

MPTS Committee

Agenda and papers

Meeting:

2 February 2022



Contents

	Page
Agenda	3
03 - Minutes of the previous meeting held 10 November 2021	4
03a - Actions arising	9
05 - Executive Manager's report	10
Annex B - MPTS notification of hearings and postponement	16
Annex D - Freedom To Speak Up Report 2020	29
07 - Update from the Quality Assurance Group	51
08 - Adjournments quarterly update	54
09 - Tribunal members training update	58
10 - Review of the delivery of planned projects and discussion of future priorities and plans	63



MPTS Committee meeting

2 February 2022

10:00-13:00

Virtual, MS Teams

Agenda

- 1** Welcome and apologies for absence
- 2** Declaration of interests
- 3** Minutes of the previous meeting held 10 November 2021
- 4** Chair's report (oral)
- 5** Executive Manager's report
- 6** Freedom to Speak Up
- 7** Update from the Quality Assurance Group
- Break for tea / coffee**
- 8** Adjournments quarterly update
- 9** Tribunal members training update
- 10** Review of the delivery of planned projects and discussion of future priorities and plans
- 11** Any other business
- 12** Date and time of next meeting: 10 May 2022, 10:00 – 13:00, St James's Buildings, Oxford Road, M1 6FQ

Agenda item:	3
Report title:	Minutes of the meeting on 10 November 2021
Considered by:	MPTS Committee
Action:	To approve

Members present

Dame Caroline Swift, Chair
Gill Edelman
Joy Hamilton
Jacky Hayden
Tushar Vince

Others present

Colin Barker, Head of Communication and Corporate Affairs MPTS (item 6)
Samantha Bedford, Head of Case Management MPTS (item 7)
Gavin Brown, Executive Manager MPTS
Nathan Fountain-Tucker, Corporate Governance Administrator GMC (Observer)
Ian Sexton, Corporate Governance Manager GMC and Committee Secretary

Welcome and apologies for absence (agenda item 1)

- 1** The Chair welcomed members of the Committee and attendees to the first in person meeting since the start of the pandemic.
- 2** Tushar Vince and Gill Edelman were welcomed to their first Committee meeting as new Committee members.
- 3** There were no apologies for absence.

Declaration of interests (agenda item 2)

- 4** No interests were declared.

Minutes of the previous meeting (agenda item 3)

- 5** The MPTS Committee reviewed, and approved, the minutes of the previous meeting held on 14 September 2021.
- 6** The Chair noted that all actions from previous meetings have now been completed.
- 7** An updated version of the MPTS Vision, including amendments suggested by members at the September 2021 meeting, was circulated before the meeting. The amended MPTS Vision was approved by the Committee.

Chair's report (agenda item 4)

- 8** The Chair provided an update on key activities and business since the last MPTS Committee meeting.
- 9** All MPTS colleagues resumed working at the hearing centre the equivalent of one day a week in September 2021. The Chair reported that she is now working from the hearing centre two days a fortnight and has found the experience of meeting colleagues face-to-face to be valuable.
- 10** The Chair highlighted her attendance and topics covered at the following virtual meetings:
 - ▶ Strategic Equality, Diversity & Inclusion advisory forum: discussions included barriers to employment and other issues faced by minority groups.
 - ▶ Virtual tribunal member training sessions: co-hosted sessions on the tribunal's role in sexual misconduct hearings.
 - ▶ Quality Assurance group (QAG) meetings: quality of decisions was generally of a high standard with only a few learning points identified.
 - ▶ Policy forum: update on regulatory reform, and discussion of action required in the future on MPTS guidance plus minor changes to the MPTS Vision.
 - ▶ Virtual chats with junior colleagues – an opportunity to get to know individuals who have recently joined the MPTS.
 - ▶ Other GMC meetings - the Chair met with Professor Dame Carrie MacEwen, acting Chair of the GMC Council, Charlie Massey, GMC Chief Executive, and Anthony Omo, Director of Fitness to Practise. Discussions included our recovery plan and regulatory reform.
- 11** Regulatory reform discussions with GMC are ongoing, timing and details are still uncertain however some preparatory work has begun.

Executive Manager's report (agenda item 5)

12 The report provides an update on the operational performance of the MPTS.

13 The following areas were highlighted:

- ▶ We continue to offer virtual hearings and in person hearings and we aim to accommodate the location requests we receive from parties.
- ▶ Colleagues have returned to working in the office at least one day per week on a flexible basis.
- ▶ Successful new initiative fund bids to increase operational staff to ensure the hearing centre can run efficiently and to reduce pressure on the workforce and for new VC equipment to help meet the demand for hybrid hearings.
- ▶ A review of IOT hearings listing has been undertaken to improve efficiency.
- ▶ There have been minor updates to the MPTS risk register.
- ▶ Plans for the appointment of legally qualified chairs and tribunal member diversity statistics were shared.
- ▶ Regulatory reform: planning for the introduction of medical associate physicians continues. The Committee will be kept updated as plans progress.
- ▶ People Survey: results for the MPTS were generally good with a couple of areas for further exploration.

14 During the discussion, the MPTS Committee noted that:

- ▶ Decision to proceed as a virtual hearing is based on the needs of both parties and is usually taken at the start of the case management process.
- ▶ The approach of over listing hearings is continually monitored in terms of the actual hearings that run to ensure that the impact on colleagues is minimised.
- ▶ MPTS management are kept apprised of workplace pressures through regular 1:1s and other colleague and network meetings and surveys.
- ▶ The Committee expressed an interest in seeing the People Survey results for the MPTS and in understanding more about the role of the Freedom to Speak Up (FTSU) Guardian. It was agreed that the FTSU Guardian would be invited to the next Committee meeting and their latest report to Council shared with the Committee.
- ▶ It was suggested that, when collecting diversity data, a higher completion rate may be attained if protected characteristics were grouped together.
- ▶ It was suggested managers and tribunal members might benefit from undertaking additional diversity training such as *Fostering inclusion*, *Active bystander* or neurodiversity training.

Report of the MPTS Committee to GMC Council (agenda item 6)

- 15** Colin Barker, Head of Communications and Corporate Affairs, MPTS, presented the Report of the MPTS Committee to GMC Council.
- 16** The report, which will be presented to GMC Council by Dame Caroline Swift and Gavin Brown at the December 2021 Council meeting, provides an update on the work of the MPTS since the last report to Council in June 2021.
- 17** During the discussion, the MPTS Committee suggested that:
 - ▶ The revised MPTS Vision could be highlighted.
 - ▶ Future reports could include reference to the challenges faced by the MPTS.The Committee were reassured that issues facing the MPTS are the subject of regular discussions with senior GMC staff including the GMC Chair and Chief Executive, as well as at MPTS/GMC Liaison Group meetings.

Adjournments quarterly update (agenda item 7)

- 18** Samantha Bedford, Head of Case Management, presented the adjournments quarterly update including detailed adjournments reviews.
- 19** The main themes arising from adjournments during quarter 3 2021 were summarised.
- 20** The results of two detailed adjournment reviews were shared.
- 21** During the discussion, the MPTS Committee noted that:
 - ▶ It might be beneficial to share the detailed adjournment reviews at tribunal member training as case studies.
 - ▶ They are very supportive of the work the MPTS continues to do to support unrepresented doctors.

Review of the MPTS Committee's work programme for 2022 (agenda item 8)

- 22** The MPTS Committee reviewed and approved its forward work programme for 2022.

Any other business (agenda item 9)

- 23** There was no other business.

Date and time of next meeting (agenda item 10)

- 24** Date and time of next meeting: 2 February 2022, 10:00 – 13:00 by MS Teams.

Confirmed:

Dame Caroline Swift

2 February 2022

Actions from the meeting

Date of meeting	Agenda item	Ref	Action	Person responsible	Status	Update	Date last updated
10-Nov-21	5		Share MPTS People Survey results with the MPTS Committee	G Brown	Completed	At Annex C to the Executive Manager's report at the February meeting of the MPTS Committee	19/11/2022
10-Nov-21	5		Consider ED&I training for managers and tribunal members such as Fostering Inclusion or Active Bystander	G Brown	Completed	Presented at item 09 - <i>Tribunal members training update</i> at the February meeting of the MPTS Committee	19/11/2022
10-Nov-21	5		Share with the MTPS Committee, the Freedom to speak up guardian report to Council.	G Brown	Completed	At Annex D to the Executive Manager's report at the February meeting of the MPTS Committee	19/11/2022
10-Nov-21	5		Invite the Freedom to speak up guardian to attend the next MPTS Committee meeting to discuss People Survey.	G Brown	Completed	G Brown has confirmed Lyndsey Mallors, Freedom to speak up guardian, will attend the February MPTS Committee meeting.	15/11/2021



Agenda item:	05
Report title:	Executive Manager’s report
Report by:	Gavin Brown, Executive Manager, gavin.brown@mpts-uk.org , 0161 240 8126
Considered by:	MPTS Committee
Action:	To consider

Executive summary

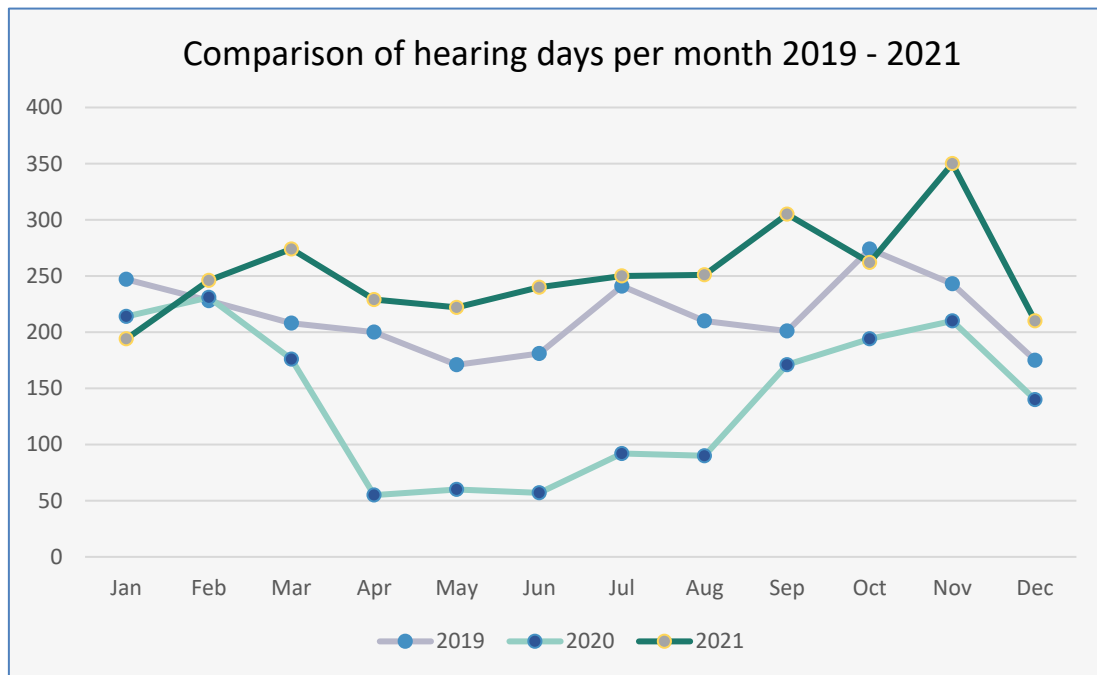
- ▶ This report provides an update on the operational performance of the MPTS.
- ▶ It includes updates on our response to the pandemic, progress in listing hearings, appeals, opportunities and threats, audit findings, people survey and freedom to speak up and LQC appointment campaign.

Recommendation

- ▶ The Committee is asked to consider the report and its annexes.

