

Tribunal Advisory Committee, 15 September 2020

Tribunal Advisory Committee – Annual Report to Council

Executive Summary

Upon its establishment in May 2017, it was agreed that the Tribunal Advisory Committee (TAC) would provide an annual update to Council on its work and achievements.

The attached paper sets out the key areas of work where the committee has been able to provide valuable advice and insight over the previous year.

Decision

The Tribunal Advisory Committee is asked to approve the Tribunal Advisory Committee Annual Report to Council.

Resource implications

There are no resource implications arising from this paper.

Financial implications

There are no financial implications arising from this paper.

Appendices

None.

Date of paper

7 September 2020

Tribunal Advisory Committee

Annual Report - August 2019 - July 2020

1. Introduction

This is the third Annual Report of the Tribunal Advisory Committee (TAC) to the Health and Care Professions Council (HCPC). It sets out the Committee's work and achievements during the period June 2019 – August 2020, and identifies further issues and areas of focus. Whereas in the previous two years the TAC's Annual Report was presented to Council in July, this year it is submitted for the September meeting as the pandemic has meant cancellations and delay in completing the year's work.

The TAC is a non-statutory advisory committee supported by officers of the HCPC and HCPTS. It is subject to the Council's strategic decisions and policies and to its Code of Corporate Governance. It reports direct to Council on the basis of the following terms of reference:

To advise the Council on

- the qualities, abilities and competences required of Tribunal panel members, chairs and legal assessors (partners);
- the arrangements for the merit-based selection, by fair and open competition, of Tribunal panel members, chairs and legal assessors;
- the arrangements for the training and assessment of Tribunal panel members, chairs and legal assessors;

Subject to any policy established by the Council to provide guidance to the Tribunal on matters of practice and procedure, in order to assist the Tribunal to conduct proceedings fairly, proportionately, efficiently and effectively.

- Under this TOR, the Council has specifically delegated the review and approval of Practice Notes for the conduct of tribunals to the TAC.

The TAC's approach to its work is informed by its terms of reference and by:

- the primary objective of protecting the public
- the Committee's role in assisting the Council to assure itself of the separation of the investigation and adjudication of fitness to practise cases and of the independence of decision-making in all fitness to practise (FTP) tribunals.
- ensuring its strategic objectives align with the Council's priorities to focus its work effectively
- devising a forward planning framework to keep its own progress on track and under review
- paying close attention to reviews undertaken by the Professional Standards Authority (PSA) both of HCPTS-related matters and of other regulatory bodies where relevant, including its regularly published 'lessons learned' reviews.

2. Background

The Health and Care Professions Tribunal Service (HCPTS) was launched in 2017 to support the separation between the investigation and adjudication of the HCPC's fitness to practice cases and to enhance independence in decision making by fitness to practice tribunals. The independence of the Adjudicatory function is a key aspect of the rule of law and of fair trial processes.

A significant value that the TAC brings is the underpinning of the independence of the adjudicatory arm of HCPC from its remaining functions (particularly the standard setting and investigatory /'prosecution' functions of the HCPC). This indeed was the key driver for Council's decision to establish the Committee which commenced work in May 2017.

With adjudicatory work, actual and perceived independence is perhaps more important than people realise at first blush and when the casework is relatively easy going. It is when the HCPC may be in greatest peril, with difficult and/or controversial cases, that separation and independence pay dividends. It is why the independence of the adjudicatory function is a key aspect of the rule of law and of fair trial processes.

Key to the TAC's work, and increasingly as our work develops, has been the role of providing a central point, within the governance structure, for oversight and coordination of policy in relation to the work of the tribunals. Recent examples are cited elsewhere in this report.

3. Meetings and Membership

Members of the TAC were appointed in 2017 through open competition on the basis of competences and relevant experience for a period of two terms of up to four years each. Three Committee members are serving Tribunal panel chairs and three are lay and independent, six in total. They are remunerated by way of a daily fee agreed by Council for all committees. The Chair is currently one of the lay members.

