Council, 6 July 2017

Minutes of the Tribunal Advisory Committee Meeting 31 May 2017

Executive Summary

The Tribunal Advisory Committee (TAC) met for the first time on 31 May 2017. The draft minutes of this meeting are provided for information.

A summary of business considered is set out below.

Head of Tribunal Services report

This will be standing item on the TAC agenda, it provides a summary of HCPTS hearing activity.

Review of Practice Notes

The Council has delegated the approval of Practice Notes to the TAC. The TAC agreed a timetable and overall review approach.

Panel Training programme overview

Members reviewed the training provided to Panellists. TAC considered the programme was comprehensive. TAC considered that the culture of the HCPC was important to include in training.

Introduction to the Partner Team and operational data

During this item discussion focused on the agreement renewal process. TAC considered that the process is fairly onerous on Partners.

TAC expressed concern about the lack of ethnicity data held on Registrants to enable accurate assessment of how representative the HCPC's Partner demographic is. It requested that this is highlighted to the Council. (10.5)

Partner appraisal system

TAC received a presentation from the Partner Manager on the appraisal system. TAC considered that Legal Assessors should be appraised. And that mandatory feedback from panels should be pursued.

Revised Competency Framework for HCPC Panellists

TAC considered a revised framework developed following the establishment of

HCPTS and based on the Judicial Skills and Abilities Framework 2014 produced by the Courts and Tribunals Judiciary.

TAC had a large number of suggested changes and so it was agreed that this item would be considered at the next meeting in September and comments would be submitted by email to the Executive.

Panellist self-assessment process for renewal agreement

As this item is linked to the competency framework it was agreed to defer consideration to September 2017

Summary of Actions requested by TAC

The Committee agreed that:-

- the Committee's advice on ethnicity data collection will be conveyed to the Council;

- the Executive will consider and report back to the committee on a competency framework for Legal Assessor appraisal, more regular Panellist performance feedback and mandatory feedback from Chairs; and

- the Committee will receive an update in September on the ICP review and work on pre instruction improvements and the process to be followed to develop a new Practice Note.

Tribunal Advisory Committee

Public minutes of the 1st meeting of the Tribunal Advisory Committee held on:-

Date: Wednesday 31 May 2017

Time: 1pm

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

Present: Graham Aitken
Catherine Boyd
Philip Geering
Shelia Hollingworth
Alan Kershaw
Marcia Saunders (in the Chair from item 2)

In attendance:

Claire Amor, Secretary to the Committee
Brian James, Acting Head of Tribunal Services
Melanie Harel, Hearings Team Manager
Teresa Haskins, Director of Human Resources
Deborah Oluwole, Adjudications Manager – Scheduling
Fiona Palmer, Partner Manager

Public

Item 1. Nomination of Tribunal Advisory Committee Chair (report ref: TAC 01/17)

1.1 The Committee received a paper for decision from the Executive.

1.2 The Committee noted that, as the first item of business at the first meeting of the Tribunal Advisory Committee, the Committee is required to nominate a member to perform the role of Tribunal Advisory Committee Chair.

1.3 The Committee noted the role of the Committee Chair, and the process for election of chairs of committees as set out in the paper.

1.4 Shelia Hollingworth nominated Marcia Saunders as Tribunal Advisory Committee Chair. All other members seconded this nomination. No other names were put forward.

1.5 The Committee **agreed** that the nomination of Marcia Saunders would be put to the Council for ratification at the Council meeting in June 2017.

1.6 Marcia Saunders agreed to act as Chair for the remainder of the meeting.

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 Graham Aitken, Catherine Boyd and Philip Geering declared an interest in the contents of the agenda, due to their role as HCPC Panel Chairs. The Committee agreed that this would remain a standing declaration of interest due to the nature of the Committee's remit. There were no other declarations of interest.

