

Tribunal Advisory Committee, 27 February 2019

Practice Notes - Format and Purpose/ Summary

## Executive Summary

Practice Notes exist to provide guidance to Panels of the Practice Committees as well as to parties with an interest or involvement in fitness to practise proceedings. All Practice Notes undergo regular review.

At the last meeting in November 2018, TAC discussed the principles that should be applied to developing a revised approach to the format of the Practice Notes. The attached paper incorporates the agreed principles.

A summary of all existing Practice Notes is also attached. The Committee had requested that a summary be provided to consider where subjects may overlap, highlight areas that are not covered and to prioritise any for review.

## Decision

The Tribunal Advisory Committee is asked to discuss the process of review as set out in the attached paper and highlight any Practice Notes within the existing schedule that should be prioritised for review.

## Appendices

Appendix one: Practice Notes Format and Purpose  
Appendix two: Practice Note Summary

## Date of paper

12<sup>th</sup> February 2019

## Practice Notes format and purpose

### 1.0 Introduction

- 1.1 This document sets out the principles that should be applied to the ongoing development and review of the HCPTS practice notes.
- 1.2 The primary purpose of the practice notes is to provide guidance to panels on relevant areas of procedure relating to fitness to practise proceedings. They also provide useful guidance and context for registrants subject to a fitness to practise allegation or those with an involvement in fitness to practise proceedings. It is important to note that a large percentage of registrants attending a hearing will be unrepresented.
- 1.3 As well as setting out procedure, they provide HCPC's interpretation of its overarching legislation and rules as well as setting out relevant case law. They are dynamic documents that are subject to regular review and revision.
- 1.4 They can be viewed and downloaded from the HCPTS website and can therefore be accessed by anyone who has an interest or involvement in proceedings.
- 1.5 They are not intended as exhaustive guidance and do not provide legal advice, although the nature of the Practice Notes means that they must encompass relevant points of law.
- 1.6 In May 2017, under provisions within Article 3 (12)(b) of the Health and Social Work Professions Order 2001, the Council delegated powers to TAC in relation to providing guidance to the Tribunal, including the review of all Practice Notes. TAC's terms of reference sets out that the committee shall:  
  
'subject to any policy established by the Council, provide guidance to the Tribunal [i.e. the Health and Care Professions Tribunal] on matters of practice and procedure, in order to assist the Tribunal to conduct proceedings fairly, proportionately, efficiently and effectively.'
- 1.7 Any Practice Notes made (newly created) following the establishment of TAC in 2017 should set out that they have been issued by TAC. All pre-existing Practice Notes prior to the establishment of TAC will have been issued by the Council upon their creation.

### 2.0 Format and content

2.1 The format of the Practice Notes should aim to be consistent and follow the principles set out below:

- Ensure clarity and simplicity of language;
- Focus on the relevant issue, when the issue could occur, the legal context and what this means in practice for the hearing;
- Ensure paragraph numbering, cross referencing and clear headings for ease of reference;
- Issues addressed in Practice Notes should be ordered so that the most frequent / relevant elements take prominence;
- Aim to avoid unnecessary legalistic language and ensure they are accessible as guidance to Panels and registrants or the wider public who may have an interest in proceedings.

### **3.0 Process of review**

3.1 The Executive will incorporate TAC's advice in relation to the review and development of the Practice Notes. However, due to the legal context of the content and their use by panels during fitness to practise proceedings they are also subject to final legal review and sign off.

3.2 Some Practice Notes may also contain guidance that is relevant to the management of the case at the earlier stages of the fitness to practise process.

3.3 In all cases, the HCPTS will initiate the process of review, undertake initial re-drafting and provide input and guidance to TAC throughout the review process, including proposals for change by TAC. HCPTS will ensure appropriate and relevant operational input at the early stages of review.

3.4 Legal review and sign off will then be sought and any further changes communicated electronically to TAC members.

**PRACTICE NOTE SUMMARY**

| <b>Title</b>                                    | <b>Summary</b>   | <b>Proposed<br/>Schedule for<br/>Review by TAC</b> |
|---|--|--|
| Appointment of medical and registrant assessors | Process for appointing medical and registrant assessors  |  |
| Assessors and Expert Witnesses                  | Sets out the function and role of assessors and expert witnesses and provides a pro-forma declaration and statement of truth   |  |
| Case Management and Directions                  | Sets out the default directions that apply in fitness to practise cases. It also sets out the principles of case management adopted by the HCPC                                  |  |
| 'Case to Answer' Determinations                 | Provides guidance for panels on determining whether there is a case to answer that a registrant's fitness to practise is impaired and the realistic prospect test                |  |
| Child Witnesses                                 | Provides guidance for panels on the steps to be taken if a child appears as a witness, to ensure that they are able to participate effectively without distress or intimidation. |  |
|   | Guidance for panels on factors that should be considered when  |  |

