

Fitness to Practise Committee, 14 February 2013

HCPC witness support programme

Executive summary and recommendations

Introduction

This paper outlines the approach taken by HCPC in relation to witness management and support. There are a range of measures in place to ensure that witnesses are aware of the proceedings, and have an opportunity to raise concerns or seek support before they give their evidence.

Recognising that evidence giving can be difficult and cause anxiety, a system is in operation to allow those who have participated to give feedback on the process.

This paper contains analysis of the results of these processes and sets out the programme of future development.

Decision

The Committee is asked to note the paper.

Background information

None.

Resource implications

The majority of the activity is carried out by Hearings Officers, and the time built in to operational forecasting and resource planning.

Financial implications

As above

Appendices

Appendix One - Witness Support Programme
Appendix Two - Witness feedback form

Date of paper

04 February 2013

HCPC witness support programme

1.0 Introduction

- 1.1 The HCPC aims to ensure that Fitness to Practise (FTP) proceedings are open and accessible for all interested parties, particularly those required to take part in hearings. Witnesses play a crucial role in these proceedings. Witnesses may find involvement in an investigation and subsequent hearing a daunting and anxious experience as they may be vulnerable and the tribunal environment is often completely unknown to them. This document details the support that witnesses receive from the HCPC if they are asked to give evidence at a hearing.

2.0 Background

- 2.1 In the current financial year, an average of 40 witnesses gave evidence at HCPC proceedings every month. Witnesses can come from all types of backgrounds and have varying needs, but are all vital to the HCPC being able to present cases. Throughout the process they come into contact with many different people, but in relation to the investigation process and their subsequent attendance at a hearing we aim to ensure that there is continuity by providing a named point of contact. During the investigation stage, when evidence is being identified and obtained, that point of contact is the HCPC case manager, who will have detailed knowledge and understanding of the case. When a case reaches the final hearing stage responsibility for supporting witnesses is transferred to the HCPC hearings officer assigned to that hearing. Hearing officers will liaise with case managers where necessary and are responsible for building a working relationship with witnesses in order to provide support before, during and after the hearing.
- 2.2 During 2012 all hearing officers and case managers undertook a mental health awareness training course with *Mind*. The training has enabled employees to gain a detailed understanding of the causes, signs and symptoms that relate to stress, anxiety and depression and identify techniques for supporting vulnerable parties in stressful environments.

3.0 Contact before the hearing

- 3.1 The delay between an investigation and a hearing can be a protracted and nervous time for those involved. Everything possible is done to reduce the time it takes for a complaint to reach a hearing where witnesses give evidence in a public setting. As well as reducing anxieties for witnesses about the event, expeditious progress also allows evidence to be fresh in the mind and more easily and accurately recalled.
- 3.2 Witnesses are initially notified that they are involved in an investigation after a case has passed through the Investigating Committee when they are contacted to arrange an interview to take a statement. At the interview they will be given a copy of the HCPC's witness brochure that contains information about providing a statement and attending a hearing. A copy of this can be found at <http://www.hpc-uk.org/Assets/documents/10002D1CInformationforwitnesses.pdf>. For the remainder of the investigation after this point witnesses are updated in writing on the progress of the case every 4 weeks by their case manager.
- 3.3 Witnesses will not be called to the hearing if their evidence can be proven through other means, such as agreed documentation or signed statements, or if allegations are admitted in advance of proceedings.
- 3.4 For those witnesses called to give evidence, the next contact is with the FTP Scheduling Team who will schedule the hearing in accordance with a witnesses' agreed availability, taking full account of professional and personal commitments. Scheduling officers will write to witnesses before contacting any other party to request dates to avoid so a hearing can be booked. Once dates from all parties are confirmed a letter recording details of the event is sent along with a copy of the HCPC witness brochure.
- 3.5 A travel and accommodation booking form is also included in this documentation along with the witness expenses policy. In order to avoid unnecessary stress and expense witnesses are encouraged to arrange travel and accommodation through the FTP Administration Team, who will make all necessary arrangements at least one month in advance of proceedings and are experienced in facilitating complex travel itineraries.
- 3.6 Two weeks before the hearing witnesses are telephoned by the hearing officer who is due to facilitate the hearing. Their attendance is confirmed and the practicalities of attending a hearing are illustrated. Details about what to expect are discussed and questions can be answered. Personal contact is made at this particular point because it is designed to identify and cater for the last minute concerns that commonly arise in the run up to a hearing when anxieties often intensify.

3.7 The table below illustrates the level of satisfaction indicated by witnesses that have participated in fitness to practise hearings between April 2012 to January 2013. Questions covered here relate to the standard of support provided to witnesses before the hearing and the figures relate to witnesses that chose to complete a feedback form after the event.