4.2 The Chair reminded members to keep the register of interests held centrally up to date.

Item 5. Tribunal Advisory Committee terms of reference and HCPC standing orders for committees (report ref: TAC 02/17)

5.1 The Committee received and noted the Tribunal Advisory Committee terms of reference and HCPC standing orders for committees.

5.2 The Committee noted that the Council had delegated the responsibility for approval of Practice Notes to the Committee.

5.3 The Committee noted that it is an advisory body and is not an appointments committee, training provider or oversight body and will not become involved in individual FTP cases. While the Committee is independent, its advice to the Council will be in accordance with and aligned to the Council's policies and strategic decisions, including taking account of financial constraints.

Item 6. Initial Committee discussion and ways of working

6.1 The Committee discussed its ways of working as an advisory body.

6.2 The Committee noted that there is no one single senior reporting officer for the Committee. Members of the Executive will be in attendance at meetings as appropriate, consistent with the Committee's remit and as specifically requested by the Committee. The Committee will be supported within existing HCPC staffing, including the Committee Secretary and resources.

6.3 The Committee agreed the importance of clarity about whom it was advising on any particular matter, the Council, Executive or HCPTS or a combination thereof.

6.4 The Committee agreed that it had a fundamental role to demonstrate the separation of the investigative and adjudication processes and the independence of the HCPTS.

6.5 The Committee agreed that it was important to ensure the TAC was not seen as HCPC's exclusive channel for communication on Tribunal matters and noted the existing forums and feedback mechanisms for e.g. panel members and chairs. Regarding TAC members themselves, communication outside of meetings, with the Executive and other Committee members, is welcomed though it should not become a main way of carrying out business.

Item 7. Head of Tribunal Services report, May 2017 (report ref: TAC 03/17)

7.1 The Committee received a report from the Acting Head of Tribunal Services. The report provides a summary of a number of key areas of work relating to HCPTS hearing activity. It was noted that the report would be a standing item on the Committee's agenda.

7.2 During discussion the following points were noted:-

- the HCPTS project has concluded, with the Tribunal Service team going live as planned in the week commencing 24 April 2017. The project was delivered on budget;

- there has been some positive movement in length of time statistics, more significant progress is expected towards the end of the financial year;

- the Executive has identified an emerging trend in the outcomes of cases with a reviewable sanction. The number of reviewable sanctions has increased in the last six months, and the duration of the orders has decreased;

- the Executive met with registrant representative and professional bodies in may as part of a cycle of biannual meetings;

- learning points received by the PSA are used to provide feedback to panels and refresher training; and

- work on developing the way the way the HCPC works with its external investigators Kingsley Napley (KN) is underway with the aim of supporting the timely progression of cases.

7.3 The Committee **recommended** that, given its importance, feedback from Panels is mandatory and that an online survey tool could encourage higher feedback returns.

7.4 The Committee welcomed the planned review of the HCPC's ICP process. This review will look at all aspects of the process including Partner training. It was noted that fundamental changes would also be considered. The Committee **requested** an update on this work at its meeting in September 2017.

7.5 The Committee discussed the data provided on adjournment rates. The Committee noted that a possible improvement to rescheduling issues was to agree a reconvening date at the time of adjournment, as all parties would be present for consultation.

7.6 The Committee welcomed the work on the KN instruction process. It was **agreed** an update on progress would be received at the Committee meeting in September 2017.

7.7 The Committee discussed the emerging trend of short reviewable sanction orders. During discussion the following points were noted:-

- no reason for the trend has been identified by the Executive, many different potential causal factors have been investigated;

- analysis of these cases shows that a significant number of them related to cases where the registrant has not engaged in the process;

- short time periods have an impact on the ability of the registrant to fully engage with the order and reflect on their practise. It also has a resource implication for the HCPTS as time is needed to arrange a review hearing;

- reviews of short sanctions almost always result in a continuing order, often without changing the terms of the original order;

- the Executive would like to enhance guidance for Panels on sanction length and the engagement of registrants and possibly require Panels to include an explanation of why a shorter or longer period is required;

- "in the room" written guidance may assist Panels in these cases;

- the indicative sanction policy could be enhanced in this area; and

- however Panels must not be 'fettered' and registrants are able to request a review hearing sooner if they feel ready.

