

Fitness to Practise Committee 26 May 2011

Adjourned/ part heard/ cancelled final hearings

Executive summary and recommendations

Introduction

Between April 2010 and March 2011 314 final hearings were concluded within their scheduled time. This paper reviews hearings that were due to take place between April 2010 and July 2011, but did not conclude as expected.

The Executive has reviewed these cases as directed by the FTP Committee in October 2010. Over the year a number of steps have been taken to try to increase the numbers of hearings that conclude within the time allowed and these are detailed in later this paper.

Decision

The Committee is asked to discuss this paper and agree that the Executive continue to monitor final hearings that are adjourned, part heard and cancelled.

Background information

Adjourned/ part heard/ cancelled final hearings, October 2010:
<http://www.hpc-uk.org/aboutus/committees/archive/index.asp?id=524>

Expectations of complainants, February 2010:
<http://www.hpc-uk.org/aboutus/committees/ftpcommitteearchive/index.asp?id=501HPC>

Fitness to practise process and length of time, February 2010:
<http://www.hpc-uk.org/aboutus/committees/archive/index.asp?id=501>

HPC Practice Note, Postponements and Adjournments:
<http://www.hpc-uk.org/publications/practicenotes/index.asp?id=156>

Practice Note, Case Management and Directions:
<http://www.hpc-uk.org/publications/practicenotes/index.asp?id=153>

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

01 May 2011

Adjourned/ part heard/ cancelled final hearings, 2010-2011

1 Introduction

1.1 This report provides information about final hearings that did not conclude as expected between April 2010 and March 2011. There are a number of reasons why a hearing may not go ahead or complete which are set out in this paper. Suggestions as how to increase the number of cases that are concluded in the time allocated are also detailed in this report.

1.2 The Fitness to Practise Committee previously looked at the numbers of cases that did not conclude as expected between April and July 2010 at their meeting in October 2010.

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 be able to report on this.

1.5 The IPSOS MORI work on the Expectations of Complainants highlighted that all parties involved in hearings are concerned about the length of time they wait for each stage of proceedings to happen. A link to the IPSOS MORI report and its findings can be found on the cover sheet of this report.

1.6 The investigation and preparation of cases for a hearing can often be lengthy. More detail can be found on this in the paper “Fitness to practise process and length of time” which was considered by the Fitness to Practise Committee in February 2010, a link of which is also provided on the cover sheet.

1.7 Concluding FTP hearings as quickly as possible is in the best interests of the HPC, registrants, complainants and witnesses involved in these cases.

2 Costs

- 2.1 The average cost of a hearing (not including legal fees and staff costs) is approximately £4,000 per hearing. The Registrant will also bear the cost of any representation and their expenses to attend. If a hearing does not conclude as expected parties have to reconvene at further expense to both the HPC and the Registrant. Panel members and occasionally HPC witnesses will need to rebook travel arrangements for any part heard cases.
- 2.2 If the hearing is being held at an external venue and the hearing does not take place as planned cancellation fees will often apply even if hearings are cancelled in advance.
- 2.3 If hearings are adjourned the following fee will be reimbursed to Fitness to Practise Panel Members, Panel Chairs, and Legal Assessors in line with the Partner's expense policy;
- Cancellation on day of hearing: full fee (attendance allowance)
 - Cancellation 1 working day before: full fee
 - Cancellation 2 working days before: ½ fee
 - Cancellation 3 working days before: ½ fee
 - Cancellation 4 working days before: ½ fee
 - Cancellation 5 working days before: ½ fee
 - Cancellation >5 working days before: no fee
- 2.4 A cancellation fee of up to £140 per day will also be payable to the transcription company if a hearing is cancelled with less than 24 hours' notice.

3 Reasons why hearings do not conclude as expected

- 3.1 There are a number of reasons why final hearings that have been scheduled do not conclude as expected. The reasons are detailed below;

Cancelled- an administrative action taken when a hearing is unable to proceed as expected, e.g. panel members cancel at short notice and a replacement cannot be found. Between 2010 and 2011 there were 185 cancellations by panel members to remove themselves from FTP events for various reasons. For every final hearing, bar two that had to be cancelled, the Scheduling Officers were able to find a replacement after calling around alternative panel members often at very short notice before hearings.

Postponed- decisions made in response to applications made by the registrant or by HPC solicitors. Applications must be received more than 14 days in advance of proceedings. Decisions on applications are taken by

the Head of Adjudication or an individual with delegated authority, usually the Hearings Manager. Decisions on postponement are made on the merit of the application weighed with the need for the HPC to progress matters expeditiously.

If those making the request provide new information to support their request after a postponement request has been declined, the application will be considered by a panel chair to take a second decision on the request. Postponements (rather than adjournments) usually mean Partner cancellation fees are avoided, there is more time to negotiate cancellation fees with external venues and witnesses have greater warning that they are no longer required.

Adjourned- applications to adjourn are requests received less than 14 days in advance of proceedings. Requests may also be made on the day of the hearing. These requests are usually made before evidence is heard and are for proceedings to be moved to a later date. Adjournment requests may also be made once evidence has started to be heard, although this is very unusual.

Postponed or adjourned applications received in advance are dealt with in line with the Practice Note on Postponements and Adjournments

“Proceedings should not be postponed or adjourned unless it is shown that a failure to do so will create potential injustice. Requests made without sufficient and demonstrated reasons to justify them will not be granted”.

Part heard- cases where the panel has started to hear the case but has to stop proceedings before the conclusion of the case. The main reason cases go part heard is that they run for longer than expected, more details about why this can happen is provided later in this paper.

Referred to another committee- registrants can make an application to a panel to have their case heard by another panel, usually moving from the Conduct and Competence to the Health stream. During 2010 to 2011 six cases were transferred between committees on application of the registrant at the hearing. Five referrals were from the conduct and competence committee to the health stream. One case that had been previously referred to health by a conduct and competence committee panel was subsequently referred back to the conduct and competence stream by way of an application by the HPC after the registrant failed to provide any further medical evidence at the resuming hearing.

4 Statistics

- 4.1 Between April 2010 and March 2011 446 final hearings were scheduled. 314 of those cases concluded as expected within the days allocated. 132 cases (some registrants had more than one case being considered at their hearing) did not conclude as expected. Some of the hearings which were

scheduled to take place were reconvened more than once. The table below shows the percentage of cases that did not conclude between 2009-10 and 2010-11.

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

4.2 The table below lists the reasons for the 132 cases that did not conclude as expected in 2010-2011.

Reason for not concluding	Number of hearings
Cancelled administratively	22
Postponed by the HPC (more than 14 days before hearing)	11
Adjourned by the panel chair (less than 14 days before hearing)	10
Adjourned on the day by the panel	26
Part heard	56
Referred to health	5
Referred to conduct and competence	1
Total	132

4.3 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.

4.4 Of the hearings adjourned on the day, four were due to a registrant or their representative's ill health. In two instances, postponement requests had been made in advance, but declined. At both hearings, additional information about ill health was produced for the panel on the day.

4.5 Six hearings being postponed in advance is a relatively high number for this period in comparison with the previous year. More detail about postponed hearings is provided later in this paper.

5 Scheduling final hearings

5.1 Concluded HPC hearings lasted for an average of 1.7 days in 2010-2011. 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. Details of how hearings

are scheduled are detailed in the paper produced for the FTP Committee in October 2010.

- 5.2 Scheduling Officers obtain witness availability before scheduling hearings. An average of three witnesses are required for each hearing, however this can be considerably more in complex cases. When witness availability is confirmed, suitable dates are considered in light of the availability of resources. Hearings are currently being scheduled between three to four months in advance.
- 5.3 During 2010-2011 there was an average of two final hearings scheduled per working day. ICPs, interim orders and substantive reviews were scheduled alongside these hearings. In 2010-2011 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.
- 5.4 FTP hearings start at 10am on the first day and at 09.30am on any following days, or earlier if possible. The later start on the first day often facilitates agreement between legal parties that can reduce the length of the hearing, e.g. time can be taken to explain the process to unrepresented registrants to ensure they are clear in their understanding of the process.
- 5.5 Hearings Officers gather dates of availability from all parties before they leave any adjourned or part heard case. When all parties are present it is much quicker to find dates suitable to reconvene proceedings, Gathering availability through correspondence is an involved and lengthy process and so getting new dates agreed before parties leave the premises makes a significant efficiency saving.