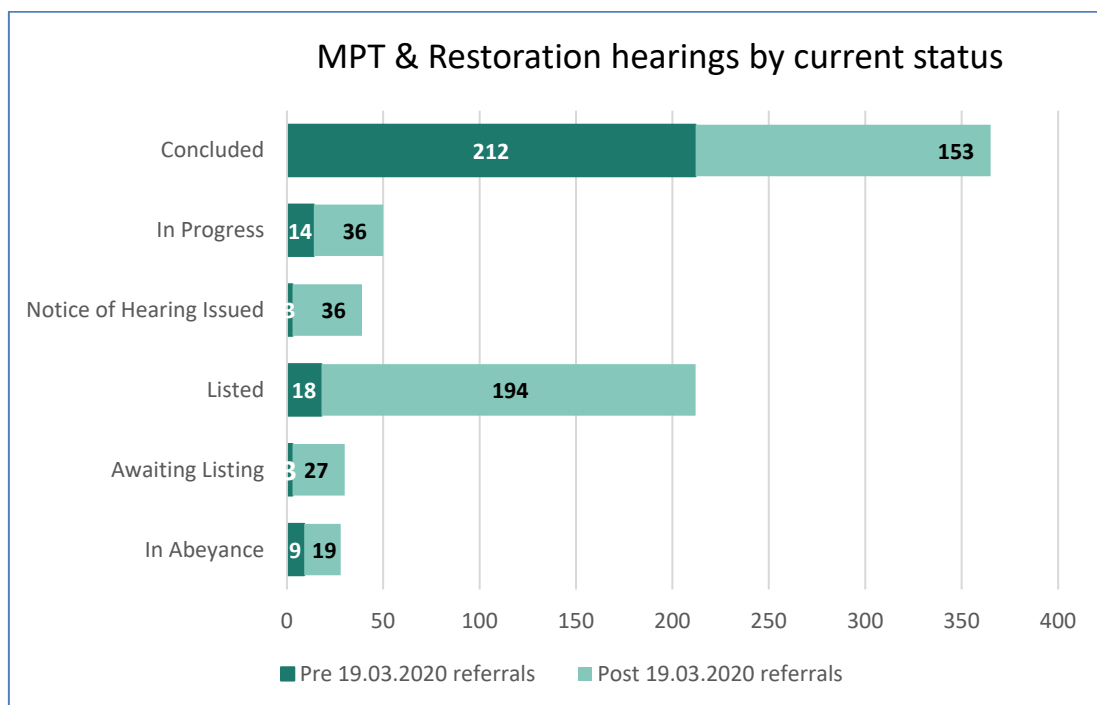
Response to the pandemic

- 1** Since the last Committee meeting on 10 November 2021, we have continued to run hearings at our hearing centre and virtually.
- 2** Keeping the hearing centre open means we can avoid postponing hearings that are ready to proceed. Concluding hearings as quickly as possible is important as delays can be stressful for doctors, patients and others involved in our hearings.
- 3** We continue to have extensive safety and hygiene measures in place at the hearing centre.
- 4** From 20 September 2021 MPTS colleagues were working their new working patterns, with at least one day a week in the office. Prior to this those who had not yet attended SJB were given the opportunity of a familiarisation day.
- 5** On 14 December 2021, we informed Committee members that, following the UK Government’s announcement that people should work from home if they can, we had asked MPTS colleagues to revert to how they were working before the summer.
- 6** This means that, at present, only colleagues who are critical to the running of hearings at the hearing centre are currently coming into the office.
- 7** We hope to return to our new working patterns, with everybody being in the office at least once a week, once the guidance changes.
- 8** We also issued an update to our User Group, confirming that all hearings would continue as planned. The User Group is made up of solicitors’ firms, medical defence organisations and GMC Legal colleagues who regularly take part in our proceedings.
- 9** The total number of hearing days held by the MPTS in 2021 represents an increase of 17.6% compared to the number held in 2019 and 79.4% compared to the number held in 2020.
- 10** On average in 2021 the MPTS held an additional 37.8 hearing days per month compared to 2019, and an additional 111.9 hearing days per month compared to 2020.



Listing of hearings

11 We continue to list hearings as soon as possible following referral. The chart below shows the status of hearings on 31 December 2021.



12 The pre-19 March 2020 referrals where cases are awaiting listing relate to the further investigation of original concerns, the ongoing appeal of a criminal conviction or the doctor’s health.

- 13** In respect of the post-19 March 2020 referrals, cases are awaiting listing or are on hold for a variety of reasons including having been referred recently (therefore a first listing telephone conference and / or pre-hearing meeting to agree a date and duration with parties has not yet been held) or the matter being the subject of a police investigation.
- 14** Of the 28 cases in abeyance, all but one is because of a postponement or adjournment application from the doctor or GMC. The one exception to this is a hearing in which the tribunal adjourned and directed that a health assessment of the doctor should be carried out.

Appeals

- 15** Since the last update to the MPTS Committee on 20 November 2021, additional learning points arising from judgments given in appeals / challenges to tribunal decisions from 1 October to 31 December 2021, include the following:
- a** Lies in themselves do not necessarily mean that the entirety of the evidence of a witness should be rejected. However, a tribunal must explain why, having rejected significant parts of the evidence a witness, it is nevertheless able to accept other parts of their evidence.
 - b** Procedural fairness requires that a tribunal gives reasons for the adverse findings it makes against a registrant. If the tribunal prefers another witness’s version of events over the registrant’s, then it should make clear why the registrant’s evidence has been rejected; if the tribunal doubts the registrant’s credibility whether generally or by reference to specific allegations, it should expressly say so and give its reasons for doing so, even if only relatively briefly.
 - c** When considering the test of dishonesty (as declared in *Ivey v Genting Casinos (UK) Ltd 2017* [UKSC 67]), it is unnecessary (and potentially confusing) for a tribunal to refer to a "dishonest" state of mind at the first stage of the test, when it is considering the registrant’s subjective state of mind about the facts, i.e. whether they believed the information they were imparting was untrue. Recklessness (such as not being careful enough about ensuring the accuracy of the contents of a CV or application form) cannot be equated with dishonesty.
 - d** *Schodlok v GMC [2015] EWCA Civ 769* suggests that it may be permissible for a tribunal to undertake the exercise of cumulating findings of misconduct on some charges to make a determination of serious misconduct on others. If that is permissible at all, the exercise is supposed to involve the cumulation of non-serious with other non-serious misconduct findings; not of one non-serious misconduct finding with other findings of misconduct that is serious in its own right. In the latter context, there is no

good reason to cumulate; the quality of the conduct is already correctly expressed, without the need for any cumulation.

- e** Tribunals should ensure that they are consistent with language used at the facts and impairment stages.
- f** A tribunal cannot hold against a registrant at the impairment and sanction stage, their refusal to admit to dishonesty found against them (i.e. where the registrant “admits the primary facts but defends a proposed evaluation of those facts in the impairment phase” (*Towuaghantse v GMC [2021] EWHC 681 (Admin)*). Where a registrant contests the charges, even robustly, this should not be treated of itself as evidence of lack of insight; something more must be shown. One possibility would be a finding that blatant lies were told to the tribunal. A tribunal ought to conduct a proper examination of the quality of the evidence given by the registrant as distinct from their resistance to and refusal to admit the charges.
- g** A registrant dishonestly stating in a job application that they are not subject to an ongoing fitness to practise investigation has the potential to undermine patient safety (as well as confidence in the profession and upholding proper professional standards). Employing a doctor in ignorance of the fact that they were subject to a fitness to practise investigation risks exposing patients to a doctor who might not be fit to practise medicine. Further, if patients do not trust their doctors, care may be compromised.
- h** A reminder of the principle in *Bolton v Law Society [1994] 1 WLR 512*, that personal mitigation should be given limited weight as the reputation of the profession is more important than the fortunes of an individual member.

Opportunities and threats

- 16** The MPTS register can be found at Annex A.
- 17** Since November’s Committee meeting, a new risk around the fairness of our regulatory decision-making has been added and several of the mitigations updated.

Audit findings

- 18** At the GMC’s Audit and Risk Committee (ARC) meeting on 17 November 2021 the audit report on ‘MPTS notification of hearings and postponement’ was tabled (see Annex B).
- 19** The Chair of ARC complimented the MPTS on our work and the good practice identified which could be shared across the business.

People survey and freedom to speak up

- 20** All colleagues at the GMC were invited to complete the People Survey between 28 June and 27 July 2021. It was completed by 82 MPTS colleagues.
- 21** At November’s Committee meeting a summary of the results was presented.
- 22** As a follow-up to November’s meeting please find attached as annexes to this paper communications to MPTS colleagues and associated attachments including the full results of the People Survey for the MPTS. Please also find attached the most recent Pulse Survey scores from November 2021 and January 2022’s ‘What’s on at the MPTS’ newsletter setting out some of the range of support available to colleagues (Annex C).
- 23** At a later agenda item, the Committee will be joined by Lindsey Mallors, Freedom to Speak Up (FTSU) Guardian and Assistant Director of Audit and Risk Assurance, and Carole Beard, one of the FTSU Champions and a Senior Tribunals Co-ordinator at the MPTS, to talk about their work. The FTSU annual report for 2020 is also included as an annex to this paper (Annex D).

LQC appointment campaign

- 24** On 15 October 2021 the appointment campaign went live with a closing date for applications of midnight on 8 November 2021.
- 25** Interviews commenced on 10 January 2022.



Agenda item: **05**

Report title: **Executive Manager’s report**

Annex B

MPTS notification of hearings and postponement

MPTS notification of hearings and postponement

Internal Audit Report

MTPS - Notice of Hearings and Handling Postponements

Date November 2021

Opinion

Control Design	Green	Amber	Generally a sound system of internal control designed to achieve system objectives with some minor exceptions.
Control Effectiveness	Green	Amber	Evidence of minor non-compliance with some controls, of a housekeeping nature, which are unlikely to put system objectives at risk.

Report Information

Distribution		Metrics	
Name	Title	Metric	Date
Gavin Brown	Executive Manager, MPTS	Scope agreed	16/9/2021
Scott Geddes	Head of Operations	Fieldwork completed	21/10/2021
Samantha Bedford	Head of Case Management	Draft report issued	04/011/2021
Lucy Robinson	Tribunals Manager	Second draft report issued	N/A
Joshua Kirby	Case Management Team Manager	Management response	08/11/2021
		Final report	08/11/2021

Executive Summary

Purpose

- 1 The purpose of this review was to review the process in place for the Medical Practitioners Tribunal Service (MPTS) and look to verify whether doctors are given sufficient notice prior to a tribunal hearing, whether timely action is taken once there has been a request for a postponement of a Medical Practitioners Tribunal (MPT) or an Interim Order Tribunal (IOT) and whether information is sufficiently gathered to make informed risk management and other such decisions. We also examined the efficiency of the process and how the MPTS process aligns to the GMC's core values.

Background

- 2 The MPTS is responsible for running hearings which make decisions on whether doctors are fit to practise medicine. Although it is part of the GMC, the MPTS is independent of the investigatory role undertaken by the Fitness to Practise Directorate and is overseen by a separate statutory committee to ensure it meets its responsibilities under the Medical Act 1983 (the Act) and the GMC Fitness to Practise Rules 2004 (the Rules).
- 3 MPTS is required to achieve a number of targets in the running of the tribunal service, some of which are statutory and others which are corporately determined performance metrics. Key among these metrics is the requirement under the Medical Act to ensure doctors receive at least 28 days' notice of a medical practitioner's tribunal hearing. If this requirement is not met there is a risk of the hearing not being able to proceed as scheduled.
- 4 The Coronavirus pandemic had a significant impact on MPTS and in particular its ability to run hearings at its hearing centre in Manchester. MPTS tackled this issue by swiftly implementing a virtual hearing process. This had an impact on activities including notifying doctors of upcoming hearings and MPTS has therefore had to adapt its ways of working to continue to be able to demonstrate to tribunals that doctors have received sufficient notice.
- 5 As well as providing assurance that key performance metrics and statutory timescales are being achieved, MPTS senior management have been keen to learn from the pandemic and to understand if there are further opportunities for improvement with respect to providing notice of hearings and handling requests for postponements.
- 6 There are two types of tribunal postponements, those for IOTs and those for MPTs. The IOT considers whether it is necessary for a doctor's registration to be restricted on an interim basis, whereas the MPT makes a final decision on the allegations the GMC brings against the practitioner. IOTs require doctors to be given such notice 'as is reasonable in the circumstances of the case' (Rule 26(1)) – in practice the MPTS interprets this as providing a seven-day notice period, wherever possible. For MPT

hearings, at least a 28-day notice period is required (Rule 15(2)), unless the practitioner consents to a lesser notice period (Rule 15(2)).