7.8 The Committee agreed that recent case law was clear that non-engagement from the registrant did not support a lower sanction. It was noted that guidance to presenting officers on the tone to take includes a number of factors to consider, non-engagement of the registrant is included in this list.

7.9 The Committee considered that the increase in short reviewable sanction orders is a training issue for Panel members. It **agreed** that the consequences for the registrant and HCPTS of making such an order should be communicated to Panel members.

7.10 The Committee considered that the number of review hearings held on one day for a particular Panel could have an impact on the length of the review order, as there were time constraints on issuing a decision.

7.11 The Committee discussed the information provided to registrants and if this supported their meeting the requirements of sanction orders. It was agreed this was particularly important when a registrant was unrepresented. It was noted that the HCPTS is currently writing to all registrants who have an open reviewable sanction to remind them of the review process and what they need to do and by when. The letter includes reference to voluntary removal being an option open to those registrants who do not intend to engage with the process.

7.12 The Committee agreed that it is important to communicate the message to registrants that their engagement is very important for the Panel to see. It was suggested that an element of caution, as to the likely consequences of disengagement with the review hearing, could be included in written decisions.

7.13 The Committee **agreed** that providing individual case specific guidance to registrants on what their review panel will want to see was not realistic and that more universal guidance should be available on the HCPC website and included in communications to registrants.

7.14 The Committee discussed the potential of the Hearings Officer having a role in reminding the Panel of the guidance on sanctions. It was agreed that this would not be appropriate, and that this was already the role of the Legal Assessor and presenting officer.

7.15 The Committee noted that indefinite suspension orders are not available to the HCPC, unlike some other regulators. It was noted that a cross regulator adjudications group meets regularly to share ideas and best practice on adjudications matters.

7.16 The Committee noted the report.

Item 8. Review of Practice Notes (report ref: TAC 04/17)

8.1 The Committee received a paper from the Executive. The Committee was asked to approve the approach and timescale of their ongoing review of the HCPC's Practice Notes (PN).

8.2 During discussion the following points were noted:-

- PNs provide guidance to all parties with an interest or involvement in a fitness to practise investigation or hearing. There are currently 30 PNs;
- PNs are reviewed on an annual basis, in most cases, there are little or no changes;
- as processes change, or new case law or learning issues arise, it is necessary to review the relevant PNs to ensure they remain relevant and accurate;
- the review cycle of the PNs is linked to the review of policies, or any operational guidance; and
- in preparation for the Council's delegation of the approval of PNs to the Tribunal Advisory Committee, all existing PNs were reviewed in order to make clear the roles of both HCPC and the HCPTS.

8.3 The Committee noted that the Executive has provided a suggested timetable and order of review for the PNs. This order is based on an assessment of the complexity of the review, or the potential impact on activity.

8.4 The Committee discussed the process it would follow when reviewing a PN. It was **agreed** that suggested amendments to PNs would be circulated to members for informal feedback before its inclusion on the Committee's agenda. A revised PN would then be presented to the Committee for discussion and formal approval.

8.5 The Committee discussed how PNs are created and what the drivers are for a new PN. The Committee discussed professional indemnity requirements in relation to the fitness to practise process, it was noted that there is currently no PN which touches on professional indemnity.

8.6 The Committee discussed the possibility of creating a PN to provide guidance on cases involving sexual motivation, it was noted that the CHRE had produced useful guidance in this area.

8.7 The Committee **requested** that the Executive report at its September 2017 meeting on the feasibility of creating new PNs and what the process for this is.

8.8 The Committee agreed the timetable set out and requested that the Executive inform the Committee of any changes to timings or scope as these arise.

Item 9. Panel Training programme overview (report ref: TAC 05/17)

9.1 The Committee received a paper from the Executive. The Committee was asked to advise on any change it feels is needed to the training programme.

9.2 During discussion the following points were noted:-

- the FTP and Partners teams jointly deliver a programme of training to Panel members. Training is delivered to all of those involved in panel decisions;
- newly appointed Panel members receive in depth training. Refresher training is then delivered within 2 years;
- Panel members with performance issues may be required to have refresher sessions earlier than this;
- training is delivered in groups, and specific training is delivered to Chairs and Legal Assessors, separate from the Panel Members;
- training is delivered as a mixture of presented material, with group or individual exercises. The content of these exercises is drawn from suitably anonymized cases, PSA learning points are incorporated;

- cases and examples used in training are regularly refreshed so that no Panel member receives the same session twice; and

- training on Equality and Diversity, information security and HCPC Patner processes is also mandatory for all new Panel members.

9.3 The Committee discussed feedback from Panel training events. It was noted that feedback returns were high and generally positive.

9.4 The Committee agreed that the training programme was comprehensive. The Committee expressed an interest in any individual development work to build Panel members' skills.

9.5 In response to a question it was noted that the HCPC has explored the possibility of having ICP only Panel member roles. This would enable those who can only commit brief periods of time due to work commitments to sit on Panels, assisting with member availability. It would also enable more in depth specialised training for ICP and would reduce potential for conflicts of interest between ICP and final hearing Panels.

9.6 The Committee noted that logistically dedicated ICP roles would be difficult to achieve due to the need to recruit ICP members for the 16 professions regulated by the HCPC. Feedback has also been received from Panel members that they value the breadth of training across all processes. The Committee noted that these factors were being considered as part of the ICP review. The Committee **noted** it would receive an update on this work in September 2017.

9.7 The Committee agreed that a different set of skills were required by ICP Panel members than final hearing Panel members. It was **agreed** that this was an important message to convey at training stage.

9.8 The Committee **advised** the Executive that it was important for the culture of the HCPC and its approach to fitness to practise to be conveyed during induction training. The Committee considered that the less legalistic approach was beneficial for registrants involved in the process and that care should be taken to preserve this culture.

9.9 The Committee discussed a recent Partner newsletter which provided a reminder to Partners about Data Protection considerations following a recent incident. The Committee noted that a rolling annual programme of computer based information security training has been in place for a number of years. This is refreshed each year and is mandatory.

9.10 The Committee noted the paper.

Item 10. Introduction to the Partner Team and operational data (report ref: TAC 06/17)

10.1 The Committee received a paper form the Executive. The paper sought to provide the Committee with an overview of the Partner team and their activity.

10.2 During discussion the following points were noted:-

- the Partner team is responsible for administering recruitment and selection, induction and refresher training, self-assessment for agreement renewal and partner resignations and terminations and concerns for all Partner roles;
- no recruitment activity is currently underway following a recent successful campaign;
- the self-assessment process for 36 Panel members will take place this year which may result in a small amount of further recruitment; and
- equality and diversity data for Partner roles is presented to Council annually.

10.3 The Committee noted that a recent renewal assessment exercise resulted in more partners than expected not being reappointed. The Committee enquired as to the reasons for this. It was noted that the Executive considered the guidance provided to Partners to be very clear on the requirements of the process, however it is possible that some Partners regarded the process as a more administrative requirement. Guidance has again been reviewed in response.

10.4 The Committee discussed the self-assessment process. The Committee considered that the volume of required submissions may be a factor in unsuccessful renewal returns.

10.5 The Committee discussed the Partner equality and diversity statistics provided in the paper. The Committee noted that it was difficult to ensure the demographics of Partners are representative of the registrant population as the registrant ethnicity data available to the HCPC is limited. Anonymous data not linked to individual records is held but this is not mandatory to provide and so the data is limited and does not provide an accurate profile of the population. Enhancements to ethnicity data collection will not be possible until the new registration system is implemented. The Committee expressed concern about this data limitation and **asked** that this issue is highlighted to the Council.

10.6 The Committee noted the paper.

Item 11. Presentation - Partner appraisal system (report ref: TAC 07/17)

11.1 The Committee received a presentation from the Partner Manager on the HCPC's appraisal system for panellists.

11.2 The Committee noted that appraisals take place every two years. They are formed of a self-assessment and peer review against panellist competencies. The partner appraisal system was last reviewed in 2013.

11.3 The Committee noted that Legal Assessors are not appraised currently and that there is no competency framework for Legal Assessors. The Committee **agreed** that a separate competency framework for Legal Assessors should be developed. Once this was agreed a proposal for appraisals for Legal Assessors could be developed.

11.4 The Committee discussed the interaction between the appraisal system and the concerns process. The Committee agreed that closing the loop on concerns raised is important to encourage engagement with the concern process.

11.5 The Committee discussed the possibility of providing more regular feedback on performance to Panellists. The Committee considered that if Chairs were required to provide feedback following each hearing, an aggregated report could be shared with a panellist to enable them to reflect on their performance. The Committee **agreed** to receive a paper in September 2017 exploring options for regular Panellist feedback.

Item 12. Revised Competency Framework for HCPC Panellists (report ref: TAC 08/17)

12.1 The Committee received a paper from the Executive. The Committee were asked to discuss and recommend the revised Competency Framework for HCPC panellists to the Council for approval.

12.2 During discussion the following points were noted:-

- as part of preparations for the establishment of HCPTS a review of the competency framework for HCPC panellists has been undertaken;
- the current framework was approved by Council in 2012; and
- the revised framework is based on the Judicial Skills and Abilities Framework 2014 produced by the Courts and Tribunals Judiciary.

12.3 The Committee **agreed** the following points:-

- Chairs should be required to lead on diversity and challenge discriminatory behaviour;
- an ‘informed’ knowledge of the relevant law is more appropriate than a ‘detailed’ knowledge;
- section 5 requires more emphasis on engagement from Chairs;

- an understanding of the position of the HCPC, regulation and public protection should be included;

- Chairs should support change to the tribunal and the HCPC culture;

- oral delivery is a key competency for Chairs.

12.3 The Committee agreed that they were unable to recommend the revised competency framework presently, due to the number of amendments requested. It was **agreed** that members would submit their suggestions for amendments to the Chair and Secretary. These would then be consolidated and incorporated into the revised competency framework. The Committee will then consider the revised framework at their September 2017 meeting.

Item 13. Panellist self-assessment process for renewal agreement (report ref: TAC 09/17)

13.1 The Committee **agreed** to consider this item following its reconsideration of the revised competency framework for panellists.

Item 14. Committee priorities, objectives and future agenda items (report ref: TAC 10/17)

14.1 The Committee **agreed** that it would explore Committee objectives and priorities at the September meeting of the Committee.

Item 15. Summary of matters for action

15.1 The Committee **agreed** that:-

- the Committee's advice on ethnicity data collection will be conveyed to the Council;

- the Executive will consider and report back to the committee on a competency framework for Legal Assessor appraisal, more regular Panellist performance feedback and mandatory feedback from Chairs;

- the Committee will receive an update in September on the ICP review and work on pre instruction improvements and the process to be followed to develop a new Practice Note; and

- members will submit feedback to the Chair and secretary on the competency framework for panellists and will provide any

information or suggestions they have for a competency framework for Legal Assessors

Item 16. Any other business

16.1 The Committee noted that a briefing note on recent case law relating to honesty and integrity provided to the Committee by a member was currently being considered by the Executive.

Item 17. Date & time of next meeting:

17.1 Tuesday 12 September 2017, 1pm

Chair……

Date……