Table 1. – Responses to witness questionnaire ‘Before the Hearing’ April 2012-Jan 2013

Before the hearing	<i>Positive response</i>		Partly Agree	Disagree	Strongly disagree	% positive responses
	Strongly Agree	Agree				
After providing a witness statement I was told what would happen next	15	15	4	0	0	88%
I spoke to a Hearings Officer by telephone in advance of the hearing	13	16	1	3	1	88%
I was given clear details of who to contact for more information	10	15	7	2	0	74%
The information I received addressed my concerns	8	19	7	0	0	79%
I was happy with the travel and accommodation arranged	7	10	4	0	0	80%**
Written correspondence was clear and helpful	11	21	1	1	0	94%
Total	64	96	24	6	1	84%

*** In 14 completed responses this question was not applicable*

4.0 Website publications for witnesses

4.1 When witnesses are provided with notice of a hearing date they are also directed to the FTP section of the HCPC website, which has a dedicated area for witness information. This includes a new guidance brochure with instructions on providing a witness statement, attending a hearing, the process and purpose of giving oral evidence and the role of FTP Committee Panels.

4.2 The content and format of this section was thoroughly revised during 2011-

2012 and now includes links to witness travel and accommodation booking forms and detailed directions for travelling to HCPC events along with images of the premises and surrounding area.

- 4.3 The FTP Department has also produced an interactive video that provides an explanation about fitness to practise proceedings aimed at familiarising participants with the environment, process and parties involved in a hearing. The video was produced to a high standard, involving two days of filming at HCPC premises with professional actors and producers and has generated a high level of interest since being published in February 2011. The video and accompanying transcript are available via the following link; <http://www.hpc-uk.tv/fitnesstopractice/mov01.html>

5.0 At the Hearing

- 5.1 At the hearing witnesses are met in the HCPC's reception area by the hearing officer and taken to a dedicated area with comfortable seating and where refreshments, a television and reading material are available. The hearing officer will let them know the order of the day. Witnesses are often extremely anxious at this point and hearing officers are trained to identify this and employ techniques to minimise stress and uncertainty. Hearing officers will discuss any practical information and offer to take witnesses to the tribunal room and provide a description of the procedure, layout and participants involved in the process in order to improve transparency and accessibility.
- 5.2 The presenting officer for the HCPC will also be informed when a witness arrives and will attend to brief them on what to expect when giving evidence.
- 5.3 Witnesses often feel distressed during and after giving evidence, particularly if the subject matter of the hearing is sensitive. They might feel as if their evidence or credibility will be challenged or that they have been unable to get their evidence across as effectively as they had wanted. This is completely normal. Representatives for registrants often pose difficult questions in cross examination with the aim of teasing out weakness or inconsistency in the evidence. Registrants have the right to test the evidence that is being used against them. If such questioning becomes aggressive, provocative or repetitive in nature, however, the Legal Assessor will take appropriate action to intervene.
- 5.4 The table below illustrates the level of satisfaction indicated by witnesses that have participated in fitness to practise hearings between April 2012 to January 2013. Questions covered here relate to the standard of support

provided to witnesses during the hearing and the figures relate to witnesses that chose to complete a feedback form after the event.

Table 2. – Responses to witness questionnaire ‘At the hearing’ April 2012 - Jan 2013

At the hearing	Positive responses		Partly Agree	Disagree	Strongly agree	% positive responses
	Strongly agree	Agree				
I was greeted professionally and directed to waiting area	23	19	2	0	0	94%
I received briefing from a HCPC representative	19	10	5	0	0	85%
I was shown the hearing room before giving evidence	14	11	2	5	2	74%
I was kept informed throughout the day	16	10	8	0	0	76%
The waiting area was comfortable	13	11	7	3	0	71%
The hearing officer answered all my questions	17	15	1	1	0	94%
I felt prepared for giving evidence	9	17	7	1	0	76%
I was satisfied with the special arrangement I required	0	8	1	0	0	89%**
Total	111	93	33	10	2	82%

*** In 25 completed responses this question was not applicable*

6.0 Vulnerable witnesses and ‘special measures’

6.1 By virtue of the statutory Procedure Rules of the HCPC’s Practice Committees, FTP Panels are able to establish “special measures” to ensure that vulnerable or intimidated witnesses are able to provide evidence to the best of their ability and without undue distress. This may include holding proceeding in private, allowing a witness to provide evidence via a video link or video recording and being protected by screens.

