

Fitness to Practise Committee 21 October 2010

Adjourned/ part heard/ cancelled final hearings

Executive summary and recommendations

Introduction

Between April 2009 and March 2010 351 hearings were concluded at a final hearing. This paper reviews the 37 hearings that were due to take place between April and July 2010 that did not conclude as expected. The Executive has undertaken a review of these cases and made a number of recommendations and suggestions in the attached report.

Decision

The Committee is asked to discuss this paper

Background information

Fitness to practise process and length of time paper, February 2010

<http://www.hpc-uk.org/aboutus/committees/ftpcommitteearchive/index.asp?id=501>

Expectations of complainants, February 2010

<http://www.hpc-uk.org/aboutus/committees/ftpcommitteearchive/index.asp?id=501HPC>

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 and partners, rooms and other resources 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 for the year. This paper sets out the associated costs for hearings that do not conclude as expected.

Appendices

Adjourned/Part heard/Cancelled case review

Date of paper

4 October 2010

Adjourned/ part heard/ cancelled final hearings

1 Introduction

- 1.1 This report provides information about final hearings that did not conclude as expected between April and July 2010. There are a number of reasons why a hearing may not go ahead or complete which are set out in this paper. Suggestions as to how to reduce the number of cases that do not conclude are detailed later.
- 1.2 Article 32(3) of the Health Professions Order 2001 provides that:
- 1.3 *“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 should take to pass through different parts of the process.
- 1.5 Between April and July 2010 it took an average of nine months after a case was considered by a panel of the Investigating Committee for a case to be heard at a final hearing. Concluding FTP hearings as quickly as possible is in the best interests of the HPC, registrants, complainants and witnesses involved in these cases.
- 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 Committee in February 2010.
- 1.7 The IPSOS MORI work on the Expectations of Complainants highlighted that that all parties involved in hearings are concerned about the length of time they wait for each stage of proceedings to happen. More details about the ISOS MORI report and it findings can be found at:
<http://www.hpc-uk.org/aboutus/committees/ftpcommitteearchive/index.asp?id=501>

Date	Ver.	Dept/Cmte	Doc Type	Title	Status	Int. Aud.
Error!		Fitness to	Error!	Final hearings that do not		
Unknown		Practise	Unknown	conclude as expected		
document			document			
property			property			
name.			name.			

2 Costs

- 2.1 The cost of hearings (not including legal fees) is approximately £3,500 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 the HPC and the Registrant. If the hearing is being held at an external venue cancellation fees will also apply.
- 2.2 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

3 Reasons

- 3.1 There are a number of reasons why final hearings that have been scheduled do not conclude as planned. We have divided those reasons into four categories which are detailed below.

Cancelled- an administrative action taken when a hearing is unable to proceed as expected, e.g. a panel member has dropped out and if it is not possible to replace them before the hearing is due to start.

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 Lead Hearings Officer. Decisions are made on the merit of the application weighed with the need for the HPC to hear matters expeditiously. If those making the request reply with new information after a postponement request has been declined, the application will be forwarded to a panel chair to take a second decision on the request. Postponements usually mean Partner cancellation fees are avoided and we have more time to negotiate cancellation fees with external venues.

Adjourned- applications to adjourn are requests received less than 14 days in advance. Requests may also be made on the day of the hearing. These requests are often made before any evidence is heard and are usually requests 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.

Part heard- cases where the panel has started to hear the case but has to stop proceedings before the conclusion of the case.

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”.

4 Statistics

- 4.1 Between April 2009 and March 2010 351 final hearings were scheduled. 112 hearings did not conclude as expected, some which went part heard more than once. Between April to July 2010 of 134 hearings, 37 did not conclude as expected. The table below shows the percentage difference for each period.

	Apr 2009- Mar 2010	Apr- Jul 2010
Hearings scheduled	351	134
Hearings not concluded as expected	112	37
% of hearings not concluded as expected	32%	28%

- 4.2 Of the 37 hearings that did not conclude in April to July 2010 all but four have already got a new date agreed by all parties to resume and hopefully conclude proceedings. The remaining cases are waiting medical reports or further information before further scheduling can be undertaken.
- 4.3 The table below lists the reasons for those hearings not concluding:

Apr- Jul 2010	Number of hearings
Cancelled administratively	6
Postponed by the HPC in advance (more than 14 days before hearing)	6
Adjourned by Chair (less than 14 days before hearing)	3
Adjourned on the day	7
Part heard	14

- 4.4 The largest number of hearings that did not conclude were those that were part heard. Eleven hearings ran out of time, often due to protracted legal argument and in one case due to a registrant representing themselves and undertaking lengthy cross examination of witnesses. Three cases had new papers submitted to the panel close to, or on, the first day of the proceedings.
- 4.5 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.
- 4.6 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

