

Fitness to Practise Committee 13 October 2011

Adjourned/ part heard/ cancelled final hearings

Executive summary and recommendations

Introduction

The attached paper sets out the reasons for cases not concluding as expected between April and August 2011.

Decision

The Committee is asked to

- (a) discuss the attached paper; and
- (b) agree with the recommendations set out in paragraph 8 of the report.

Background information

None

Resource implications

Cases that do not conclude need to be rescheduled. Partners, rooms and other resources need to be rearranged for any days booked to resume proceedings. The impact on resources is explained in further detail in this paper.

Financial implications

Financial implications stem from the need to reschedule cases and the effect this has on the budgeted number of hearing days scheduled per annum. This paper sets out the associated costs for hearings that do not conclude as expected.

Appendices

None

Date of paper

3 October 2011

Adjourned/ part heard/ cancelled final hearings, in the period April to August 2011

1 Introduction

- 1.1 This report provides information about final hearings that did not conclude as expected between April 2010 and August 2011. There are a number of reasons why a hearing may not go ahead or complete which have been set out in previous papers on the topic. Further suggestions as how to increase the number of cases that are concluded in the time allocated are detailed in this report.
- 1.2 The Fitness to Practise Committee previously looked at similar analysis of the numbers of cases that did not conclude as expected between April and July 2010 at their meeting in October 2010, and those concluding between April 2010 and March 2011 at their meeting in May 2011.
- 1.3 Article 32(3) of the Health Professions Order 2001 provides that:

“Each stage in proceedings under Part V and article 37 shall be dealt with expeditiously”
- 1.4 The Fitness to Practise (FTP) management pack reports on the length of time that cases take to pass through different parts of the process. Final hearings that do not conclude can extend the average length of time it takes for cases to conclude. The new Case Management System will further improve FtP performance reporting. FtP staff are currently reviewing how the system will automate the data reporting, in preparation for the go-live in early 2012.
- 1.5 Concluding FTP hearings as quickly as possible is in the best interests of the HPC, registrants, complainants and witnesses involved in these cases.

2 Statistics

- 2.1 Between April 2011 and August 2011 244 final hearings were scheduled. 184 of those cases concluded as expected within the days allocated. 60 cases did not conclude as expected. The table below shows the percentage of cases that did not conclude between 2009-10 , 2010-11 and for the part-year 2011-12.

	Apr 2009- Mar 2010	Apr 2010- Mar 2011	Apr 2011 – Aug 2011
Hearings that concluded	256	314	184
Hearings that did not conclude	103	132	60
% of hearings concluded as expected	71%	73%	67%

- 2.2 The table below lists the reasons for the 60 cases that did not conclude as expected in April to August 2011.

Reason for not concluding	Number of hearings
Cancelled administratively	7
Postponed by the HPC (more than 14 days before hearing)	8
Adjourned by the panel chair (less than 14 days before hearing)	2
Adjourned on the day by the panel	13
Part heard	31
Referred to health	0
Referred to conduct and competence	0
Total	60

- 2.3 The largest number of hearings that did not conclude were those that went part heard. More detail about why hearings went part heard are detailed later in this paper.
- 2.4 Of the 13 hearings adjourned on the day, 12 were due to unexpected or unplanned lack of availability of parties on the day. This includes registrants, representative and other parties such as key witnesses. The main cause of absence was illness, though two cases had a conflict of interest only discovered on the day. One case had a new allegation added at late notice, for which an application was made to adjourn.
- 2.5 Eight hearings being postponed in advance requiring re-working by the Scheduling Officers, but allowing cancellation costs to be minimised or eliminated.

3 Scheduling final hearings

- 3.1 Concluded HPC hearings lasted for an average of 1.8 days in this period, compared with 1.7 days in the previous full year. If the number of days estimated is too short, hearings will not conclude in time, if it is too long, facilities will have to be cancelled and partner fees will still need to be paid in accordance with their expense policy. Scheduling final hearings involves the coordination of a number (average eleven separate individuals) of parties and usually becomes more protracted in accordance with the number of witnesses called.

3.2 During April to August there was an average of two final hearings scheduled per working day, as in previous years. ICPs, interim orders and substantive reviews were scheduled alongside these hearings. So far in 2011 there has been an increase in the number of substantive and interim order cases that need to be reviewed, which has an effect on the resources available for final hearings. FtP are currently analysing the number of known review cases, and forecasting those cases likely to need reviews in the coming 12 months. This will inform the resource utilisation, especially as more cases need to be heard in venues outside of London.

4 Notice period for proceedings

4.1 Hearings are currently scheduled between three to four months in advance. Currently, the Scheduling Officers are already fixing cases in December 2011 and January 2012. The scheduling allows a generous period of notice of proceedings for registrants to prepare their case, thus minimising requests for applications to adjourn in order to prepare. Registrants will also have been aware of the allegations they face since their Investigating Committee Panel date, when allegations are notified to them.