Membership has not changed during the course of the year. Because of the pandemic the appointment processes for members finishing first or final terms did not take place in 2020 and the affected members' terms have been extended where possible until the end of December 2020. One retiring panel chair member has been appointed a temporary lay member until that date and one panel chair member retired from the Committee on 31 July 2020. Council committee membership is being reviewed by the Council as part of its overall governance review and the appointments process will be reviewed accordingly.

TAC meets four times a year. Its meetings are supported by HCPC's Head of Governance, the Department Lead, Tribunal Services and the Partner and HR Manager, and are attended by members of HCPTS staff who participate as presenters, contributors and observers. They are open to the public and the agendas, minutes

and papers are published on the HCPC website ahead of the meetings. Minutes are submitted to Council meetings following each TAC meeting.

4. Partner Competencies, Recruitment, Assessment, Training and Development

This year the TAC has focused its attention on driving the use and efficacy of the competency frameworks for those engaged in tribunal work, thus promoting the development of an iterative 'loop' guiding the link between competencies, recruitment, training, assessment and (re) appointment. It has included overseeing the introduction of a modernised appraisal system for tribunal members and legal assessors.

TAC has supported the move away from manual processes towards a digital portal enabling feedback and training to be undertaken online, opening the way to better supporting panellists to deliver high quality hearings and decisions. The committee reviewed and tested the new online 360 degree performance portal and provided significant feedback to its development. User acceptance testing and the pilot process have been completed but the launch has been delayed due to the pandemic. The launch of the performance platform will be rolled out shortly as the new ways of conducting hearings have now been established.

Also in respect of the Covid-19 pandemic, in addition to general advice on prioritisation of cases, TAC has provided specific partner-related advice in relation to emergency action in respect of panellist reappointment, and the TAC's panel chair members have provided feedback and advice to HCPTS to maximise learning to support other panellists involved in consideration of cases remotely under the present circumstances and in the future.

TAC has given considerable priority to improving the quality and coordination of feedback from those involved in panels so that a cycle of information and learning is constantly in motion and timely, and informs not only the adjudicatory but also the investigative processes, end to end. TAC is concerned to ensure that information from panels about the whole case management system and case flow is available and captured to support the Fitness to Practise Improvement Programme. It has reviewed recruitment documentation for panellists, observed panel and training sessions and is promoting the establishment of a reference group of panel chairs and members.

TAC has addressed a number of questions in respect of panel management reflecting back on case management as a whole and in particular involving unrepresented respondents and also victims and families requiring special support. It has been mindful of the importance of clarity and understanding of the processes by all parties, from the outset – i.e. starting when a referral/complaint is first received. TAC members are mindful of the need to ensure that as few cases as possible are subject to adjournments.

TAC has continued to support initiatives to promote a more diverse pool of panellists and legal assessors. It recognises the challenges to achieving this, not least the current HCPC information system's ongoing lack of capacity to monitor data relating to registrants and panellists. This in turn hampers the ability to understand and

address which groups are under-represented in the pool or whether there is a disconnect between the profile of registrants and those involved in the adjudication of fitness to practise cases.

TRAINING

TAC has supported the move towards a digital portal for training, consistent with the Council's overall approach to moving away from manual to digital support services for the fitness to practice systems as a whole.

PERFORMANCE REVIEW

During the year the Council approved TAC's recommendation to cease the existing performance review process that had been operating for a number of years and support the implementation of a streamlined and more positive process that had been developed with TAC's advice and support.

5. Policy and Practice Guidance

TAC has standardised the format of Practice Notes and undertakes a rolling programme of review, ensuring that they are responsive to internal and external feedback, legislation, PSA guidance and 'lessons learned,' and best practice. This has improved their value, timeliness, consistency and accessibility – accessibility being of particular value in support of the HCPC's commendable culture of enabling Registrants, particularly unrepresented Registrants, to engage with the Fitness to Practise process. A major priority for the coming year will be to create this as an online suite and to ensure it becomes a vital part of the competency, feedback and quality improvement 'loop', i.e. responsive, clear, up to date, reliable and accessible.