6 Notice period for proceedings

- 6.1 Hearings are currently scheduled between three to four months in advance. The scheduling allows a generous period of notice of proceedings for registrants to prepare their case. Registrants will also have been aware of the allegations they face since their Investigating Committee Panel date, when allegations are notified to them.
- 6.2 The postponement process allows registrants to apply to have proceedings postponed. Holidays that have been booked before a hearing date was notified is the most common reason for postponement requests to be accepted, although the we would request evidence of holiday booking details before taking this decision.
- 6.3 The letter communicating the date of the hearing to registrants and representatives clearly sets out the Standard Directions for the production of papers. The Practice Note on Case Management and Directions sets this out in more detail, a link is provided on the cover sheet for this paper. However, if papers are produced on the day, it would be unrealistic and

unfair for a panel to ignore them. They may not read them straight away, but wait for a suitable break in proceedings in which they can be read.

- 6.4 We address the issue of papers presented at short notice from Unions or Professional bodies at the quarterly meeting that is held between them and HPC

7 Part heard hearings

- 7.1 Of the cases that didn't conclude in 2010-2011 56 (42%) of them went part heard. Some of them went part heard more than once. 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
Registrant's representative had in depth questions for HPC witnesses / the registrant	12
Papers submitted on the day by the registrant	5
Force majeure, e.g. weather conditions, illness	4
HPC witness/ papers issue	4
Panel issues, e.g. conflicts of interest	3
Legal issues being discussed	2
Panel deliberations took longer than usual	2

- 7.2 In all but one of the part heard cases the registrant either represented themselves (27 %) or had a representative (71%). The part heard hearing where no-one attended was unfortunately delayed by two review hearings heard by the same panel in the morning that ran on significantly longer than expected.
- 7.3 The style and approach of case presentation have an influence on the amount of time spend hearing evidence and was the area most often highlighted as causing delay. If the registrant is represented by Counsel, it is often the case that they will take longer to question HPC witnesses and the registrant about their evidence. Similarly, if a registrant represents themselves, they often take longer to cross examine witnesses due to their inexperience.
- 7.4 It is often the case that panels will sit later than 5pm to try and conclude cases. Many of the panels that were involved in hearings that went part heard sat later than usual to try and reach a conclusion, but circumstances meant they were unable to do so.

8 Postponement and Adjournment Practice Note

- 8.1 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.
- 8.2 The Practice Note is also clear in outlining the circumstances where postponements or adjournments will not be considered. It is often the case that registrants simply request more time in order to be able to prepare their case, which is not a reason to delay all the other parties involved and prepared to attend.
- 8.3 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
No. of hearings scheduled	351	433
No. of postponement/adjournment requests before hearing date	58	53
Average number of requests per month	5	4.5
No. of requests granted	14	19

- 8.4 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
- 8.5 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.
- 8.6 If proceedings are postponed in advance, it is often the case that the panel members and facilities booked can still be used for other panel work.

8.7 Delaying proceedings has a significant impact on the witnesses who have prepared themselves to give evidence on a set date. Witnesses often contact the HPC to voice their concerns and anxieties if hearings do not go ahead as planned. Where possible, when cases are postponed registrants are asked to commit to a window of future dates in order that a new date can be rearranged as quickly as possible.

9 Actions taken to increase the number of completed hearings as scheduled since October 2010

9.1 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 have been recorded over 2010-2011 to gain a better understanding of why these cases have not concluded
- Notice of Allegation correspondence, sent out after the ICP decision to refer a case for a hearing now asks for details of any representatives who will be involved in future proceedings
- Notice of Hearing correspondence, sent out with a final hearing date, has been updated and strengthened to place more significance on notification of any representative, setting out timescales for when documents should be submitted, detailed what steps should be taken if a postponement is requested
- Research is being made into whether a decision template would help panels to draft decisions more efficiently, particularly to focus their minds on the issues in question
- The Notice of Allegation and Hearing now refer registrants to the HPC website for more information about FTP hearings
- Information on the HPC website has been reviewed and refreshed and is now audience specific. The registrant's pages detail what is expected from them before a final hearing
- The Hearings video is available on the website to help to familiarise registrants with the process before they attend their own hearings.
- Positive feedback has been received about the video from registrants (and witnesses).
- The resources at Park House has been used more efficiently, meaning more hearings have been able to be arranged
- 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.

10 Conclusion

10.1 The Executive proposes that as a result of this review, hearings that do not conclude as expected should continue to be monitored. During 2010-2011

more information about these cases has been captured and this should continue in following years. .