|   |   |               |
|---|---|---------------|
| Competence and Compellability of Witnesses    | determining whether a witness is competent or compellable   |               |
| Concurrent Court Proceedings                  | Guidance on proceeding with FTP cases when there are other civil or criminal proceedings ongoing against the same registrant  |               |
| Conduct of Representatives                    | Sets out the responsibilities of representatives during FTP proceedings.  | November 2018 |
| Conducting Hearings in Private                | Sets out the factors panels must consider in determining whether all or part of a hearing should be held in private and when the press or public should be excluded from all or part of the hearing                           | November 2018 |
| Conviction and Caution Allegations            | Sets out what factors panels should consider when dealing with allegations where a registrant has been convicted or cautioned for a criminal offence.   |               |
| Cross-Examination in Cases of a Sexual Nature | Sets out the procedure for undertaking cross-examination in cases of a sexual nature.   |               |
| Disclosure of Unused Material                 | Provides guidance to those appearing before FTP panels on the disclosure of material that is obtained by HCPC or those acting for them which is not relied upon in the presentation of the case before a final hearing panel. |               |
| Discontinuance of Proceedings                 | Sets out the procedure to be followed when a discontinuance   | February 2018 |

|  |   |                |
|--|---|----------------|
|  | application is made and the decision as to whether or not it should be granted  |                |
| Disposal of Cases via Consent                | Provides guidance and information on the disposal of cases by consent process   | February 2018  |
| Drafting Fitness to Practise Decisions       | Provides information and guidance for panels on the drafting of decisions and provides examples of conditions of practice   |                |
| Finding that Fitness to Practise is Impaired | Provides guidance on determining whether a registrant's fitness to practise is impaired and the different tasks that panels undertake at each stage of the decision making process. It also provides guidance on considering each element leading to fitness to practise impairment sequentially. |                |
| Half Time Submissions                        | Provides guidance on the process to be followed if a registrant makes submissions at 'half time' of a final hearing that there is no case to answer.  |                |
| Health Concerns                              | Provides guidance to panels on dealing with health concerns and when a case should be referred to the Health Committee  | September 2018 |
| Hearing Venues                               | Provides guidance on the location of hearings and the factors taken into account in determining where a hearing should be held.   |                |
| Interim Orders                               | Provides guidance on interim orders, the procedure to be followed and when they can be made.  | September 2018 |
| Joinder                                      | Sets out the procedure by which two or more allegations against the same registrant or allegations against two or more registrants can be joined.   |                |

|   |   |                |
|---|---|----------------|
| Mediation   | Sets out the principles of mediation and what issues panels should take into account when deciding whether mediation is an appropriate mechanism to adopt.                |                |
| Postponement and Adjournment of Proceedings                     | Sets out the procedure for dealing with requests for postponement and adjournment applications and the factors that should be considered when dealing with such requests. |                |
| Preliminary Hearings  | Provides guidance on conducting preliminary hearings.   |                |
| Proceeding in the Absence of the Registrant                     | Sets out the procedure and factors to be taken into account when considering whether to proceed with a hearing in the absence of the registrant.                          | September 2018 |
| Production of Information and Documents and Summoning Witnesses | Provides guidance on the production of information and documents and the summoning of witnesses.  |                |
| Restoration to the Register                                     | Sets out the procedure and issues panels must consider when determining whether to grant an individual restoration to the Register.                                       | November 2017  |
| Review of Article 30 Sanction Orders                            | Sets out the provisions of Article 30 (1) and (2) of the Order and the procedure and issues to be addressed by panels considering reviews                                 | May 2018       |
| Review of Striking Off Orders                                   | Provides guidance to panels on the procedure to be adopted in   |                |

|   |  |                                  |
|---|--|----------------------------------|
|   | relation to the admission of new evidence for applications made for review of a Striking Off order under Article 30 (7) of the Order. It sets out the test that panels should apply.   |                                  |
| Service of Documents                            | Provides guidance to panels on: <ul style="list-style-type: none"> <li>- Methods of service</li> <li>- Service by electronic means</li> <li>- Address for service</li> <li>- Deemed service</li> <li>- Proof of Service</li> </ul> |                                  |
| Special Measures                                | Sets out the provisions available to panels to help ensure that vulnerable witnesses are able to give their best evidence with minimal distress.   | November 2018                    |
| Unrepresented Registrants                       | Sets out steps that panels should consider taking when a registrant is unrepresented to ensure a fair hearing and put the registrant at ease.  | Due to be considered in Feb 2019 |
| Use of Welsh in Fitness to Practise Proceedings | Sets out the arrangements which have been established to ensure that proceedings in Welsh are conducted fairly and effectively and sets out the principles of the Welsh Language Act.  |                                  |