Key findings

- For a selected sample of 10 MPTs and 13 IOTs, doctors were given 28 calendar days' and seven days' notice respectively prior to the tribunal hearing as per the relevant Rules.
- Postponement applications for MPTs and IOTs were responded to in a timely and effective manner to limit incurred costs due to late postponements. This is achieved by staff considering those postponement requests that are due to take place sooner when prioritising cases to review.
- The listing process divides MPT hearings into two categories, based on their complexity. The two categories are direct listings (standard, shorter cases that require limited further preparation – for example, cases based on a conviction) and case management procedure listings (all other cases, which are usually more complex). This approach allows risk management and decision-making to be tailored and streamlined by focusing more attention on complex cases early on.
- Management information is produced at least quarterly and is used to inform decision making.
- Quality assurance takes place within the notification of hearings process. Assistant Registrars review all notification letters disseminated to doctors and their representatives to ensure the information within is accurate.

Conclusion

- 7 Overall, the processes for providing notice of hearings and handling of postponements are well-structured and ensure compliance with regulations. Notices and postponements are recorded on Siebel, which requests the same information is provided for each case and so allows for consistent handling of cases. The sample testing we conducted found that cases are handled consistently and promptly. Minor areas of improvement were identified that if addressed could further strengthen processes, such as spot-checking files and reminding staff to seek formal confirmation of a postponement application where there is considered to be any ambiguity regarding whether a formal request has been made.
- 8 The Team's principal contributions to the GMCs strategic aims and objectives are:
 - `Collaboration` by working with several teams and bodies to ensure the notification and postponement processes runs effectively.
 - `Fairness` by ensuring the process treats all applicants fairly based on the individual circumstances of each case.

Audit findings summary and recommendations

Our opinion for the review of MPTS notice of hearings and handling postponements from a controls perspective, is given below:


Control Design	Green	Amber	Generally a sound system of internal control designed to achieve system objectives with some minor exceptions.
Control Effectiveness	Green	Amber	Evidence of minor non-compliance with some controls, of a housekeeping nature, which are unlikely to put system objectives at risk.




Summary of Recommendations		
High		0
Medium		0
Low		3

Detailed Findings


1. Notice for hearings	Design	Green	Amber
	Effectiveness	Green	
<p>Unless the practitioner consents to a lesser notice period, at least 28 days' notice must be provided to doctors who will be subject to a MPTs hearing in line with rule 15(2) of the GMC's Fitness to Practise rules. IOTs require doctors to be given such notice 'as is reasonable in the circumstances of the case' (Rule 26(1) – in practice the MPTS interprets this as providing a seven day notice period, wherever possible. We conducted sample testing of 10 tribunal hearings taking place between (2nd January 21 and 29th September 21) to ascertain if at least 28 days' notice was given to doctors.</p>			
<h3>Areas of Good Practice</h3>			
<ul style="list-style-type: none"> ■ Policies are in place, up-to-date, align with the GMCs legislative requirements and are available to staff via the intranet. ■ The MPTS are informed of MPT and IOT cases through a referral from Fitness to Practise (FTP), whereby FTP creates a hearing record on Siebel (CRM and case management system) and sets its status as 'listing date required'. MPTS run daily checks for cases with this status and starts the listing process accordingly, thus ensuring timely commencement of MPTS activity. ■ A hearing calendar is maintained that records MPTS resource availability and workload. This is used to ensure staff are allocated an appropriate number of cases that are manageable, helping to ensure efficiency. ■ As per Rule 15, all medical practitioners in our sample were provided at least 28 days-notice prior to the tribunal hearing. It was noted that for our sample, on average the notice period given to doctors was 37 days. ■ A weekly email is sent by MPTS to the GMC Legal Support Team and the Case Review Team, which flags up notice of hearings to be sent out the following week. ■ 'Read receipts' are included for all email notifications to medical practitioners ensuring MPTS is assured that the notice of hearing is receipted. ■ Where acknowledgement is not received from the medical practitioner there is a follow up process to minimise any further delays. 			
<h3>Area for improvement</h3>			
<ol style="list-style-type: none"> 1. We identified one case whereby the notice was sent and saved appropriately on Siebel but where formal of acknowledgement was not retained on Siebel and therefore, we were unable to confirm when the party had been notified of their upcoming tribunal. There is a risk that without sufficient evidence maintained on the file the medical practitioner may claim they did not receive notification and the tribunal is thus cancelled and an unnecessary cost is incurred. 			

Recommendation	Priority
1. Undertake spot checks of the key stages of the end-to-end process to ensure all case documentation is retained on Siebel.	
Management response	
<p>Accept</p> <p>Action: Undertake spot checks of the key stages of the end-to-end process.</p> <p>Owner: Scott Geddes, Head of Operations, MPTS</p> <p>Due By: In place by 30 November 2021</p>	


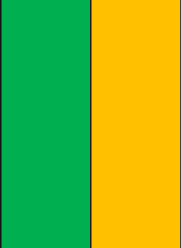
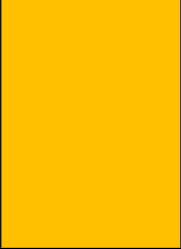
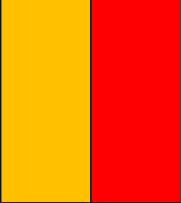
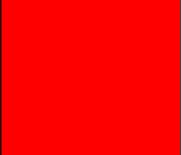
2. Postponement applications	Design	Green	
	Effectiveness	Green	Amber
<p>Tribunal postponement applications should be handled in a prompt and consistent manner to ensure the best outcomes for all parties and to ensure compliance with the 28-day notice period.</p> <p>We conducted sample testing on postponements for MPTs and IOTs. We selected a sample of 10 for interim order tribunals (March – September 2021) and the full population of 13 medical practitioner tribunals (August to September 2021), where a new process was adopted in August 2021, to verify postponements are dealt with in a timely manner.</p>			
<p>Areas of good practice</p>			
<ul style="list-style-type: none"> ■ It was identified through discussion with staff that judgement is used to prioritise cases where tribunals are due to take place sooner. Minimising the delay to upcoming tribunals allows the MPTS to have a better understanding of its resources (staff, rooms, tribunals, etc) and should lead to reduced costs and increased efficiency. ■ Staff receive training when they commence in their roles via learning through shadowing and discussions with senior team members on the key aspects of cases. ■ For the postponements tested we identified the following: <ul style="list-style-type: none"> — IOTs - in all instances were handled promptly with an average reply time of 2.4 days between the application being received and an outcome being provided, this was reduced to 1.83 days when the application was received prior to a Thursday, highlighting the impact of the weekend on turnaround times. — Medical practitioner tribunals - in all instances were handled promptly with an average reply time of 7.15 days between application being received and the outcome being provided, this was reduced to 5.63 days when we disregard hearings taking place in more than two months' time. 			
<p>Area for improvement</p>			
<p>2. We identified one instance out of 13 in our interim order testing whereby a doctor's initial enquiry of a postponement was taken as a formal postponement application. Where informal enquiries are taken as formal postponement applications there is a risk that tribunals are unduly cancelled and result in wasted resources.</p>			

Recommendation	Priority
3. Remind staff that only formal postponements are actioned. Where there is ambiguity staff should seek management advice and clarification from the doctor/representative.	
Management response	
<p>Accept</p> <p>Action: Remind IOT staff in line with the recommendation</p> <p>Owner: Scott Geddes, Head of Operations, MPTS</p> <p>Due By: 30 November 2021</p>	




3. Risk management and decision-making	Design	Green	Green
	Effectiveness	Green	Green
<p>In order to ensure tribunals are treated appropriately in relation to their complexity and the threat they pose to the MPTS, there must be agreed risk management and decision-making processes in place. We reviewed the MPT listing process to assess how the risks are managed within the listing process.</p>			
Areas of Good Practice			
<ul style="list-style-type: none"> ■ Cases passed to MPTS by FTP are categorised based broadly on their level of complexity and the potential risks that may arise within the hearing process. Direct listings are generally more straightforward cases that do not require any pre-hearing meetings prior to listing, with the inverse (case management procedure) listings being more complex and generally involving a listing telephone conference then at least one pre-hearing meeting (all held by telephone unless another format is required as a reasonable adjustment). By identifying a category of hearings that do not require detailed pre-hearing communications, efficiency has been improved and costs reduced. ■ The categorisation of cases in line with agreed risk appetite allows MPTS to deal with the unique nature of MPT hearings in line with underpinning policies and guidance. This ensures both efficiency and effectiveness within the process by ensuring only the necessary amount of resource is expended in each case. ■ The undertaking of listing telephone conferences and pre-hearing meetings during the listing process to guide decision making prior to the tribunal helps to reduce the number of postponements and the likelihood of wasted resources. 			

4. Management information and quality assurance	Design	Green	Amber
	Effectiveness	Green	Green
<p>Management information (MI) provides information to stakeholders regarding how a particular area is performing and can be used for benchmarking as well as informing decision making. Quality assurance should form part of the process and help to ensure that a team's objectives are achieved. We examined the MI and quality assurance arrangements in place to verify if these are robust, regularly produced/undertaken and used to good effect.</p>			
<p>Areas of good practice</p>			
<ul style="list-style-type: none"> ■ Quality assurance is included within the notification process when providing notice to medical practitioners. The letter notifying medical practitioners of their upcoming tribunal is checked by a second member of staff, who is an assistant registrar. This process was aligned to the policies and procedures provided to us. ■ Management information is produced by MPTS and used in a variety of reports. Executive Management reports are produced on a quarterly basis for the MPTS Committee, Briefing meeting reports for the Chief Executive are produced on an ad hoc basis and MI is produced and shared at Executive Board level. ■ Monthly Quality Assurance Group (QAG) meetings are held wherein the MPTS review a randomised sample of IOT and MPT determinations and cases referred by QAG members, the PSA and others thus allowing for knowledge sharing and the identification of lessons learnt. 			
<p>Area for improvement</p>			
<p>3. The quality assurance undertaken does not currently cover the end-to-end process for postponements or standard tribunals. There is a risk that without sufficient quality checks in place, mistakes or inaccuracies may not be identified and sufficiently managed.</p>			
<p>Recommendation</p>			
<p>3. Develop and implement spot checks of the end-to-end tribunal process, including the postponement of tribunals.</p>			
<p>Management response</p>			
<p>Accept Action: Develop and implement end-to-end tribunal process spot checks Owner: Gavin Brown, Executive Manager, MPTS Due By: In place by 31 December 2021</p>			

Appendix 1 – Outline scope

		Design	Effectiveness
Green		There is a sound system of internal control designed to achieve system objectives.	The controls that are in place are being consistently applied.
Green-Amber		Generally a sound system of internal control designed to achieve system objectives with some minor exceptions.	Evidence of minor non-compliance with some controls, of a housekeeping nature, which are unlikely to put system objectives at risk.
Amber		Some weaknesses in the system of internal control exist with some system objectives potentially at risk of not being achieved.	More significant non-compliance with some controls that may put some of the system objectives at risk.
Amber-Red		System of internal controls is weakened with the majority of system objectives at risk of not being achieved.	Non-compliance with key procedures and controls places the system objectives at risk.
Red		Poor system of internal control.	Non-compliance and/or compliance with inadequate controls.

Risk and significance categories for recommendations

Priority ranking 1		There is potential for financial loss, damage to reputation or loss of information. This may have implications for the achievement of business objectives and recommendation should be actioned immediately.
Priority ranking 2		There is a need to strengthen internal control or enhance business efficiency.
Priority ranking 3		Internal control should be strengthened, but there is little risk of material loss.

Appendix 2 – Interviewees

The following people have been consulted during the course of this work.

