



Agenda item:	M5
Report title:	Report of the Medical Practitioners Tribunal Service Committee
Report by:	David Pearl , Chair of the Medical Practitioners Tribunal Service david.pearl@mpts-uk.org , 0161 240 7115
Considered by:	MPTS Committee GMC/MPTS Liaison Group
Action:	To consider

Executive summary

This report sets out the key achievements of the Medical Practitioners Tribunal Service since it was established in June 2012.

Annexes A and B provide an update on progress since the previous report to Council in May 2016.

Key points to note:

- His Honour David Pearl will step down in December 2016 after nearly five years as MPTS Chair. Howard Matthews will step down as Assistant Director in January 2017
- Dame Caroline Swift will take up her post as MPTS Chair on 1 January 2017.
- The successful implementation of the recent Section 60 changes has allowed the MPTS to make a net efficiency saving of £261,000 in January to September 2016.

Recommendation

Council is asked to consider the report of the Medical Practitioners Tribunal Committee.

The MPTS: 2012-2016

- 1 This is the Medical Practitioners Tribunal Service (MPTS) Committee's second biannual report to Council of 2016, and the final report to be presented by His Honour David Pearl.
- 2 The creation of the MPTS in June 2012, separating adjudication from the GMC's investigation role, was the biggest change to fitness to practise proceedings since the GMC was first established in 1858.
- 3 In four and a half years of operation the MPTS has made decisions in over 10,000 hearings, and implemented significant changes that have improved how we work and underlined our operational separation.
- 4 In that time the MPTS has designed and implemented significant change across its operations, delivered improved timeliness and efficiency in its hearings service and become the internationally recognised model for adjudication of health professional regulation.

Changes delivered

- 5 In 2012, digital recording was introduced in MPTS hearing rooms, replacing shorthand writers. Transcripts began only being produced if needed or requested. The use of specialist and professional advisers, which were routinely used in health and performance cases respectively, was made the exception rather than the norm.
- 6 In 2013, changes to the Fitness to Practise Rules were implemented, which allowed the MPTS to provide a more efficient and effective adjudication service. A number of these changes also benefited witnesses giving evidence to MPTS hearings: allowing written statements to be accepted as evidence-in-chief, and simplifying the process for agreeing the use of video or telephone evidence. The changes also increased case management powers for panel chairs and case managers.
- 7 In 2014, the Department for Health (England) consulted on proposed changes to the Medical Act to provide for a statutory basis for the MPTS, a GMC right of appeal and other significant changes to hearings and investigations. In April 2014, the Law Commission proposed in its report *Regulation of Health Care Professionals* that the Government should have powers to introduce a separate adjudication system for any of the health regulators, "based on the Medical Practitioners Tribunal Service."
- 8 At the end of 2014, the MPTS launched a telephone information service to help doctors without legal representation better prepare for a hearing, supported by a series of fact sheets outlining different stages of the process.
- 9 In March 2015 a Section 60 Order was agreed by the UK Parliament, Scottish Parliament and Privy Council, amending the Medical Act 1983. Throughout 2015, the

MPTS and the GMC Fitness to Practise Directorate delivered an ambitious programme of 15 separate change projects, implementing the changes to the Medical Act and Fitness to Practise Rules.

- 10** The Section 60 Order was enacted on 31 December 2015, creating the MPTS Committee as a statutory committee of Council, replacing the previous Advisory Committee. The MPTS Committee has significant responsibilities, including ensuring the hearings service is delivered in an efficient and effective way and ensuring tribunals maintain high quality standards of decision-making.
- 11** The Section 60 Order also underlined operational separation with a GMC right of appeal against tribunals' decisions, and gave the MPTS discretion to appoint legally qualified chairs, run review hearings 'on the papers' and issue binding case management decisions.
- 12** Throughout 2016, the MPTS has implemented those changes. Interim orders are now regularly reviewed 'on the papers', legally qualified chairs regularly sit on tribunals and cases are subject to robust, active case management.
- 13** Savings delivered January to September 2016 are £231,000 from the use of legally qualified chairs and £30,000 from reviews being completed on papers instead of through a full hearing. The forecast for the full year is for £360,000 savings from legally qualified chairs and £60,000 from reviews on papers.

Resources

- 14** In 2013, the first full year of operational separation, MPTS expenditure was £10.2m. The latest full year forecast for 2016 is £10.3m. Elsewhere on the agenda, Council will be asked to approve a 2017 budget of £9.4m.
- 15** The average length and average daily cost of MPTS hearings have been reduced. When the MPTS was established in June 2012, the cost of running hearings was £4,167 per hearing day. The 2016 forecast is for a daily cost of £3,257. Service levels have been maintained through this period, in line with our commitment to running an effective and efficient adjudication service.

Recruitment and training

- 16** The MPTS Committee is responsible for the appointment, training and assessment of tribunal members and case managers. The MPTS appoints medical and lay tribunal members through open competition against agreed competencies.
- 17** Since June 2012, the MPTS has appointed 154 tribunal members with another 35 joining us before the end of 2016. More than 100 annual training sessions have been delivered since June 2012. Each tribunal member has attended a week-long induction

training event. Tribunal members, legal assessors and case managers have all attended annual training each year they have been in post.

- 18** The MPTS encourages applications from a diverse range of backgrounds. The diversity of our tribunal members compares well to other courts and tribunals in the UK. The MPTS Committee believes it is important that tribunal members bring a range of diverse perspectives to the role, and monitors the diversity of our tribunal member pool at every meeting.
- 19** As of October 2016, the MPTS has 244 tribunal members of whom 45% are female and 18% identify as BME. This compares favourably with the most recently published figures for UK courts (28% female and 5% BME) and UK tribunals (45% female and 12% BME) (Source: <https://www.judiciary.gov.uk/publications/judicial-statistics-2016>).

Quality assurance

- 20** In 2012 a new system of providing quality assurance feedback on MPTS decisions was established. The Quality Assurance Group (QAG) is chaired by David Pearl. Prior to this, a review of both investigation and adjudication decisions was carried out by the GMC's Decision Review Group (DRG) which included individuals involved in the investigation process.
- 21** QAG has reviewed over 2000 decisions since 2012, with exemplary decisions and constructive feedback helping to shape tribunal members' annual training. Any guidance issued to all tribunal members as a result of QAG discussions is proactively shared with medical defence organisations and published online.

Communications and engagement

- 22** An MPTS User Group was established in 2012 to engage directly with all parties involved in our hearings. This has met twice every year and is attended by medical defence organisations, the legal firms they instruct, the GMC's Fitness to Practise Directorate and GMC Legal. The meetings are an opportunity to raise operational matters of concern with the MPTS Chair and Assistant Director. A large range of topics is discussed at these meetings. For example, in October 2016 the User Group discussed the piloting of paperless hearings, the use of legally qualified chairs, the MPTS approach to adjournments and proposals on the provision of bundles in advance of hearings.
- 23** The MPTS also established a Case Management Group in 2013, to discuss changes to case management procedures with medical defence organisations and the GMC, particularly in advance of the Section 60 Order enacted in December 2015.

- 24** Throughout his time as MPTS Chair, David Pearl has met with stakeholders representing doctors, patients and legal professionals to promote the work of the MPTS. He has regularly been invited to deliver keynote addresses at conferences attended by medico-legal professionals.
- 25** Along with members of the MPTS Committee, he has travelled all over United Kingdom to speak at Local Medical Committees, medical schools and law schools.

Conclusion

- 26** The MPTS is now very well placed to face future challenges. Further legislative change is required in some areas but the culture of continuous improvement and effective delivery of change has been established, while maintaining operational performance. Further cultural change will deliver real benefits, particularly in the timeliness of hearings and the support for those attending.
- 27** It can be noted that the MPTS has been recognised as the model for adjudication services and is working with other regulators to share and develop best practice.
- 28** Howard Matthews, Assistant Director, MPTS, will retire on 27 January 2017. An interim Assistant Director is being [has been] appointed, with a substantive appointment to be made by the new Chair of the MPTS.
- 29** His Honour David Pearl will formally step down as MPTS Chair on 31 December 2016, having taken up the post in February 2012. The new MPTS Chair, Dame Caroline Swift will take up her post on 1 January 2017.



M5 – Report of the Medical Practitioners Tribunal Service Committee

M5 – Annex A

2016 Performance

Hearing outcomes

- 1 Hearing outcomes for first three quarters of 2016 are included at Annex B.
- 2 In the first nine months of 2016, 182 doctors appeared before new medical practitioners tribunals. 27% of those doctors were erased, 42% suspended, and 9% were given conditions. 14% were found not impaired, while a further 5% were found not impaired and received a warning. In the remaining 2% of hearings, the tribunal found impairment but took no action, or granted an application for voluntary erasure.
- 3 These figures are broadly similar to the fitness to practise panel outcomes in the two previous calendar years. The breakdown of outcomes suggests that MPTS decision-making continues to be consistent and that the GMC are referring cases appropriately.
- 4 In the first nine months of 2016, 252 doctors appeared before new interim orders tribunal hearings. 16% of doctors received interim suspensions and 69% interim conditions. Interim orders tribunals made no order in 15% of cases.
- 5 In 2016 so far, there has been a significant reduction in the number of IOT referrals from the GMC compared with recent years.

Section 60 implementation

- 6 The use of legally qualified chairs (LQCs) was successfully piloted in the first quarter of the year, and is now being trialled in a range of different types of medical practitioner tribunal (MPT) hearings.
- 7 Qualitative feedback is being sought from parties, tribunal members and MPTS staff to assess effectiveness of LQCs in particular types of MPT hearing. This will help us decide how LQCs can best be used to ensure the MPTS delivers an effective hearings service.

- 8** 209 reviews of interim orders were held 'on the papers' between January and September 2016, where both parties agree on the proposed outcome. This change means many doctors do not need to travel to Manchester for short hearings.

Self-represented and vulnerable doctors

- 9** In addition to our telephone information service and factsheets for self-represented doctors, we are working with colleagues in the Fitness to Practise Directorate to offer additional support to doctors in our respective processes.
- 10** We are piloting a Doctor Support Group, a group of volunteers among MPTS staff who doctors can talk to if they need additional support during a hearing. The 2017 MPTS Business Plan includes a commitment to make this additional support part of our business-as-usual.

Resources

- 11** The MPTS budget for 2016 is £10.6 million. In terms of both staff and financial resource the MPTS represents 10% of the GMC.
- 12** The various Section 60 changes, including reviews 'on the papers' and legally qualified chairs, have allowed the MPTS to make a net efficiency saving of £261,000 in January to September 2016, with a forecast of £360,000 to be saved in the full year.
- 13** As stated above, Council will be asked to approve a 2017 budget of £9.4m elsewhere on the agenda.

MPTS Committee

- 14** Since the last report to Council, Professor Jacky Hayden has been appointed as a new medical member of the statutory MPTS Committee, and the Committee has met on two occasions, 7 September and 15 November 2016.
- 15** The Committee has considered a range of matters, including an update from the Quality Assurance Group and the development of the MPTS vision.
- 16** The Committee's papers and minutes are routinely published on the MPTS website.
- 17** The next meeting of the Committee will take place on 8 February 2017.



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M5 – Annex B

Hearing Outcomes

Medical practitioners tribunals	2014	2015	Jan-Sep 2016
Erasure	71	72	49
Suspension	86	95	77
Conditions	22	24	16
Undertakings	3	1	0
Impairment, no further action	4	2	2
No impairment, warning	10	6	10
No impairment	37	38	26
Voluntary erasure	4	1	2
Total	237	239	182

Interim orders tribunals	2014	2015	Jan-Sep 2016
Suspension	102	49	40
Conditions	350	359	174
No order made	119	114	38
Total	571	522	252