An outstanding issue is the tension between TAC responsibility for approval and issuing of Practice Notes and the fact that this is nonetheless subject to final legal oversight and approval. TAC is concerned that while the Practice Notes must be consistent with up to date legal advice, there is a risk that a final "legal" redraft can render a note insufficiently intelligible to users and cumbersome with regard to process.

We have proposed the addition of a Legal Assessor to the Committee's number to ensure that all TAC decisions and recommendations take into account the legal assessor perspective. This would also take into account the fundamental role that legal assessors play in ensuring that panels complete their business, provide comprehensive reasons for their decisions and apply relevant legislation and guidance. There is also potential for using their legal knowledge when documents such as the Practice Notes are reviewed.

TAC has pursued ongoing work to review the various sources of feedback on the FTP processes. These include Chair feedback, panel feedback, feedback from recruitment exercises, appraisal and training, PSA feedback and the work of the Decision Review Group (DRG). The Decision Review Group potentially could be a significant source of intelligence feeding routinely into the work of TAC and we have asked that

consideration be given to strengthening the DRG/TAC link and, indeed, incorporating it into our Terms of Reference.

TAC has placed particular emphasis this year on ensuring that policy guidance and practice notes are consistent and able to inform each other, and has stressed that the point at which TAC is consulted within any decision making cycle must be explicitly considered and timely so that the earliest and best use is made of TAC and its members' experience and expertise.

Recently the TAC has begun to explore the impact of the large proportion of online hearings necessitated by the pandemic on the quality and pace of the decision-making process. Although borne of necessity and creating a large backlog, there are also some positive messages emerging that may usefully inform the implementation of the FTP Improvement Programme that the HCPC has undertaken. The TAC, like others involved in the FTP process, has considered the prospect of some remote hearings becoming routine post-pandemic, with Investigating Committee Panels and Interim Order Reviews on the papers being obvious first candidates. If there is to be a silver lining to the pandemic it is that the option of electronic case files and remote hearings has been swiftly pursued and embedded with advantages for efficiency, cost and resilience.

TAC spent time considering its priorities and assurance processes during the past year in order to ensure they were fit for purpose and for the future. Conscious of the unusual extent and complexity of the HCPC's role, and of its financial resources relative to that of other professional regulators, TAC observes that it can offer valuable support in anticipation of regulatory reform, where new rules and configurations come into place, using its knowledge and experience of current best practice in e.g. the use of undertakings, disposals by consent, projects for support to complainants, witnesses and registrants.

We appreciate that the HCPC Council is undertaking, as part of its overall governance review, a review of the extent, nature and quality of information it receives at its meetings on which to base decisions. Consistent with this is TAC's approach to improvement in the flow as well as quality of information in the processes that lead up to and flow from tribunal hearings. The TAC's own ability to question the factors which lie behind any data could be made more effective if it could be provided with historic comparators and other benchmarking information. TAC will consider this at its September 2020 meeting, when it will review the format and nature of information it would like in the future in order that it can undertake more thorough analysis of data and develop its ability to help forecast future impact.

Meetings August 2019 – July 2020:

- 25 September 2019 (this meeting was preceded by a forward planning session)
- 12 November 2019
- 3 March 2020 (cancelled because of the pandemic)
- 9 June 2020
- 13 July 202 (to consider TAC's response to the HCPC Committee Review)

Membership throughout the year

Graham Aitken (Panel Chair Member)

Catherine Boyd (Panel Chair Member)

Philip Geering (Panel Chair)

Sheila Hollingworth (Lay)

Alan Kershaw (Lay)

Marcia Saunders (Lay/Chair of the Committee)