6.2 For the purpose of those Rules a vulnerable witness is any person whose ability to give evidence may be affected by the fact that they:

- are under the age of 17 at the time of the hearing;
- have a mental disorder within the meaning of the Mental Health Act

1983;

- have significantly impaired intelligence and social functioning;
- have physical disabilities and require assistance to give evidence;
- are the alleged victim in an allegation of a sexual nature;
- have complained of intimidation.

- 6.3 Depending upon the nature of the case, the relationship between the witness and the registrant subject to the allegation and, in particular, whether the allegation is linked to conduct directed at the witness will also have a bearing on whether a witness is deemed to be vulnerable.
- 6.4 During the investigation stage the responsible case manager will identify whether any witness in the case falls within one of the categories listed above. If so, contact should be made with the witness either directly by the case manager or through the instructed solicitors who should then make arrangements to visit the witness at a safe and suitable location for both parties to identify suitable requirements and produce a vulnerable witness assessment for the benefit of FTP Committee and hearing officer.
- 6.5 Wherever possible, the case manager will arrange to meet the witness with the instructed solicitor at the time of a witness statement being taken to ensure that the witness does not feel stressed or anxious by multiple visits. If the allegation is of a sexual nature then the witness will be consulted about their preference of being visited by a male or female Case Manager and/or Solicitor.
- 6.6 It is for the panel hearing a case to determine whether a witness is vulnerable and, if so, what special measures should be adopted in order to enable it to receive evidence from a vulnerable witness. Normally this will be done at a preliminary hearing so that witnesses can be made fully aware of the measures in place before they are asked to attend the hearing. Panels will take account of representations from the both parties and the advice of the Legal Assessor. Any representations made on the HCPC's behalf will largely be based upon the vulnerable witness assessment report prepared by a Case Manager
- 6.7 In addition, in cases involving allegations of a sexual nature where the registrant is conducting his or her own defence, the registrant will only be permitted personally to cross-examine an alleged victim with that person's written consent.

- 6.8 If the witness does not consent to being cross-examined by the registrant, the registrant must appoint a lawyer to conduct the cross-examination. If the registrant does not have access to legal representation in these circumstances the HCPC will appoint a lawyer to conduct the cross-examination on their behalf.
- 6.9 Between April 2012 and January 2013 the HCPC employed special measures to enable vulnerable witnesses to provide evidence to the committee on 32 occasions. This has included hearings at HCPC facilities and external venues and has also involved providing support to witnesses in their own homes so that they may provide evidence remotely. Measures used have included video-links, teleconferencing, screens, appointment of lawyers for cross-examination and conducting witness evidence in private. HCPC has a consistent approach for agreeing special measures as part of its preliminary hearing process.

7.0 Contact after the hearings

- 7.1 It is common that witnesses come away from proceedings feeling angry or without the sense of closure they might have hoped for. Our contact with witnesses is designed to reduce those feelings and ensure individuals realise the importance of their contribution to the process.
- 7.2 After the hearing has concluded, witnesses are informed of the outcome, thanked for their participation and provided with a copy of the panel's decision. Witnesses are offered the opportunity to receive a debriefing call from the hearing officer that supported them when they are provided with notice of the hearing but, in most cases, they indicate that they are happy to receive details of the outcome of the hearing in writing.
- 7.3 Hearing Officers are asked to observe the behaviour of witnesses during hearings in order to identify those that found the process particularly stressful. In such cases the HCPC considers there to be a duty of care upon it to ensure that the experience has not had detrimental impact upon their wellbeing and to signpost to suitable agencies for further assistance where this appears to be the case. In order to achieve this, 'debriefing' telephone calls are conducted by the hearing officer that facilitated the hearing 2-3 days after the event. Hearing Officers have undertaken this process on 14 different occasions between April 2012 and January 2013. This has been for a variety of reasons including concern surrounding the vulnerability of witnesses, sensitivities associated with the subject matter of the hearing, robust or lengthy cross examination and excessive delays in hearings prior to the witness being called.

- 7.4 A questionnaire for witnesses about their experience is included in the HPC witness brochure and is also available as a stand-alone document in the waiting area at HCPC premises. A private box for their return is located in the witness waiting area. Witness feedback forms are collated and the nature of feedback is reviewed by the hearings manager. The information included in tables 1 and 2 above has been taken from witness feedback received between April 2012 and January 2013.
- 7.5 There is a separate section on the form in which particular comments and concerns can be raised. These are also reviewed by the hearings manager and responded to in writing where appropriate.
- 7.6 Between April 2012 and January 2013 only 34 witnesses (10%) chose to complete feedback forms. The response rate is relatively low because, as highlighted above, providing evidence can be a stressful experience and witnesses are usually eager to leave the hearing premises and put the experience behind them afterwards. Nevertheless it is recognised that such feedback is a valuable source of information, which enables the Adjudications Team to continuously review and develop its programme of support. A process designed to encourage feedback has recently been developed in which witnesses are handed the feedback form with a pre-paid envelope on the day of their attendance by hearing officers. They are also emailed a copy of the form alongside the panel's final decision. It is hoped that a previously low return rate will be increased by this focus and that more substantial data can be extracted from witness feedback to report on in the near future.