5 Part heard hearings

5.1 Of the cases that didn't conclude in April to August 2011 31 (52%) of them went part heard. This rate has increased from the 56 cases (42%) of cases scheduled in the previous 12 months. If a hearing goes part heard the Hearings Officer needs to detail reasons for any delay. The table below details some common areas that affected cases that went part heard. Many hearings were affected by more than one area which led to them running out of time:

Areas highlighted	Number of cases affected
Dedicated deliberation days requested by Panel	5
Lengthy evidence or discussion	9
Issues with witness attendance, numbers or length of evidence	1
Allowing registrant to seek or change representation	4
Lengthy submissions by representative	2
Hearing was planned to finish at later date	3
Application to join cases, adjourn or transfer to another committee's jurisdiction	3
Allowing registrant to seek further evidence	2
Panel availability	2
TOTAL	31

- 5.2 There has been a change in the proportion of part heard cases where the registrant is represented. In ten cases (33%) the registrant represented themselves. In 16 cases (52%) the registrant had a representative. In five cases (16%) no-one attended. This compares to 27%, 71% and 0% in the same categories for the previous year.
- 5.3 These changes can have an impact on the predicted time required for hearings, and how the proceedings are managed on the day. Registrants who represent themselves often require more time to present their arguments as they are unfamiliar with the legal framework. If no-one attends, Panels may spend more time assuring themselves that it is the interests of the public and that of the registrant to proceed in their absence.
- 5.4 Panels are working flexibly in order to manage their workload, and to prevent hearings from going part-heard. This includes sitting after 5pm, or managing the order of witnesses to make best use of the day. Panels are reminded as part of their refresher training of the impact of extending the day, and the effect it may have on participants (or external perception of fairness), and are encouraged to include any rationale in their decision making. The most common cause of extending a day is to conclude witness evidence so they do not have to be re-called or to complete their evidence within limited availability.

6 Postponement and Adjournment Practice Note

- 6.1 The Postponement and Adjournment Practice Note has been in existence since 2008 and was reviewed and approved by the FTP Committee in October 2010. It has been successful in helping to avoid unnecessary adjournments on the day of the hearing, often incurring no cancellation charges for partner fees and providing a fair and transparent way for registrants who have justified reasons as to why they can't attend to have their hearing postponed to an alternative date.
- 6.2 Applications received by the HPC 14 or more days in advance are classified as Postponements, those received less than 14 days before the hearing are Adjournment applications. The number of postponement and adjournment requests received before hearings were due to take place are detailed in the table below:

	2009-2010	2010-2011	Apr – Aug 2011
No. of hearings scheduled	351	433	248
No. of postponement/adjournment requests before hearing date	58	53	8
Average number of requests per month	5	4.5	1.2

No. of requests granted	14	19	3
-------------------------	----	----	---

- 6.3 A paragraph was added to the Notice of Hearing to the Registrant in early 2011, highlighting scheduled cases will only be adjourned on an exceptional basis, and that applications that are not sufficiently well described or grounded may be rejected. This appears to have affected the number of requests made.
- 6.4 Where possible alternatives to postponement are made, e.g. requests can be made by representatives who say they are unable to get the registrant's witnesses to attend on the hearing date. The request would be declined and a suggestion made to use the time available and break at the appropriate juncture should witnesses be essential. Alternatively a video-link may be offered so witnesses can appear
- 6.5 Where hearings do go ahead as planned, they may not necessarily be able to conclude, e.g. the registrant's witnesses may not be able to attend the hearing dates, and may add to numbers of part heard hearings. Having the hearing going part heard is preferable to any adjournment costs and means HPC witnesses are able to give their evidence as planned and there are less parties to coordinate for the resuming hearing.

7 Actions taken to increase the number of completed hearings as scheduled since May 2011

- 7.1 The paper approved by the FTP Committee in October 2010 detailed a number of areas to keep under review. Since this time, the following steps have been taken to increase the numbers of HPC hearings concluding as planned:
- The reasons for cases going part heard continue to be recorded and analysed. These reasons are included in forecasting and resource management.
 - Induction and refresher training for Panel members has been delivered, concentrating on practical aspects of hearings management, including clarification to panels of their responsibility to work flexibly with HPC and other parties to complete planned work.
 - Continued monitoring of supporting documentation to plan hearings, assess risks associated with various participants, or formally notify those attending to engage with HPC at the earliest opportunity. New checklists to support Scheduling Officers to identify vulnerable witnesses or to identify possible conflict of interest for Panel Members have been introduced.
 - A decision template is being developed to support Panels to manage their workload and management of parties within the time available. This will be piloted later in the year and reviewed. GMC and NMC both use variations on decision templates with their panels, which

allows elements of the decision-making process (proof of service, finding of facts, grounds and impairment, and indicative sanctions).

- Changes to the information available for parties attending hearings (written and online) are being reviewed to ensure they continue to answer the most frequently asked questions. Feedback from users continues to be positive.
- The resources at Park House have been used more efficiently, meaning more hearings have been able to be arranged. We are looking at resources around the UK, and planning future activity with a mind to major events (such as the 2012 Olympics).
- HPC solicitors asked to review their time estimations for hearings, ensuring they allow adequate time for representatives, particularly those who are likely to be unfamiliar with HPC processes. We are reviewing our existing Service Levels Agreements to measure improvements.

8 Conclusion

- 8.1 The Executive proposes that as a result of this review, hearings that do not conclude as expected should continue to be monitored. The implementation of the electronic case management system in early 2012 will assist in the production of future reports.