Name	Title
Joshua Kirby	Case Management Team Manager
Scott Geddes	Head of Operations
Lucy Robinson	Tribunals Manager
David Maguire	Legal & Case Management Adviser
Margaret Barry	Case Manager
Naomi Djese	Case Management Officer
Claire Riley	Senior Case Management Officer



Agenda item: **05**

Report title: **Executive Manager’s report**

Annex D

Freedom To Speak Up Report 2020

Freedom to speak up guardian annual report 2020



Contents

Guardian foreword	02
CEO foreword	04
What is freedom to speak up at the GMC?	06
What is the role of the FTSU champions?	07
What concerns were raised in 2020?	08
What steps were taken when a concern was raised?	12
Case studies	13
What was the outcome of the concerns raised?	15
You said, we did	16
What can we learn from the concerns raised in 2020?	18
Next steps	19

Guardian foreword



2020 was an extraordinary year. A year defined by world events that have caused many colleagues to reflect on their lives and what they should expect from their employer.

So what do we expect of the GMC? Our new corporate strategy highlights that our working environment should be safe, fair, transparent and inclusive. And that action should be taken if those expectations are not met. In return, we should always be professional, treat one another with courtesy and respect, embrace diversity of views and speak up when we feel those behaviours fall short.

Colleagues have done amazing things in 2020. We've tackled the challenges of the pandemic and made sure that we can continue our work to support patients and help doctors to deliver good care. We have supported each other in the shift to home working with excellent IS support, equipment to

help us work efficiently at home delivered to our doors, and new policies providing flexibility in how we organise our home and working lives. In such a time of uncertainty, I am grateful to be working for an organisation that has demonstrated commitment to its people and those it serves so visibly and practically.

But there have been occasions where things haven't gone so well. Last year, there were 104 concerns raised through the Freedom to Speak Up (FTSU) Guardian and a further 11 through the FTSU champions. While we don't have the full 12-month data for 2019, this does suggest there has been an increase in the number of people speaking up, as there were 57 concerns raised between March and December 2019.

It takes courage to speak up, and I salute every single colleague who has had to take what can be a daunting first step towards resolving an issue. For some it has been easier to approach the Guardian or a champion as this becomes an accepted part of the way we work. You are all making a difference and this report will outline some of the ways that is being achieved.

Speaking up, though, only works if others are willing to listen and take action. So I am grateful to colleagues across the business who have acted on concerns raised. I also want to thank those who have incorporated the feedback into their way of working and used it to reflect on their own behaviours.

I don't believe anyone sets out to deliberately behave unprofessionally at work. It's easy to say or do something we don't mean, which is out of character, in sheer frustration or tiredness, and I hope we can all have a bit of kindness for those around us in these circumstances.

Guardian foreword

But being exhausted or stressed isn't an excuse for poor behaviour and it isn't an excuse to let poor behaviour in others slide by unchallenged. Our professional behaviour standards apply all the time. And if we just have a bad moment or things boil over a bit, we need to support each other and call out those behaviours in a way which is compassionate and constructive. I've had some of those concerns brought to me. A calm reflective conversation between individuals and an apology was mostly all that was needed to rebalance a relationship.

However, what is never acceptable is serious poor behaviour. Concerns that are clear breaches of our policies need immediate action. And sadly, albeit few, there have been cases of, for example, sexual harassment, bullying and discrimination raised with me in 2020.

Let me be absolutely clear, there is no place for these behaviours in the GMC. There has been, and will be if future concerns are raised, full investigations leading to disciplinary action if allegations are proven. Zero tolerance has to mean, zero tolerance. So please, if you experience these behaviours, raise it immediately somewhere, wherever you feel most comfortable. You will be supported and listened to.

If you witness such behaviours, then please take action by coming forward. You will also be supported and listened to and in doing so you will be helping your colleagues. I know it's not easy, but it is a responsibility we all have.

Whatever the 'future' looks like, it's going to be different to before March 2020. As we reshape our ways of working, re-balance home and work life, reconfigure our offices, let's all commit to making

a better organisation for everyone by being open, honest, inclusive, compassionate and intolerant of unprofessional behaviours.

Let's all commit to speaking up, calling it out and listening up whenever we need to.

The feedback from last year's report was really positive – thank you. But you also told me that you wanted to hear more about some of the cases and what happened as a result of someone having the courage to speak up.

I heard you. Inevitably there are too many to include in this report, but there are some brief examples. We will supplement them with a suite of case studies which will be published on the intranet. The FTSU champions have also established a monthly drop-in session where you can hear more about the kinds of concerns that are raised and what happens as a result.

And on the subject of the champions, can I just say thank you to each of them for the important role they are doing too, in listening, encouraging and supporting colleagues seeking advice and signposting.

As ever, your feedback is invaluable so if you have any comments on this year's report, would like further information or have something to speak up about, my virtual door is always open.

Best wishes

Lindsey Mallors
Freedom to Speak Up Guardian

CEO foreword



Tough times often bring out the best in people. And I am incredibly proud of what we have all done in the past year to push ourselves, and make sure that doctors and the health services have the support they need to deliver the best possible care to patients.

To do this, we've had to stretch our effort and energy to new limits. At times, it's been exhausting. So, it isn't surprising that there have been occasions when we've made mistakes. Emails may have been sent in haste, or things said in a tone that might be out of character. And I include myself in that. We are only human.

But real humanity is shown when we have the courage to admit it to ourselves and say sorry to anyone that has been affected by what we have said or done.

2020 has caused many of us to take a hard look not only at ourselves, but also at the organisations where we work. It's a year that challenged us to not be passive bystanders, and to speak up when we see behaviours that aren't acceptable.

CEO foreword

The data in this year's report is interesting. There was an increasing number of colleagues who, after a conversation, felt able to take their concern forward for themselves, 16 this year compared to three out of 57 last year. It is early days but I hope this demonstrates that we're beginning to grow in confidence to raise a matter directly with the individual(s) concerned when it happens.

The data also points to some of the things we need to work harder on. Although it's encouraging that more people are using our freedom to speak up programme to raise concerns, too many colleagues worry about taking further action for fear that they will be seen as a troublemaker and that this may hinder their career progression and development. In 2021, I want us to make our working environment feel much safer in this regard, to make it okay to speak up without the fear of losing opportunities further down the line.

And just to be clear, retribution of any kind is a behaviour that won't be tolerated.

One of the aims of our 2021–25 corporate strategy is to help create safer, fairer and more inclusive environments for doctors across the health services. But it's also our aim to replicate this within our own organisation.

Our 2020 survey shows that not everyone's experiences of working at the GMC are equal. We must change that. As we head through 2021 and beyond, let's all work towards creating the safe, inclusive, tolerant culture that everyone deserves.

And our commitment to making every interaction matter doesn't just relate to how we interact with doctors and patients – it is also about how we interact with each other. When it's wrong let's call it out and speak up. Let's demonstrate care and compassion for each other and make the GMC a better place to work.

Best wishes

Charlie Massey
Chief Executive

What is freedom to speak up at the GMC?

It is now four years since the FTSU initiative was first launched across the NHS. Prompted by a recommendation from Sir Robert Francis in his inquiry report on Mid Staffordshire Foundation Trust in 2013, the National Guardian's Office was set up in 2016. Its role is to provide national leadership for learning lessons when things go wrong, offer opportunities to put them right and drive continuous improvement across health services.

Speaking up can be about anything that doesn't feel right. Unlike formal whistleblowing which is defined in the Public Disclosure Act, speaking up has no threshold. It can be about a legally defined whistleblowing concern, or it can be about something much less formal. At the GMC, we want to hear about any concerns that prevent us being the best organisation we can be - either in what we deliver for patients and doctors or in the way we treat one another every day.

We have several routes for raising concerns, for example through a line manager, more senior colleague or HR. The Guardian gives you an alternative route. If anyone raises a concern with me I will:

- listen carefully to the issue being raised
- when needed and with the colleague's permission, facilitate action via the appropriate channel – for example, through a relevant policy, via HR or by involving senior management
- share regular updates on timelines and progress with the individual who raised the concern
- follow up with the individual to make sure they are satisfied that appropriate steps and action have been taken.



What is the role of the FTSU champions?

The champions also play a key role in raising the profile of our commitment to 'speaking up' and respond to concerns locally and collaboratively across all parts of the GMC and MPTS. They:

- understand our policies and the different routes for speaking up to be able to explain choices to colleagues who approach them on potential routes for raising a concern
- take time to find out what is happening around the organisation, including linking in with other cross GMC networks to identify any issues or concerns that affect colleagues so they can be flagged
- promote the Guardian as a safe place and an alternative route for colleagues to raise concerns
- build confidence in freedom to speak up by sharing communications and messages about the themes arising from concerns raised and how they are being addressed.

In 2020 their role has evolved and awareness of FTSU as a route for raising a concern has increased. We are now starting to see colleagues approach champions directly to raise a concern as well as signposting to the Guardian. This is encouraging evidence that FTSU feels a safe place.



'I am very appreciative of freedom to speak up. As someone who is very passionate about how we treat and respect one another, my experience as a champion has been insightful and a learning curve. The role of a FTSU champion offered me the opportunity to help the organisation understand some of the difficult issues that colleagues want to raise but don't feel able to raise with their managers.'

During different interactions with colleagues, I have learnt how important it is for me to listen and understand their concerns with the goal of resolution in mind. I strongly agree that one of the ways to address issues of harassment, bullying, discrimination and unprofessional behaviour is to speak up. Then we'll be able to tackle the issues and build an organisation where we all feel valued, respected, and included.'

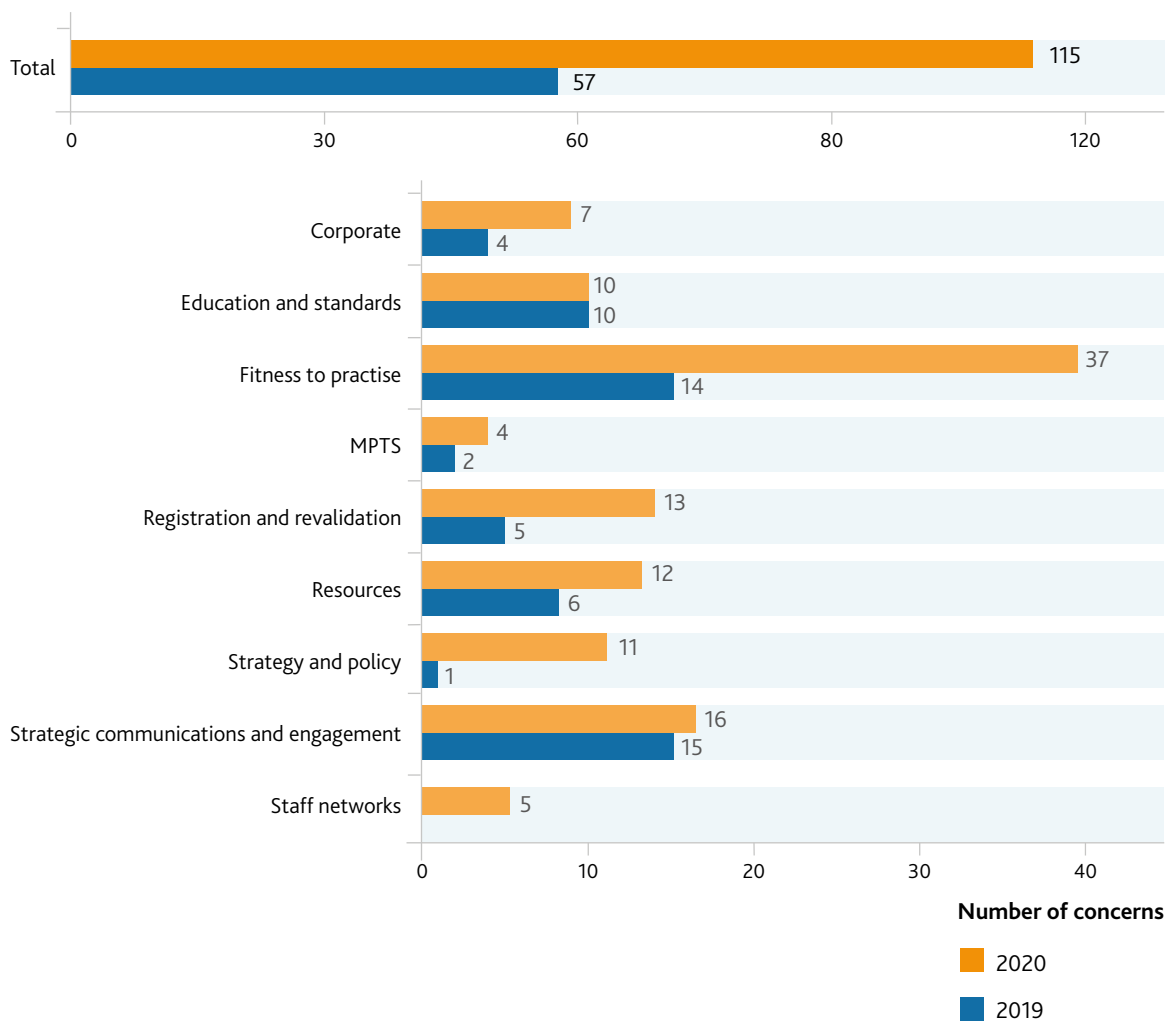
Chris Olu, FTSU champion

What concerns were raised in 2020?

This is the first full 12 months that our FTSU initiative has been in place. Between January and December 2020, 104 concerns were raised through the Guardian and 14 concerns were raised with the

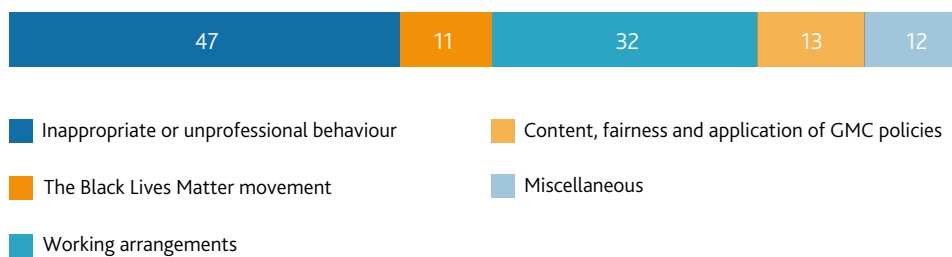
FTSU champions, three of which were passed to the Guardian, making a total of 115 (this compares to 57 in the period March to December 2019).

Figure 1: Where concerns were raised in 2019 and 2020



What concerns were raised in 2020?

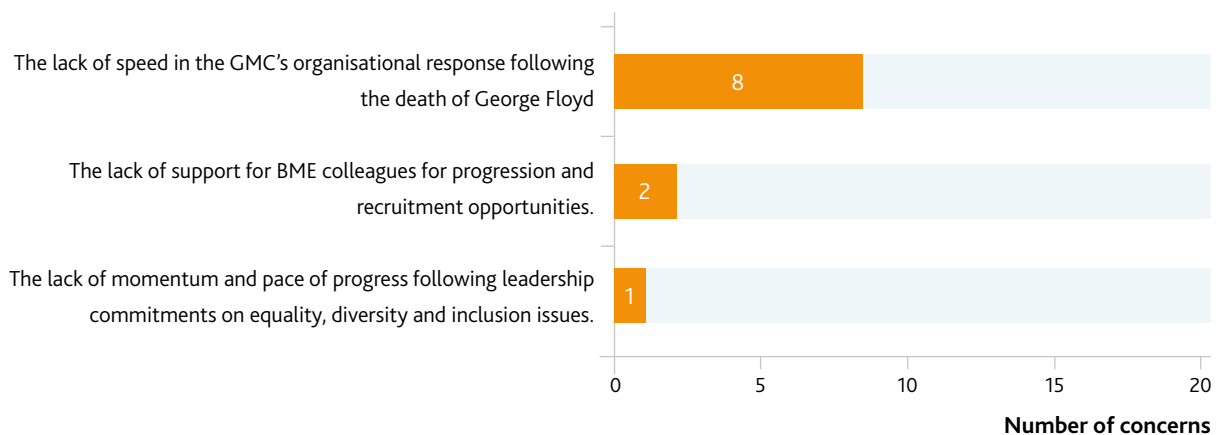
Figure 2: Concerns raised in 2020 by theme



A new theme emerged in 2020 – 11 concerns were raised in response to global events and the Black Lives Matter movement. Prompted by the tragic death of George Floyd, this has brought a more open conversation in the organisation about racism. One of the outcomes is a set of accelerated equality, diversity and inclusion (ED&I) commitments, both as a regulator and as an employer, which have been agreed by our Council. We will publish our progress towards these each year.

Of the 11 concerns raised: eight related to the lack of speed in the GMC's organisational response following the death of George Floyd, two related to lack of support for black and minority ethnic (BME) colleagues for progression and recruitment opportunities and one related to the lack of momentum and pace of progress following leadership commitments on equality, diversity and inclusion issues.

Figure 3: Concerns raised in response to the BLM movement by topic



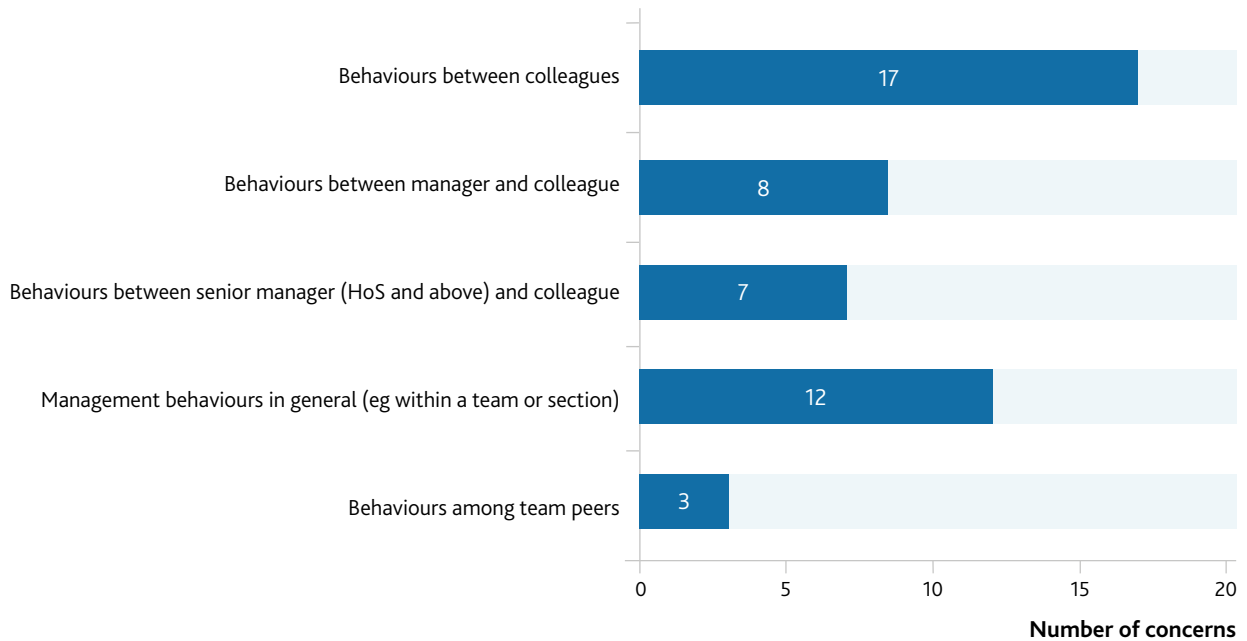
What concerns were raised in 2020?

As in 2019, the biggest theme from the concerns raised was inappropriate or unprofessional behaviour. These concerns related to: behaviours between colleagues, behaviours between manager and colleague, behaviours between senior manager (HoS and above) and colleague, management behaviours in general (eg within a team or section) and behaviours among team peers.

Two of the cases related to allegations involving sexual harassment. One was an historic case and the second was an individual seeking advice on how to handle a matter.

Two of the cases related to allegations of racism. One individual wanted action taken and one individual didn't want to take the concern further.

Figure 4: Concerns raised about inappropriate or unprofessional behaviour by topic

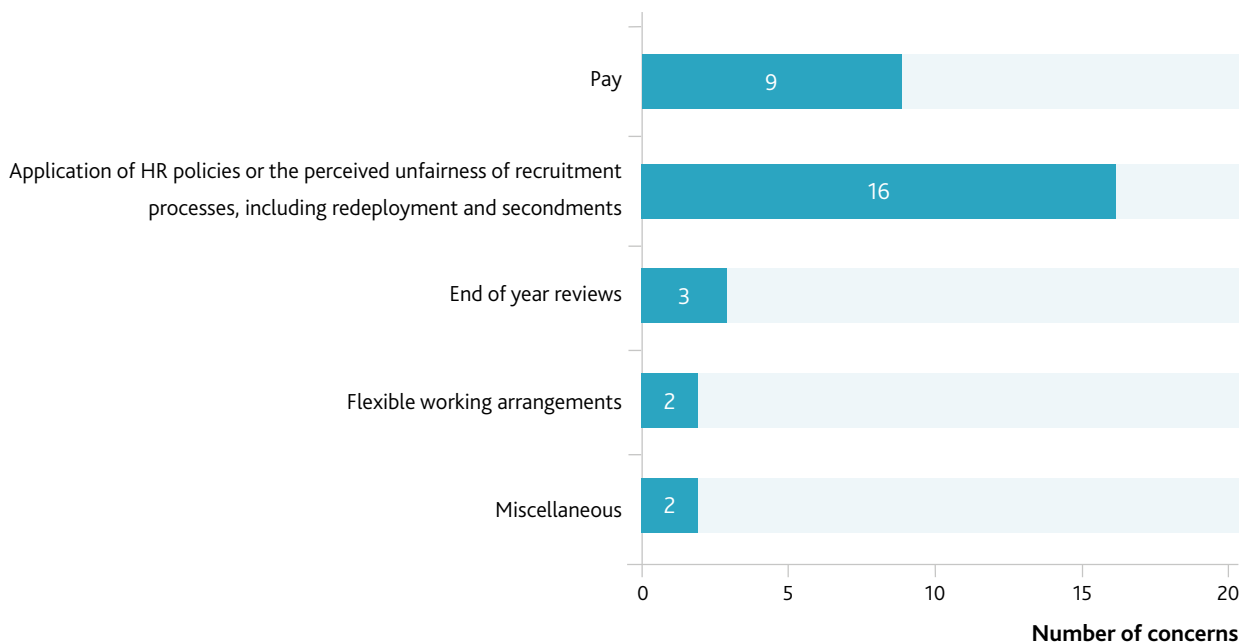


What concerns were raised in 2020?

Thirty-two concerns related to working arrangements. Of these: nine were about pay, 16 related to application of HR policies or the perceived unfairness of recruitment processes by managers, including redeployment and secondments, three related to end of year reviews, two related to flexible working arrangements and two were miscellaneous.

The 13 concerns relating to policies covered a range of areas. There were three concerns which related to how known mental health issues are handled and taken account of if colleagues are in HR processes.

