



Agenda item:	9
Report title:	Implementation of Legally Qualified Chairs
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Action:	To consider

Executive summary

This paper outlines the key considerations to progress the implementation of the use of legally qualified chairs (LQCs). In order to commence the appointment process decisions relating to fees payable to MPTS associates that are legally qualified need to be decided (subject to the necessary GMC budgetary approval processes) and the procedure for carrying out the appointments process needs to be agreed.

Recommendations

The MPTS Committee is asked to:

- a** Approve the recommendation that the fee for legally qualified MPTS Associates should be £500 per sitting day, for approval by the Performance and Resources Board.
- b** Agree that an uplift for chairing hearings by an LQC will not be provided as an enhanced fee is already paid.
- c** Agree the proposal that the interview and assessment process will consist of an interview, case study and presentation.

Trial of legally qualified chairs

Background

- 1 The trial of LQCs commenced in January 2016, initially limited to interim order hearings and medical practitioners tribunal review hearings. From 3 October 2016 we have commenced the next stage of the trial, using LQCs in new MPT hearings. This stage of the trial will continue until the end of 2016 and we intend to develop criteria to confirm how the discretionary use of LQCs will be decided. This will specify clearly to all parties in which types of hearings the MPTS will usually use LQCs - exceptions only to be made for operational empanelment needs.
- 2 Once the criteria is established we will be able to forecast the volume of LQCs we would require to resource the hearings that fall within those criteria, however at this stage we anticipate that LQCs will be utilised in an increasing volume of hearings.

Forecasting

- 3 With 2429 hearing days forecast for 2017 and based on the contractual requirement for 'lay (including legal)' associates to sit for 35 days each year, approximately 70 chairs would be required to meet demand. In practise we operate with a larger pool of chairs to account for availability issues. There are 88 chairs across both MPT and IOT with 14 of these as Legal Assessors appointed as LQCs for the purpose of the trial only. If we assume that at least 70%* of all cases will be considered suitable for the use of a Legally Qualified Chair we would need to appoint 50 LQCs.

Dual roles

- 4 We have reflected on the similarity of the LQC and Legal Assessor roles and in order to maximise flexibility of resource as the criteria develops, the recruitment process will appoint to both roles - LQC and LA. Individuals will only carry out the relevant function to which they are - hearing specific - appointed.
- 5 Initial feedback on this approach from the Tribunal User Group has raised the concern that a conflicting legal opinion with a legal assessor could impact on presentation of cases before the same person when sitting as Chair. We feel that this is no different from where a LQC sitting on one case takes an opposing view of a party's legal advice and then sits on a subsequent hearing where that party is also presenting. Such matters can be dealt with by way of an application for recusal if real

* Percentages will not be known until nearer the conclusion of the trial

bias is considered likely although it would appear to be a routine legal professional matter. With increasing hearings being led by LQCs such situations will be reduced.

- 6 It is planned that the cohort of individuals appointed as LQCs will also be appointed as LAs. There will continue to be a number of hearings with non-legally qualified chairs and so we will increase the number of appointments to reflect this. Assuming at least 30% of hearings, the forecasting data would indicate that at least 21 additional appointments should be made.
- 7 We therefore would intend to carry out recruitment for approximately 75-85 dual appointed LQCs and LAs.

Fees

- 8 The current fee for LQCs is £483 per day with no reading fee. The current fee for LAs is £525* per day with a reading fee of £200 per hearing or hearing day.
- 9 We have reflected on the roles and consider that LQC carries out the function that the LA carries out in addition to chairing the hearing. It would therefore seem appropriate that the LQC receive a higher or comparable fee to the LA.
- 10 We have reviewed the fees payable by other regulators and conclude that a fee of £500 for legal duties is appropriate. We have considered the distinction between the role of Legal Assessor and LQC, but consider that as an enhanced fee is paid in any event, no additional chairing fee would be payable. The chairing responsibilities are included within the fee considered appropriate for an LQC.
- 11 Currently tribunal members are paid £310 and chairs are paid an additional £50 per day when chairing, however we consider that as an LQC already has an enhanced fee due to their legal contributions that the chair enhancement would not need to mirror that for standard chairs.
- 12 Introducing LQCs will result in considerable savings and the table at Annex A demonstrates that for 2017 if we were in a position to have 70% of all hearings led by an LQC from the start of the year then savings would be in excess of £770,000 (against full year budget for 2016)[†]. Recommending an enhancement for the LQC fee with an effective decrease in the LA fee, while still making a saving, would result in a slight decrease to just under £760,000 for the comparable year. Therefore

* Most LAs will claim VAT on this amount and a small number of LAs are under old contract terms and claim £583 per day

[†] Note that as appointments for LQCs will not complete until summer 2017, the savings for 2017 will be less.

consideration needs to be given to balancing the appropriateness of enhancing the LQC fee for the full roll out of LQCS against the impact on savings that will result.