8.0 Conclusions

- 8.1 The FTP Department has undertaken an extensive amount of work in the last 18 months to improve the programme of support it provides to witnesses.
- 8.2 In its annual performance review of the HCPC in 2011-2012 the Professional Standards Authority for Health and Social Care (PSA) singled out particular aspects of the HCPC's witness support programme as positive steps in improving the effectiveness of the (FTP) process;

The HPC has maintained its performance whilst making a number of enhancements which will improve the effectiveness and transparency of its fitness to practise process...

Enhancing its witness support system to ensure that witnesses are willing and able to participate in current and future hearings. The telephone call made to each witness before a hearing now aims to address any anxiety the witness has about the hearing and to check what assistance they may need on the day of the hearing. The HPC

is also piloting a system of debriefing witnesses after the hearing if they have expressed anxiety or if their experience of giving evidence has been either lengthy or particularly difficult/emotional. Hearings Officers have received training from MIND to help them with this work.

- 8.3 The feedback received from witnesses since April 2012 has been largely positive with over 80% of participant responses to questions indicating satisfaction with the service provided.
- 8.4 Taking into account the difficult nature of the tasks HCPC witnesses are asked to undertake it is suggested that this level of satisfaction constitutes a positive reflection of the current programme of witness support. Nevertheless feedback will continue to be monitored to identify areas where there is room for improvement. For instance the tables above indicate that more work could be undertaken to identify clear points of contact for witnesses prior to the hearing and to familiarise witnesses with hearing facilities once they arrive at a venue.
- 8.5 The Executive proposes to keep the feedback received from its witnesses under continued review and to continue to identify ways in which its support programme can be developed and improved.
- 8.6 The following work will continue to be undertaken to ensure that standards are maintained and progress continues to be made in this area.
 - Review the method of communication established with witnesses during the post Investigation Committee stage of the process
 - Ensure new FTP employees receive appropriate training and support to deal with vulnerable parties
 - Develop processes to encourage witnesses to complete and return feedback forms
 - Continue to make personal calls to all witnesses before hearings
 - Continue to monitor the behaviour of witnesses at hearings and make debriefing calls after the event where necessary
 - Ensure that vulnerable witness assessments are undertaken at the earliest possible stage to ensure appropriate special measure are put in place where necessary
 - Respond in writing to all written concerns raised by witnesses within 14 days
 - Review facilities available to witnesses at hearing venues, internal and external, to ensure they remain fit for purpose

Attachments:

1. Witness questionnaire
2. Witness feedback form

Witness Feedback Form

Understanding your experience as a witness helps us monitor and improve our services. We would be very grateful if you fill in this form and return it to us at:

ftphearings@hcpc-uk.org

Case Name: _____

FTP Number: _____

Please tick ONE of the following boxes

Before the hearing

	Strongly Agree	Agree	Partly Agree	Disagree	Strongly Disagree
Q1 After providing a witness statement I was told what would happen next	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Q2 I spoke to a Hearings Officer by telephone in advance of the hearing	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Q3 I was given clear details of who to contact for more information	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Q4 The information I received addressed any queries or concerns that I had	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Q5 I was happy with the travel and accommodation arranged by the HCPC	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Q6 The written correspondence I received from HCPC prior to the hearing was clear and helpful	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

At the hearing:

		Strongly Agree	Agree	Partly Agree	Disagree	Strongly Disagree
Q1	When I arrived for the hearing, I was greeted professionally and directed to the witness waiting area	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Q2	I received a briefing from the HCPC Representative/ Lawyer	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Q3	I was shown the hearing room before giving evidence	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Q4	I was kept informed about what was happening during the hearing	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Q5	The witness waiting area was comfortable	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Q6	The Hearings Officer answered any questions I had for them	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Q7	I felt prepared for giving evidence	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Q8	(if applicable) I was satisfied with any special requirements I requested	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Q9 What did you find most helpful about your experience and why?

Q10 Please tell us below if you have any further comments about your experience.

Thank you for taking the time to give us your valuable feedback.

Your Name: _____ **(Optional)**

Date: _____

Please indicate if you do not want us to contact you if you have raised a particular issue we want to follow up: