair welcomed Committee members and the Executive to the sixth meeting of the Tribunal Advisory Committee.
- 1.2 The Committee noted that Elaine Buckley had stepped down as the Chair of the HCPC. The Committee thanked Elaine for her support in establishing the Committee.
- 1.3 The Chair reported her attendance at the Council meeting of 5 July 2018 to present the Committee's first annual report.

### **Item 2. Apologies for absence**

- 2.1 Apologies were received from Philip Geering and Graham Aitken.

### **Item 3. Approval of agenda**

- 3.1 The Committee approved the agenda.
- 3.2 Catherine Boyd provided the Committee with an overview of her recent attendance at the PSA's seminar on the duty of candour. It was noted that the duty of candour has a narrow legal definition and that the regulators present reported they are not receiving allegations relating to this duty. A report on the duty of candour will be produced and is expected at the end of 2018, the report may have implications for the regulators to consider.

### **Item 4. Declarations of members' interests**

- 4.1 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 30 May 2018 (report ref: TAC 20/18)**

- 5.1 The Committee received the draft minutes from its meeting held on 30 May 2018.
- 5.2 The Committee agreed the minutes.

### **Item 6. Matters arising (report ref: TAC 21/18)**

- 6.1 The Committee received an update on matter arising 5 from its meeting of 19 February 2018. It was noted that an allegation can be reopened following a finding of no case to answer if new evidence comes to light.

6.2 The Committee noted the matters arising from its meeting of 30 May 2018.

### **Item 7. Head of Tribunal Services report (report ref: TAC 22/18)**

7.1 The Committee received a report from the Head of Tribunal Services.

7.2 The Committee noted the following points:-

- the missing statistic for Interim Orders reviewed in table 2.1 was 89;
- a meeting of the HCPC/HCPTS Decision Review Group (DRG) took place in August, the group undertook a review of not well founded cases;
- the FTP improvement plan is progressing to plan. Part of this plan was to produce a health allegations policy, which was approved by Council in May 2018. As part of this the existing Health Allegations Practice Note has been expanded; and
- the plan also includes the exploration of the use of Panel Chairs who specialise in Investigating Committee Panels. However interest in piloting such a role was low among Panel Chairs.

7.3 The Committee discussed the DRG. It was noted that the purpose of the group is to support organisational learning with particular emphasis on issues affecting the case management and tribunal processes. The group conducts regular reviews of decisions made by HCPTS Panels, but the focus of this is to identify actions for the HCPC to take to improve its own processes rather than 'going behind' the Panel's decision.

7.4 The Committee considered that Panel Member involvement could enhance the discussions of the group by providing a different perspective beyond the written decisions. It was noted that learning from the DRG is fed back to Panellists individually and through training sessions. The Committee agreed that knowing the currency of the issues explored in training through real examples is impactful for Panellists.

7.5 The Committee noted the report.

### **Item 8. Partner team operational report (report ref: TAC 23/18)**

8.1 The Committee received a paper from the Partners and HR Manager.

8.2 The Committee noted the following points:-

- the first review of the Partner Portal has been completed. A more in-depth review, including Partner feedback, will take place 12 months after the introduction of the Portal;
  - Partner turnover is higher in comparison to the previous three months, this has been primarily triggered by 75 FTP Partners going through self-assessment. A number of Partners resigned not wishing to go through the process; and
  - a recruitment campaign for Lay panel members will launch on 17 September. High interested is anticipated
- 8.3 The Committee discussed the high level of turnover in the reporting period. The Committee expressed concern that the reappointment assessment process had deterred some Partners from continuing with a second term. It was noted that some Partners had cited a reduction in volume of work available as being a contributing factor.
- 8.4 The Committee questioned if more Panellists should be recruited, given that some existing Panellists are not getting the volume of work they expect. It was noted that concern about work volume was mainly from Registrant Panellists, and that long term planning due to the 8-year rule limitation requires frequent recruitment to enable appropriately experienced Panellists to be available consistently. The Executive also aims to develop a model of recruiting Panel Chair's from the Member pool exclusively, requiring an appropriate pool to be available.
- 8.5 In response to a question it was noted that the HCPC does not hold an annual meeting for e.g. lay Panellists due to numbers and costs. However updates and engagement is delivered through refresher training and the Partner newsletter.
- 8.6 The Committee noted that the asterisk in the table in appendix A should be next to terminations not the 8-year rule.
- 8.7 The Committee noted the report.

## **Item 9. Review of Practice Notes (report ref: TAC 24/18)**

- 9.1 The Committee received a paper from the Head of Tribunal Service.
- 9.2 The Committee discussed the overall purpose, tone and format of HCPC Practice Notes (PN). The following points were made by Members:-
- the current format of the PNs needs improvement to encourage more frequent use by Panellists;
  - the content of PNs is on whole good, but in places wording is too legalistic and the ordering of information does not assist the reader;

- PNs are located on the HCPTS website under 'legislation' this is not appropriate and contributes to the overly legalistic perception;
- paragraph numbering, indexing and cross references would assist Panellists under pressure; and
- the use and positioning of the qualifier 'only' needs to be reviewed in the PNs to ensure legal precision.

9.3 The Committee noted that PNs are also intended as guidance to Registrants undergoing FTP proceedings, especially those who are not represented. For this reason the PNs need to be understandable to people not familiar with the tribunal setting.

9.4 The Committee agreed to update the format of the PNs as they are considered through the review cycle. The need for consistency was emphasised.

### **Health Allegations**

9.5 The Committee discussed the revised Health Allegations PN. It was noted that a key strand of the FTP Improvement Plan has been the development of a policy statement on investigating health matters, and a review of existing policies and guidance that relate to these cases. The Health Allegations PN has been expanded as part of this work.

9.6 The Committee agreed that the term 'health allegations' should be avoided where possible; instead offering that health concerns" or "impairment due to health" would be more suitable and less combative. It was noted that the Rules may require the use of health allegations in some areas, but that this would be reviewed with the aim of minimising its use.

9.7 The Committee noted the recent PSA learning point (Digest January-July 2018) on health: "Problems arose particularly in cases where the regulator had separate health and conduct committees and the registrant was alleged to have committed misconduct and that misconduct was the result of a health condition...where it became clear that erasure was not likely, panels or regulators did not follow this through and address the health condition...there remain questions about whether the registrant remains fit to practise...we would encourage regulators and panels to ensure that all health concerns are fully investigated and that panels are provided with sufficient and up-to-date evidence..."

9.8 The Committee agreed that a paragraph drawing attention for the need for Panels to explain why they have taken one expert's advice over another should be added to the PN.

9.10 The Committee discussed the inclusion of vulnerable registrants in the health allegations PN. It was noted that a project on unrepresented

registrants is currently working to produce enhanced guidance and that the PN could refer to guidance being available and sign post this.

- 9.11 The Committee agreed to consider the revised Health Allegations PN by correspondence following its amendment to reflect the Committee's discussions. - ACTION

### **Proceeding in Absence**

- 9.12 The Committee discussed the revised Proceeding in Absence PN. It was noted that the PN has been reviewed as part of the FTP improvement plan project. The PSA have previously raised broad concerns that the practice note is unclear, and that it is insufficiently focused on public protection.
- 9.13 The Committee agreed the revised Proceeding in Absence PN subject to the addition of paragraph numbering. - ACTION

### **Interim Orders**

- 9.14 The Committee discussed the revised Interim Orders PN. It was agreed that the penultimate bullet point on page 10 of the revised draft PN should include acts of violence to include assault. It was agreed that this example list should be consistent throughout.
- 9.15 The Committee noted that context was important and that Panels should not be tied to automatically impose an Interim Order. For this reason an exhaustive list of possible factors indicating an Order is required is not included.
- 9.16 The Committee agreed that the revised Interim Orders PN drafted by Member Phillip Geering and shared by correspondence was an improvement in terms of structure, clarity and readability and a useful basis for discussion of future standard format and approach.
- 9.17 The Executive agreed to review the PN further taking this into account and to distribute for approval by correspondence. – ACTION

### **Item 10. Option paper FTP performance review (report ref: TAC 25/18)**

- 10.1 The Committee received a paper from the Partners and HR Manager.
- 10.2 The Committee noted the following points:-
- the current process of self-assessment and performance review for Panellists has not been reviewed since 2012;
  - options for revisions to the process are included in the paper;

- the aim of any change is to make the process more effective and reliable in providing meaningful assurance on Partner performance; and
  - the Executive's recommendation to the TAC is to discontinue the process of self-assessment and to consider a multisource feedback option.
- 10.3 The Committee agreed that if processes for recruitment are working well, it would be reasonable to assume the majority of Panellists are performing satisfactorily. The aim of the process therefore should be to identify outliers' i.e. both excellent and poor performers.
- 10.4 The Committee discussed the use of an external provider in option one. It was noted that the role of the provider would be to administer the process, not to make observations or judgements on performance. The HCPC would develop the questions and make the assessments.
- 10.5 The Committee agreed that those undertaking the assessments should be appropriately familiar with the role of a Panellist. It was agreed that questions should be limited in number, brief and phrased to elicit reflective, constructive feedback. It should be made clear to those providing feedback that their feedback will be shared.
- 10.6 The Committee noted the costs of running a multi-source feedback model would depend on the frequency of assessment. It was noted that the MPTS requires feedback following each hearing, and that this was not feasible for the HCPC as the volume of hearings is higher; additionally hearings tend to be less complex.
- 10.7 The Committee agreed that a representative sample was more proportionate to undertake assessment. This sample should be sufficient to be statistically valid for credibility of the assurance.
- 10.8 The Committee welcomed use of a reference group with Partner representation to further develop proposals.

**Item 11. Raise a concern guidance - draft (report ref: TAC 26/18)**

- 11.1 The Committee received a paper from Partners and HR Manager.
- 11.2 The Committee welcomed the guidance.

**Item 12. Candidate Guidance (report ref: TAC 27/18)**

- 12.1 The Committee received a paper from the Partners and HR Manager.

- 12.2 The Committee agreed that the guidance should advise applicants that a large number of applications are received and therefore following the guidance is particularly important for shortlisting.
- 12.3 The Committee noted that the guidance was quite long and that the Executive should seek to remove non-essential passages and duplication to encourage applicants to read it.

**Item 13. Recruitment survey (report ref: TAC 28/18)**

- 13.1 The Committee received a paper from the Partners and HR Manager.
- 13.2 The Committee noted that a small survey had been conducted with successful applicants following a recent recruitment campaign.
- 13.3 The Committee suggested that future surveys include unsuccessful candidates following the next recruitment campaign. In particular, it would be useful to include people from minority groups' experience of the process if possible. – ACTION
- 13.4 The Committee noted the report.

**Item 14. Forward planning**

- 14.1 The Committee agreed to hold a forward planning workshop following its meeting in November 2018. This session would be based on the Committee's 3-year plan. It was noted that the Chair would propose a framework for this session.

**Item 15. Any other business**

- 15.1 There was no further business.

**Item 16. Date & time of next meeting:**

- 16.1 Thursday 14 November 1pm.
- 16.2 The Committee requested that the dates for its 2019 meetings be reviewed and circulated to members.

**Chair Marcia Saunders**

**Date 14/11/2018**