- 13 Any adjustments to fees would need to be approved by the GMC Performance and Resources Board.

Interview and Assessment process

Previous appointment campaigns

- 14 Since 2012, the appointments process for tribunal members has comprised an online application form - which is manually scored against the relevant competencies. If successful at this stage applicants are invited to undergo a competency based interview, case study exercise and a verbal reasoning psychometric test. The verbal reasoning test provides an objective means of assessing the applicants ability to consider questions against the information provided and assists to distinguish those that may score well at case study due to knowledge of MPTS proceedings.
- 15 In recent years, weighting has been applied to the different elements with the interview score:case study:verbal reasoning as 3:2:1. Minimum scores at interview and case study have been set and then an overall minimum threshold required.
- 16 Reviewing applicants from this year's tribunal member campaign, four applicants scored low in the verbal reasoning which resulted in a lower overall score. However, as their score at interview and case study was sufficiently over the required minimums they were considered appointable. Two applicants passed the scores for interview and just met the standards for case study but their overall score due to a low verbal reasoning score was deemed insufficient to make them appointable.
- 17 It is therefore considered that the verbal reasoning test acts as an element of the assessment to inform whether an applicant should be appointed but the interview and case study scores are the deciding factors.

Appointment process for LQCs/ LAs

- 18 As the criteria for the appointment of LQCs and LAs would require a minimum level of legal experience, it can be assumed that applicants meeting the criteria for appointment would be appropriately experienced in verbal reasoning and considering information based on the evidence.
- 19 In order to differentiate applicants, however, as we are looking for strong chairing skills as applicants will be immediately commencing a chairing role during proceedings we consider it is necessary to assess how they are able to consider

information including legal material that is put to them and quickly analyse and assess this and then use it to present (lead) a tribunal on these issues. We consider that a presentation to the interview panel would allow these skills to be demonstrated.

- 20** We would therefore recommend that the appointment process continue to consist of the interview and case study but that the verbal reasoning testing is substituted for a presentation based on matters deriving from the case study.

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9 – Annex A

	current rates	current rates using LQCs	Change to same fee, no chair uplift		Chair uplift of £50	
			both reduced	to match LA	both reduced	to match LA
Total LQC fee inc VAT where charged.	£521.64	£521.64	£540.00	£567.00	£594.00	£621.00
Total LA fee inc VAT where charged	£603.75	£603.75	£575.00	£603.75	£575.00	£603.75
Total Budgeted Hearing Days	2,429	2,429	2,429	2,429	2,429	2,429
Cost of LQC led hearing inc members	£1,160.24	£1,160.24	£1,178.60	£1,205.60	£1,232.60	£1,259.60
Total Cost of LA led hearing inc members	£1,613.15	£1,613.15	£1,584.40	£1,613.15	£1,584.40	£1,613.15
Total hearing Costs - 100 LA Jan- Dec	£3,918,341.35					
Total hearing Costs - 85:15 Jan-Jul 2017		£2,189,438.76	£2,158,715.05	£2,199,079.46	£2,170,192.07	£2,210,556.49
Total hearing Costs - 30:70 Aug-Dec 2017		£1,311,774.37	£1,316,052.44	£1,343,910.04	£1,354,309.19	£1,382,166.79
Full Year Cost 2017	£3,918,341.35	£3,501,213.13	£3,474,767.49	£3,542,989.50	£3,524,501.27	£3,592,723.27
Full Year Cost - if all at 30:70		£3,148,258.48	£3,158,525.86	£3,225,384.09	£3,250,342.06	£3,317,200.29
Savings against 2016 all hearings LA	£0.00	£770,082.87	£759,815.49	£692,957.27	£667,999.29	£601,141.07