- 5.1 HPC hearings lasted for an average of 1.8 days between 2009-2010. 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.
- 5.2 For cases referred to a final hearing, there are a number of steps before a case can be listed. Solicitors are instructed by the Case Manager, and they will prepare the case for hearing including taking formal witness statements and acquiring expert reports where necessary. A service level agreement exists between HPC and Kingsley Napley (KN) which sets out a number of particular service level standards. We receive a monthly report and review the service level agreement every six months.
- 5.3 The HPC should be notified that the case is ready to fix within four and a half months of the ICP referral date in 80 per cent of cases. This allows for the more complex cases which may take longer to prepare. Cases are not listed for hearings immediately after an ICP for a number of reasons. It is not known at this stage how many witnesses will be required, whether any witnesses may be considered vulnerable and what additional material may need to be sought. It is also not possible to determine the number of days required for a hearing until the case has been prepared. In waiting until this information is confirmed, the Hearings Team can ensure that cases are listed appropriately and reduce delay in relisting cases.
- 5.4 The Hearings Team is notified that a hearing is ready to schedule by KN. KN detail how many days they think are required and the running order witnesses should be called in. The number of days requested for a hearing will depend in the main on the number of witnesses. It will also be influenced by interaction the registrant may have had with the HPC, e.g. if there has never been a response to any FTP correspondence, time would not be allocated to them at a hearing, as it would be extremely unlikely that they would attend.

- 5.5 If the registrant has a representative, dates to avoid will be gathered from the representative before a hearing date is arranged. Time is usually allocated for the registrant to be able to present their case if they have engaged with the HPC in some way. It is sometimes the case that we are able to reduce the number of days scheduled in advance of proceedings if we are notified in advance that the registrant is not attending.
- 5.6 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. It is often the case that witnesses delay confirming their availability. Three chase letters are sent out before the hearing would be scheduled without their dates and a possible witness summons requested. When witness availability is confirmed, suitable dates are considered in light of the availability of resources. A panel is then organised and the hearing details confirmed to all parties. The availability of the panel (particularly the registrant member), adds further logistical detail to scheduling the hearing.
- 5.7 During April to July 2010 there was an average of two final hearings scheduled per working day. ICPs, interim orders and substantive reviews would have been scheduled alongside these hearings. The parties contacted for each final hearing are detailed below:

Panel	Number	External parties	Number
Panel Chair	1	Witnesses	2 (average)
Registrant partner	1	Registrant/ Representative	1
Lay Partner	1	HPC solicitors	1
Legal Assessor	1	Transcribers	1
		Venue	1
		Catering	1

- 5.8 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., admission of certain allegations meaning witnesses do not need to be called. Before 2010 all hearing days started at 10am, but it was felt there was capacity to start earlier on some days and panel chairs were instructed to start earlier after the first day of any hearing.
- 5.9 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, (appendix 4), sets this out in more detail. 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 Postponement and Adjournment Practice Note

- 7.1 The Practice Note has been in existence since 2008 and has been successful in avoiding unnecessary adjournments on the day of the hearing. 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	April- July 2010
No. of hearings scheduled	351	134
No. of postponement/ adjournment requests before hearing date	58	20
Average number of requests per month	5	5
No. of requests granted in advance	14	7

- 7.2 Where requests have not been granted in advance, further applications to adjourn proceedings can still be made on the day of the hearing. Further applications are rarely made because reasons as to why an application did

not meet the required standard had already been explored. The only successful applications made on the day of the hearing, where previously they had been refused, were related to matters of ill health and where additional information was presented at the hearing.

- 7.3 Registrants or their representatives are requested to make applications in writing if they want to postpone planned proceedings. Applications are considered on their merits by the Head of Adjudication or the Lead Hearings Officer.
- 7.4 Where applications provide valid reasons to postpone proceedings, applications will be agreed to. It is often the case that additional information has to be requested before this happens, e.g. evidence that a holiday was booked is submitted on request to show it was arranged before the notice of the hearing date was received by the registrant. For applications that are turned down, it is very rare that registrants go on to make a further application to the panel on the day of the hearing, as they are entitled to.
- 7.5 Where possible alternatives to postponing proceedings are discussed with registrants, e.g. a postponement was requested because second day of the hearing fell on a Friday and the registrant could not return home from London to Manchester before the Jewish observation of Sabbath. A videolink was arranged for the registrant to participate in proceedings on the second day from Manchester to allow her to participate in the last day of proceedings and get home in time to observe Sabbath and the hearing was concluded as expected. Another postponement request was made as the registrant wanted a witness to give evidence but they were in America during the hearing. Our video link facilities were used so the witness could give evidence and the hearing concluded.
- 7.6 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. Postponements granted in advance mean that resources can be used elsewhere and there would be no Partner cancellation charges, as there would be if the case was adjourned on the day.
- 7.7 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.

8 Conclusions

- 8.1 The Executive proposes that as a result of this review, the following work should continue to be monitored and developed, where possible, with the aim to reduce the number of final hearings that do not conclude as expected;

- continue to monitor number of hearings not concluded monthly;
- continue to report why cases have not concluded as expected.
- that as part of the Expectations of Complainants work to update the FTP pages of the HPC website, information will be included to help registrants involved in hearings understand the process. More detail of this work can be found on the agenda as the 'Update on Expectation of Complainant work' paper,
- that through training sessions, panel members should continue to be encouraged to look for ways to avoid or delay adjournments made on the day.
- that registrants should continue to be encouraged further to attend hearings and to provide their representations in cooperation with the HPC's Standard Directions.
- that representatives should be reminded of the need to comply with the HPC's Standard Directions through quarterly Union Professional body meetings.