Figure 5: Concerns raised about working arrangements by topic



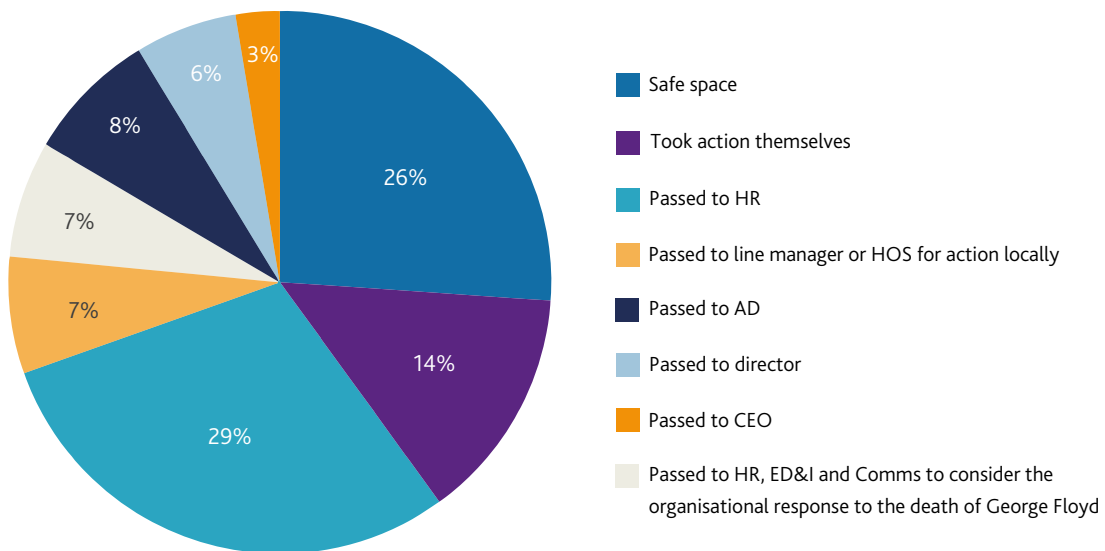
What steps were taken when a concern was raised?

It is vital that colleagues have confidence that when they speak up, their concern will be listened to and properly heard. In 30 cases, colleagues just wanted a safe place to talk about an issue, seek advice or put a marker down in case what has happened is repeated. Whilst these individual concerns were not taken further, the generality of the issue is useful to contribute to wider conversations on where change may be needed. This was particularly the case with concerns raised with respect to BLM.

In a further 16, just over 14% of cases, individuals took action themselves, for example, by raising their concern with their line manager, head of section or assistant director. This is a really encouraging sign as last year it was only 5%.

Of the remaining 69 cases: 34 were passed to HR, eight were passed to line manager or HoS for action locally, eight were passed to HR, ED&I and Comms to consider the organisational response to the death of George Floyd, nine were passed to ADs, seven were passed to directors and three were passed to the CEO for action.

Figure 6: Steps taken after concerns were raised



Case studies

Case study 1

'I had an issue about how best to handle the behaviour of colleagues following an incident and wanted another perspective to ensure that the course of action I was going to take was appropriate. I had tried to rationalise how I wanted to proceed, as I was mindful of being reactionary. I'd written it down but wanted to talk it out with someone, so I contacted the FTSU guardian. I discussed the issue with Lindsey - course of action, why I thought that was the best way forward and she provided some insights. I took the decision I had intended to, but it helped to talk to someone before making that decision.'

Network Chair

Case study 2

A concern was raised about the photographs that are chosen to accompany particular articles or screensavers and, in particular, whether the colleagues shown had given permission for their photo to be used with a specific article. This was particularly sensitive for articles about mental support and wellbeing.

'As part of the process to select and use pictures in communications relating to staff network activities, we typically contact any colleagues who may appear in the pictures selected before we use them, informing the colleague(s) we intend to use their image in association with a specific network theme/message, and offering the option to refuse. As a result of the concern that was raised we reviewed and strengthened our processes in this area.'

Response to address the concern from colleague in Strategic Communications and Engagement

Case studies

Case study 3

'I was redeployed last year to support another team experiencing high workloads and a backlog of work. My expectation was that there would be induction and full training for the role, but this wasn't the case and I didn't feel properly equipped for the work I was doing. It felt very different to the team I had come from, though everyone individually was lovely. I tried to raise my concerns with the managers, but felt they were not fully addressed. So, I decided to speak to the FTSU Guardian. I have now returned to my usual role, but I know that significant changes are being made and I'm glad that my concern will help other colleagues in future.'

FTP colleague

Case study 4

'In 2018, I had a query about guaranteed interview schemes for candidates who meet the minimum criteria for a job and who are considered disabled under the Equality Act 2010. I raised it with HR – back then, we didn't have a FTSU Guardian or champions – and understood we didn't participate in any of these schemes.

When it came up again, among the R&R Equality, Diversity and Inclusion champions, it was suggested that I raise the matter again. So, I contacted Rebecca Morris, a FTSU champion, to have a confidential and honest conversation. We met virtually and she understood my concern that as a fair regulator, we needed to make our recruitment process more accessible to everyone, regardless of their disability status.

We agreed that Rebecca would raise it with HR and I was contacted sometime later by an HR Manager to tell me that the organisation was preparing and was on track to receive accreditation for the government's Disability Confident Scheme, which is a fabulous achievement for us.'

R&R colleague

What was the outcome of the concerns raised?

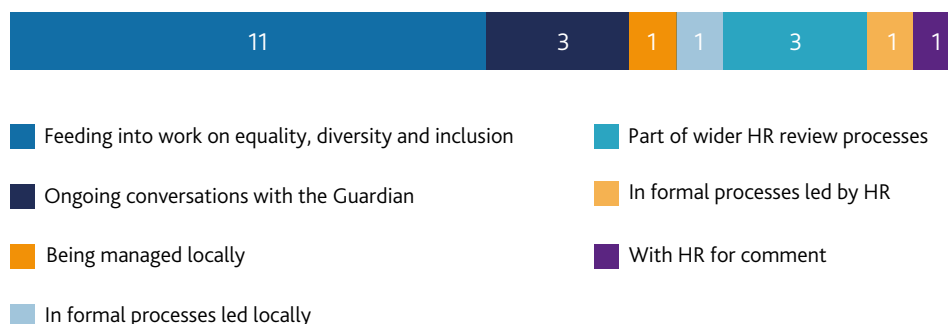
Ninety-four concerns raised in 2020 are now closed and 21 remain open. Of these, 11 were general concerns raised in relation to the Black Lives Matter movement, which have fed into our accelerated work on equality, diversity and inclusion. This is ongoing OneGMC work with colleagues and champions from ED&I, L&OD, HR, FTSU and others working together to support our commitment to zero tolerance for any unprofessional behaviour and especially, racism, sexual harassment or bullying. The work includes an organisational learning needs analysis to identify where we need to have extra effort and focus as well as some training for all colleagues on what professional behaviours means for the GMC.

Of the remaining 10 cases: three are ongoing conversations with the Guardian, three are part of wider HR review processes, one is in a formal process led locally, one is in formal processes led by HR, one is with HR for comment, one is being managed locally.

A concern is not considered closed until the individual raising it is satisfied that any action agreed has been taken. As noted above, in 30 cases there was no further action at the request of the individual, and in 16 cases colleagues took next steps themselves. Of the 34 cases passed to HR, there are 5 that are still ongoing. In the remaining 29 cases that are closed the outcomes were:

- Independent review conducted, HR action initiated to resolve a matter, including redeployment, mediation or disciplinary action – 13
- HR using the information to contribute to organisational policy development – 9
- Individual chose to leave the organisation – 2
- Partly addressed due to need to maintain another colleague's confidentiality – 2
- Other – 3.

Figure 7: Status of open concerns



You said, we did

In 2019, you said

Many issues could be dealt with locally if people felt able to talk – how do we all develop the antennae and courage to pick up on signals for earlier intervention?

Awareness of our [Dignity at work policy](#) could be improved to make sure all colleagues understand the behaviours that are expected of them at work - everyone should make the time to read it and be clear that we will not tolerate poor standards of conduct.

Feedback suggests that the management of behaviour, conduct and professional standards can be inconsistent, and we need to do more to enable managers to better deal with the issues quickly and fairly. One way we are doing this is to ensure our training for managers and leaders provides sufficient support on the GMC's expectations and values.

In 2020, the GMC did

Managers have been provided with a [toolkit](#) for managing professional behaviours, including guidance on how to make early interventions.

How to be an active by-stander sessions run in FTSU month.

Increased frequency of FTSU drop-in sessions picking up issues for earlier support.

Pulse surveys run through the year to assess organisational morale and pick up potential issues early.

New [OneGMC behaviours](#) framework published.

Mandatory leadership programme rollout has continued - all L3 and above will have completed it by the end of 2021.

Professional behaviours module of People Manager Essentials to upskill managers and tackle poor behaviours earlier has been developed (to be rolled out in 2021).

Professional behaviours mandatory training for everyone to be completed in 2021 with a suite of supporting materials and guidance.

You said, we did

In 2019, you said

Bringing up an issue through our grievance process is seen, quite reasonably, as 'serious' and formal. Feedback suggests that there are some cases where colleagues would welcome the opportunity to explore their issues more fully with HR in an informal way before engaging in a formal process.

When colleagues do find themselves in a formal process, they would welcome a source of support from HR separate to those who are handling the disciplinary or grievance.

Internal recruitment processes need to be more transparent and demonstrably fair, particularly at a local level and when people change/transfer to roles that are not advertised. We need to be clear about the process without breaching confidentiality. Managers should take a lead in ensuring there is appropriate communication to their teams.

There is an opportunity to be more transparent and communicate in general about action that is taken when serious concerns are raised.

In 2020, the GMC did

We'll be publishing updated policies for disciplinary and grievance processes in 2021. We have developed guidance to make these more accessible and to explain the processes and how colleagues can access support.

Although it is not widely understood, HR already offer additional support to colleagues involved in formal processes. The refreshed grievance and disciplinary policies will have accompanying guidance which will explain the support available and signpost how to access it for colleagues involved in those processes.

In the later half of 2021 we are launching refreshed training for recruitment managers as part of our People Manager Essentials programme. This will include emphasis on the need for open and clear communication within local teams. As now, managers will not be able to participate in recruitment activities without attending the training.

Our approach to redeployment and secondments is being updated with clearer principles, guidance and support for colleagues.

Published data is already available on the number of grievance and disciplinary cases each year, though this does not include hearing outcomes. As the number of cases is small, doing so may identify individuals who also have a right to confidentiality. However, we are looking to commit to publishing outcome data over a longer time period to mitigate this whilst providing transparency.

What can we learn from the concerns raised in 2020?

Perhaps the key message and learning from the concerns raised is the importance of professional behaviours in supporting good quality working relationships. Whilst the GMC is considered by most colleagues to be a great place to work, this isn't everyone's experience. But it is everyone's responsibility to address and it is encouraging to see colleagues speaking up and taking action themselves. We need to build on this in the coming 12 months so that having difficult conversations becomes a normal way of doing business. All the work outlined above on professional behaviours will support us in that endeavour.

Other organisational learning we can draw includes:

- the need to continue to drive for management consistency through high quality and robust leadership training
- there is more to do in ensuring our recruitment processes, including for secondments and redeployment, are transparent and fair with good local communication which respects the confidentiality of individuals
- the need to maintain momentum for equality, diversity and inclusion conversations and actions
- where mental health is a factor in a case, it must be handled sensitively and colleagues must have access to appropriate support.

At an individual level, when there are difficult messages to give, we should reflect on not only what needs to be said, but how to say it. It is also important to think about the timing – Friday afternoon is not helpful if what you have to say leaves a colleague without support over the weekend.


And a final learning and reflection is the importance of having the FTSU initiative as a complementary route to raising concerns. Feedback from colleagues who have used this route say it is a welcoming and safe space to share concerns that might be hard to raise in other places.

Next steps

FTSU is now becoming a more established part of our organisational fabric. We have recently refreshed and republished our [Raising concerns policy](#) and over the next twelve months we will develop the foundations from the last two years to build on the encouraging data from 2020. We are growing our FTSU activities, for example, introducing monthly drop-ins with the champions, expanding the Guardian drop-in sessions with senior management team members also available to hear concerns, and working more closely with our other networks.

We know that one of the key reasons colleagues use the FTSU route for raising a concern is the fear of retribution or being seen as a 'troublemaker'. In line with the National Guardian's Office, we are starting to collect longitudinal data on whether the perception of fear of retribution is borne out in practice. To date, feedback from colleagues who have raised a concern is that it is too early to say. We will continue to monitor this over 2021.

We will also improve key data collection to help determine if there are parts of the business or groups of colleagues with particular characteristics who would benefit from more targeted support and guidance.



We are growing our FTSU activities, for example, introducing monthly drop-ins with the champions and expanding the Guardian drop-in sessions with senior management team members.

Email: gmc@gmc-uk.org

Website: gmc-uk.org

Telephone: 0161 923 6602

Textphone: **please dial the prefix 18001** then
0161 923 6602 to use the Text Relay service

To ask for this publication in another format or language, please
call us on **0161 923 6602** or email us at publications@gmc-uk.org.

Join the conversation



[@gmcuk](https://twitter.com/gmcuk)



facebook.com/gmcuk



linkd.in/gmcuk



youtube.com/gmcuktv

Published May 2021

© 2021 General Medical Council

The text of this document may be reproduced free of charge in any format or medium providing it is reproduced accurately and not in a misleading context. The material must be acknowledged as GMC copyright and the document title specified.

The GMC is a charity registered in England and Wales (1089278) and Scotland (SC037750) GMC/FTSU/0420

Agenda item:	07
Report title:	Update from the Quality Assurance Group
Report by:	Tamarind Ashcroft, Head of Tribunal Development tamarind.ashcroft@mpts-uk.org , 0161 240 7291
Considered by:	MPTS Committee
Action:	To note

Executive summary

This paper details an overview of the Quality Assurance Group (QAG) meetings held during 2021, summarising the themes identified.

Recommendation

- ▶ The MPTS Committee is asked to note the outputs of the relevant QAG meetings.

Volumes

- 1** During 2021 there were a total of 2101 MPTS hearings started including Medical Practitioners (MPT), Interim Orders (IOT) and Non-compliance hearings (NCH). Of these, 336 were selected for QAG review. It is important to note that the QAG only reviews decisions once the appeal period has passed. Any learning points from appeals are considered at a later stage.
- 2** There was a 24% increase in hearings compared to 2020 and a 2% increase in the number of decisions reviewed compared to 2020; the increase in hearing volumes reflects our decision to increase our capacity to hold further hearings in 2021 to address the impact of the pandemic. The proportionately smaller increase in decisions reviewed is due to the adjustment of the selection criteria advised at the previous committee meeting.

MPT Decisions

- 3** The QAG reviewed 25% of MPT decisions (included within this number are restoration hearings).

		2021
Number of hearings	MPT (New and preliminary- (N))	418
	MPT (Review- (R))	<u>132</u>
TOTAL		550
Cases selected for QAG	MPT (N)	106
	MPT (R)	<u>30</u>
TOTAL		136

- 4** The standard of decision drafting remains consistently high with the number of learning points identified remaining low.
- 5** Learning points included further guidance on the approach to witness evidence, addressing the best use of aggravating and mitigating factors in decision making and using the most up to date and relevant case law. All learning points were addressed in training or through communication to share learning points.

IOT Decisions

- 6** Overall QAG reviewed 11% of IOT decisions, this included 23% of new IOT decisions.

		2020
Number of hearings	IOT (N)	332
	IOT (R)	<u>1198</u>
TOTAL		1530
Cases selected for QAG	IOT (N)	75
	IOT (R)	<u>93</u>
TOTAL		168

- 7** IOT determinations continue to be of a high standard and learning points were focussed on the length of the order, particularly in light of the impact of the pandemic and clarifying changes made to conditions or the type of order at a review hearing. IOT learning points were addressed in a combined approach with MPT training and specific communication regarding learning in this area.

Non-compliance hearings

- 8** 100% of non-compliance hearings were reviewed in 2021, no significant learning points were identified but we reminded tribunals of the need to ensure the most current guidance is used.

Feedback

- 9** All appeals, as well as the rationale leading to the appeal, continue to be carefully considered by QAG to identify any learning points from judgments. Similarly feedback from the GMC and PSA continue to be considered in full. An e-learning module on key case law was issued in 2021 and we continue to provide summaries of appeal judgments to assist tribunal members in applying the issues to their hearings.

QAG criteria

- 10** Further to our update in September, we have adjusted the criteria for selection of cases to be considered at QAG and this has had minimal impact on the overall proportion of cases reviewed. No impact on the quality of feedback identified has been observed to date.
- 11** We intend to continue with the revised criteria but will keep this under review. We have raised internal awareness among MPTS staff of the ability to refer cases to the QAG where it is considered that a review of the decisions would benefit wider learning.



Agenda item: **08**

Report title: **Adjourments quarterly update**

Report by: **Samantha Bedford, Head of Case Management,**
Samantha.bedford@mpts-uk.org, 0161 240 7112

Considered by: **MPTS Committee**

Action: **To note**

Executive summary

This report:

- ▶ Summarises the key issues arising from hearings adjourning in Quarter 4 2021;
- ▶ Identifies actions to be taken forward by the MPTS Senior Management Team.

Recommendation

- ▶ The Committee is asked to note the update

Adjudgments Quarterly Review: Q4 2021

Scope of Review

- 1** Each month the Head of Case Management, Head of Operations, Case Managers and Legal Adviser meet to identify themes and issues arising from adjourned MPT hearings, with reference to internal resources, including hearing commentary and case management documents.
- 2** The findings and recommendations are discussed at the MPTS Senior Management Team (SMT) meeting and actions are assigned to be taken forward.

Overview of MPT Hearings Reviewed

- 3** A total of 60 MPT hearings (across all MPT hearing types) concluded earlier than scheduled in Q4 2021. An analysis of new MPT hearings only during the same period shows that 68% of hearings concluded either early or on time.
- 4** In light of the COVID-19 pandemic, MPT hearings taking place in Q4 2021 did so as a mix of SJB hearings, virtual hearings using MS Teams and as hybrid hearings with parties attending in person or remotely.
- 5** A total of 40* MPT hearings adjourned in Q4 2021. The table below indicates the number of adjournments across the MPT hearing types.

Hearing Type	Unplanned Adjournment	Planned Adjournment [†]
6-Month Cases	11	8
9-Month Cases	11	0
Direct Listing	4	1
Review Hearings	3	0
Remittal Hearings	0	0
Non-Compliance Hearings	1	0
Restoration Hearings	4	0
New & Review Hearings	1	0
Preliminary Hearings	1	0

- 6** References “Q4/XX” are used below as identifiers for specific hearings. Anonymised identifiers have been used for the purposes of this paper as they may relate to matters which have not yet concluded.

* The figures shown in the table include one hearing with two sittings and one hearing with five sittings during Q4.

[†] Hearings which are scheduled to adjourn and reconvene, either through a planned split listing or due to reconvene dates.

Themes emerging from adjourned hearings

- 7** Often adjournments can arise for reasons that are unavoidable and could not reasonably have been foreseen. For example, where a party or Tribunal member is unwell, or if a Tribunal direct the practitioner to undergo an assessment of their health, language or performance.
- 8** The following themes, which we consider to be potentially avoidable and/or foreseeable, arise from our analysis of the adjourned MPT hearings:
- a** **Tribunal deliberations and timekeeping** – There were instances where Tribunals took time to complete their deliberations which appeared potentially disproportionate to the issue(s) under consideration (Q4/09, Q4/11, Q4/15, Q4/21, Q4/26, Q4/27, Q4/33, Q4/34, Q4/35, Q4/36, Q4/39), or where hearing time could have been managed more effectively (Q4/01, Q4/02, Q4/05, Q4/10, Q4/13, Q4/14, Q4/20, Q4/28, Q4/31, Q4/32, Q4/42, Q4/45).
 - b** **Delays potentially caused by GMC case preparation** – There were instances where avoidable delays appear to have been caused by issues relating to GMC preparation or presentation of evidence (Q4/08, Q4/10, Q4/11, Q4/17, Q4/38, Q4/42).
 - c** **Delays potentially caused by doctor/defence case preparation and/or conduct** – There were instances where doctor/defence preparation was incomplete or delayed progress during the hearing (Q4/12, Q4/21, Q4/22, Q4/37, Q4/39, Q4/41, Q4/42, Q4/43, Q4/44, Q4/45).
 - d** **Delays caused by witness availability** – There were instances where the availability of witnesses to give evidence delayed progress (Q4/01, Q4/05, Q4/06, Q4/17, Q4/27, Q4/28, Q4/30, Q4/31, Q4/37).
 - e** **Tribunal directed assessments** – There were instances where Tribunals adjourned for assessments based on a head of impairment not included in the allegation (Q4/03, Q4/16).

Identified action points

- 9** The review identified a number of actions from the analysis of Q4 adjournments, as outlined below.
- a** Actions requiring liaison with stakeholders
 - i** Continue dialogue with MPTS User Group regarding witness timetabling.
 - ii** Feedback to GMC Legal about case preparation where appropriate.
 - b** Actions relating to MPTS

- i** Consider whether (and if so, how) to develop an over-listing approach to unusual and/or exceptionally long hearings, to increase the prospect of concluding these hearing on time.
 - ii** Refer relevant hearings for an Adjourment Detailed Review.
- 10** Any actions relating to identifiable individuals have been removed from the list above in order to ensure confidentiality. Such actions may include recommendations for the Tribunal Development and Operations teams to consider when undertaking observations or reviewing Tribunal member feedback.

Adjourment Detailed Reviews

- 11** In 2019, the MPTS agreed to introduce an adjourment detailed review (ADR) for cases which have required a significant number of additional hearing days and/or have unexpectedly adjourned on a significant number of occasions. The intended purpose of the ADR process is to reflect in more detail on the hearing experience and identify learning points for MPTS teams and MPTS users, so that adjournments can be avoided wherever reasonably possible.
- 12** In Q4 2021, two further hearings were identified as requiring ADRs and MPTS Operations staff are currently undertaking the ADR process. Further information will be provided to the Committee once these reviews have been completed and any action points arising have been identified.

Agenda item:	09
Report title:	Tribunal members training update
Report by:	Tamarind Ashcroft, Head of Tribunal Development tamarind.ashcroft@mpts-uk.org , 0161 240 7291
Considered by:	MPTS Committee
Action:	To note

Executive summary

This paper summarises the tribunal member training delivered in 2021 and details future activity.

All training was delivered virtually in 2021 due to the pandemic.

E-learning was delivered in Q1 and Q4.

Case law updates and learning points from the Quality Assurance Group continued to be provided throughout the year.

Recommendations

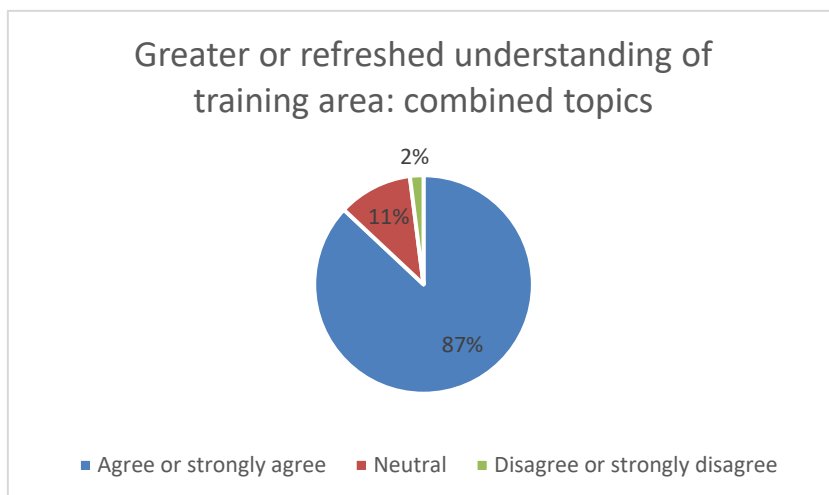
- ▶ The MPTS Committee is asked to note the training provided in 2021 and proposed plans for 2022.

Training needs background

- 1** As detailed in previous updates, training needs for MPTS tribunal members fall largely into two main categories; induction training for those newly appointed to the MPTS or a new associate role within the MPTS, or annual refresher training.
- 2** In 2021 no appointments were made and therefore no induction training was delivered.
- 3** Despite the fact that the hearing centre re-opened in August 2020 with appropriate safety measures in place, the ongoing uncertainty of the pandemic in addition to the volume of sessions required to be delivered to ensure appropriate social distancing meant that all training in 2021 would be virtual.
- 4** There was recognition that many medical members might still be required to support front line services due to the pandemic and therefore training was split into several sessions to be held at different stages across the year. This consisted of an ED&I webinar (Q2), general learning update webinars focussed on insight and remediation including a short preparatory video (Q3), interactive workshops on the role of the tribunal in sexual misconduct hearings (Q4) and e-learning on case law (Q4). These essential elements of training, when combined, were equivalent to a full day of training.

Webinars

- 5** Feedback was formally collated for all webinars and, overall, sessions were well received and considered to add value.



- 6** Where feedback indicated that attendees were neutral or disagreed that the training refreshed or provided greater understanding of the topic this was

largely due to either existing knowledge on the subject area or technology issues impacting the full benefit of the training for the individual.

- 7** Sessions were offered at a range of times and dates including evening sessions. Predominantly evening and afternoon sessions were preferred with greatest attendance at these events. We recognised that individuals had different preferences and feedback from some individuals focussed on distance learning not being preferred due to a reduced ability to interact with peers whereas others preferred the flexibility of sessions enabling them to join after other commitments and preventing the need for travel. For 2022, we hope to be able to offer a combination of full day face to face events in addition to the modular virtual approach to cater for all styles of learning.

Equality, diversity and inclusion refresher

- 8** Content focussed on a brief refresher of legal duties and then explored unconscious bias, inclusive language and being a ‘bystander’. Discussion was explored through the use of two case studies based around actual issues.
- 9** The sessions were scheduled for 1 hour and 15 minutes which included the use of break out groups to facilitate small group discussion. Where feedback indicated scope for improvement this was largely due to preferring further time to explore case study discussions. In sessions delivered later in the year we revisited the topics of bias and adjustments as an integral part of the content for discussion at that time.

General learning update with focus on insight and remediation

- 10** Prior to the general learning update webinars, we issued a short video focussed on the case law developments around insight and remediation; this was optional to view but tribunal member indicated that they had watched this and found it useful.
- 11** In addition to summarising in more depth the key case law on this area the session also focussed on addressing learning points identified by the Quality Assurance Group (QAG); this included how to approach the use of aggravating and mitigating factors, recent guidance updates and, for IOT members, ensuring that decision making did not stray into fact finding.

The role of the tribunal in sexual misconduct hearings

- 12** Further to a wider organisational programme of work to embed learning around sexual abuse, the session on sexual misconduct that had been planned for 2020 was delivered as a half day virtual workshop in Q4 of 2021. It was identified that c20% of hearings relate to sexual misconduct allegations and this

session would therefore assist tribunal members to approach these cases with care.

- 13** An external trainer was used to lead the sessions, and this included a recap on basic approaches to questioning and listening and then focussing on how to approach sexual misconduct cases and other cases with vulnerable participants. A case study was used to explore this further including testing biases and picking up on key learning from case law. Polls and www.mentimeter.com were used as tools to facilitate more interaction with remote learning and enabled the sharing of views in a timely and anonymous approach. A summary of all sessions was issued in Q4 to provide an opportunity to give an overview of the programme as a whole.

E-learning

- 14** An essential e-learning module was issued in Q4, focussing on key case law issued in the past 18 months. This short module allowed individuals to explore cases in their own time and have the option to revisit the content.
- 15** An e-learning module on restoration hearings was issued in Q1. This module was designed to facilitate tribunal members being able to refresh their knowledge prior to sitting on restoration hearings, where they considered it useful, as it was identified that these hearings occur less frequently.

Additional learning

- 16** Throughout 2021 a number of guidance communications were provided in addition to a range of hints and tips to embed understanding of managing virtual hearings.

Future activity

- 17** In 2022 we will be delivering induction training to new Legally Qualified Chairs; we will be using a blended approach for this training with two days of training being held at SJB and other sessions being delivered remotely across a range of dates; this reflects the benefits that virtual training has provided while recognising the value of 'face to face' training for certain subject areas.
- 18** Annual training will also provide a flexible approach to enable tribunal member led preferences for how to access training. Content will be led by outputs from the Quality Assurance Group and wider learning from case law and other sources.
- 19** We typically seek updates about tribunal member' personal details at annual training however with training being remote in 2021 and expected to remain

remote for some tribunal members in 2022 we will seek updates throughout the year.

20 The Committee is asked to note the training programme.



Agenda item: **10**

Report title: **Review of the delivery of planned projects and discussion of future priorities and plans**

Report by: **Gavin Brown, Executive Manager,**
gavin.brown@mpts-uk.org, 0161 240 8126

Considered by: **MPTS Committee**

Action: **To consider**

Executive summary

- ▶ This report provides an update on the delivery of projects and on our future priorities and plans.

Recommendation

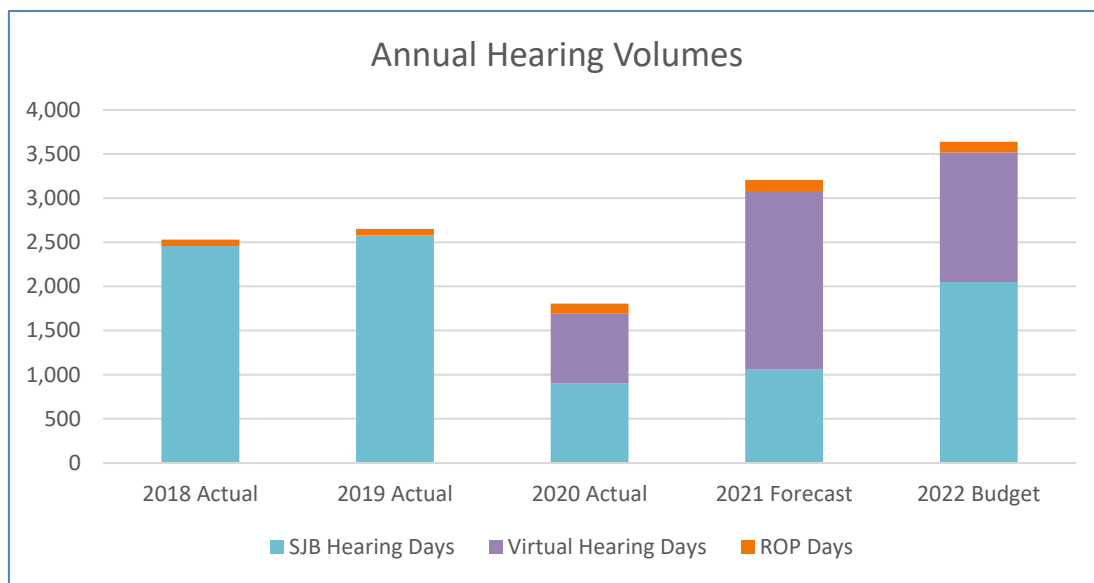
- ▶ The Committee is asked to consider the report and note the annex.

Projects delivered in 2021

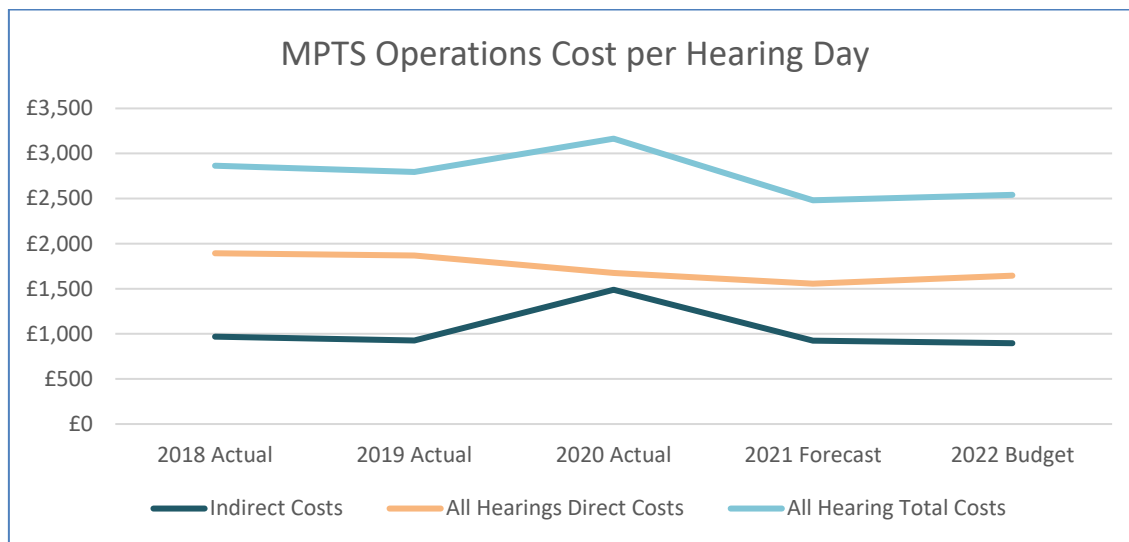
- 1** Following testing, training, and updates to our operational processes, we moved our virtual hearings to Microsoft Teams.
- 2** On 2 August 2021 interim orders tribunal hearings made the switch and on 16 August medical practitioners tribunal hearings followed suit.
- 3** Guidance for staff and associates can be found on the [virtual hearings](#) intranet page.
- 4** Guidance for parties and witnesses, including a short explainer video and a troubleshooting guide can be found on the [MPTS website](#).
- 5** There have been several benefits to this switch including:
 - Many people (both internal and external) were already familiar with Teams.
 - Breakout rooms can be set up for the ‘in camera’ discussions so only one hearing invite needs to be sent rather than two. A doctor contact room can also be set up if needed during the hearing.
 - The recording continues even if the host needs to leave the hearing to support other work. The tribunal clerk can stop the recording when required.
 - A transcript is produced within the Teams meeting, supporting the clerk’s work (external participants will not be able to see the transcript).
 - Video evidence can be shared directly in the hearing.
 - Images appear larger, and connectivity is improved.
 - Microsoft is continually developing Teams and new features are likely to be released to support the user experience, including the ability to set up breakout rooms more conveniently and with multiple organisers.
- 6** In addition to the virtual hearings project, our Improvement Forum (IF) have suggested and implemented changes to our policies and procedures, a new approach to the scheduling of IOT days has been introduced and two cohorts of tribunal clerks and tribunal assistants have been recruited and trained.
- 7** Acting on suggestions from the MPTS ED&I group, a new hearing loop system has been installed at the hearing centre at a cost of £25k and an external, independent accessibility audit at SJB has been commissioned for early 2022.

Looking ahead to 2022

- 8** The MPTS budget for 2022 is £11.2m, an increase of £1.3m compared to the latest full year forecast for 2021.
- 9** Key factors for the increase include the costs of our continued recovery with increased hearing days, the full year effect of staffing increases in 2021, annual salary uplift, and additional national insurance costs.
- 10** The chart below shows the total hearing volumes from 2018 to 2022.



- 11** The successful introduction of virtual hearings has enabled significant progress to be made with the recovery and removed the need to seek additional physical hearing space to increase capacity whilst social distancing measures remain in place.
- 12** In the 2021 forecast 38% of MPT hearing days are at the hearing centre. In line with what we have seen towards the end of 2021, this is forecast to increase to 65% in 2022. The number of reviews on the papers (ROPs) is expected to stay broadly the same.
- 13** The total cost per hearing day has reduced from £2,863 in 2018, to £2,542 in the 2022 budget.



- 14** The key factors in reducing the direct cost per hearing day is the introduction of virtual hearings (reducing tribunal member expenses), the increased use of legally qualified chairs (reducing the need for legal assessors), and the increased use of ROPs (reducing the need for a full hearing).
- 15** Hearing volumes can have a significant impact on indirect costs. There was a significant spike in cost per day in 2020 due to the initial lockdown period.
- 16** We expect to conclude two pilot projects in 2022. The first is reviewing whether the transcript of a hearing can be provided directly from Microsoft Teams (rather than being produced from a digital recording by a transcription agency). The second concerns the use of an alternative platform to facilitate pre-hearing meetings (the project review and recommendation from this pilot can be found at Annex A).
- 17** Other key projects for 2022 include the legally qualified chair appointment campaign, regulatory reform and, as mentioned in November’s Committee meeting, the purchase and installation of new video conference equipment in 11 of our hearing rooms.