

Consultation on the revised Indicative Sanctions Policy

Analysis of responses to the consultation on the revised Indicative Sanctions Policy
and our decisions as a result

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1. Introduction

About the consultation

- 1.1 We consulted between 4 June 2018 and 31 August 2018 on proposed changes to the Indicative Sanctions Policy.
- 1.2 We informed a range of stakeholders about the consultation including professional bodies, employers, and trade unions. We also advertised the consultation on our website and on social media, and issued a press release.
- 1.3 We would like to thank all those who took the time to respond to the consultation. You can download the consultation document and a copy of this responses documents from our website: www.hcpc-uk.org/aboutus/consultations/closed.

About us

- 1.4 We are a regulator and our job is to protect the public. To do this, we keep a Register of professionals who meet our standards for their professional skills, knowledge and behaviour. Individuals on our Register are called 'registrants'.
- 1.5 We currently regulate 16 health and care professions:
 - Arts therapists
 - Biomedical scientists
 - Chiropodists / podiatrists
 - Clinical scientists
 - Dietitians
 - Hearing aid dispensers
 - Occupational therapists
 - Operating department practitioners
 - Orthoptists
 - Paramedics
 - Physiotherapists
 - Practitioner psychologists
 - Prosthetists / orthotists
 - Radiographers
 - Social workers in England
 - Speech and language therapists

About this document

1.6 This document summarises the responses we received to the consultation.

- Section two explains how we handled and analysed the responses we received, providing some overall statistics from the responses.
- Section three provides an executive summary of the responses we received.
- Section four adopts a thematic approach and outlines the general comments we received on the draft guidance document.
- Section five outlines our responses to the comments received, and any changes we will make as a result.
- Section six lists the organisations which responded to the consultation.

1.7 In this document, 'we', 'us', and 'our' are references to the HCPC; 'you' or 'your' are references to respondents to the consultation.

2. Analysing your responses

2.1 We have analysed all the written and survey responses we received to the consultation.

Method of recording and analysis

- 2.2 The majority of respondents used our online survey tool to respond to the consultation. They self-selected whether their response was an individual or an organisation response, and, where answered, selected their response to each question (e.g. 'yes', 'no', 'partly', or 'don't know').
- 2.3 Where we received responses by email or by letter, we recorded each response in a similar format.
- 2.4 When deciding what information to include in this document, we assessed the frequency of the comments made and identified themes. This document summarises the common themes across all responses, and indicates the frequency of arguments and comments made by respondents.

Quantitative analysis

- 2.5 We received 88 responses to the consultation. 67 responses (76%) were made by individuals and 21 (24%) were made on behalf of organisations. Of the 67 individual responses, 50 (75%) were HCPC registered professionals.
- 2.6 The tables below provide some indicative statistics for the answers to the consultation queries.

Table 1 – Breakdown of responses by question

	Yes	No	Don't know	No answer
Q1. Do you think the content in the Policy covering proportionality is sufficiently detailed?	63 (76%)	17 (21%)	3 (4%)	5
Q2. Does the Policy provide adequate clarity around the difference between insight, remorse and apology?	65 (79%)	14 (17%)	3 (4%)	6
Q3. Does the Policy provide sufficient guidance about how	56 (67%)	21 (25%)	6 (7%)	5

insight, remorse, and apology may impact a panel's decision on sanction?				
Q4. Is it clear from the Policy what remediation is and how a panel might take account of any remediation activities in making their decision?	62 (76%)	16 (20%)	4 (5%)	6
Q5. Do you think the aggravating factors detailed in the Policy are appropriate?	65 (79%)	12 (15%)	5 (6%)	6
Q6. Do you think the types of cases which are aggravating are appropriate?	59 (71%)	11 (13%)	13 (16%)	5
Q7. Is the detail provided against each of the sanctions available to the panel sufficient?	56 (68%)	19 (23%)	7 (9%)	6
Q8. Does the Policy provide enough information about how a panel should approach a review hearing?	57 (70%)	19 (23%)	6 (7%)	6
Q9. Do you consider there are any aspects of our proposals that could result in equality and diversity implications for groups or individuals based on one or more of the following protected characteristics, as defined by the Equality Act 2010 and equivalent Northern Irish legislation? If yes, please explain what could be done to change this. <ul style="list-style-type: none"> • age; • disability; • gender reassignment; • marriage and civil partnership; • pregnancy and maternity; • race; • religion or belief; • sex; and 	19 (23%)	58 (72%)	4 (5%)	7

- sexual orientation.

Table 2 – Breakdown of responses by respondent type

	Individuals				Organisations			
	Yes	No	Don't know	No answer	Yes	No	Don't know	No answer
Q1. Do you think the content in the Policy covering proportionality is sufficiently detailed?	49 (74%)	14 (21%)	3 (5%)	1	14 (82%)	3 (18%)	0 (0%)	4
Q2. Does the Policy provide adequate clarity around the difference between insight, remorse and apology?	54 (83%)	10 (15%)	1 (2%)	2	11 (65%)	4 (24%)	2 (12%)	4
Q3. Does the Policy provide sufficient guidance about how insight, remorse, and apology may impact a panel's decision on sanction?	46 (69%)	15 (23%)	5 (8%)	1	10 (59%)	6 (35%)	1 (6%)	4
Q4. Is it clear from the Policy what remediation is and how a panel might take account of any remediation activities in making their decision?	48 (74%)	13 (20%)	4 (6%)	2	14 (82%)	3 (18%)	0 (0%)	4
Q5. Do you think the aggravating	51 (78%)	9 (14%)	5 (8%)	2	14 (82%)	3 (18%)	0 (0%)	4

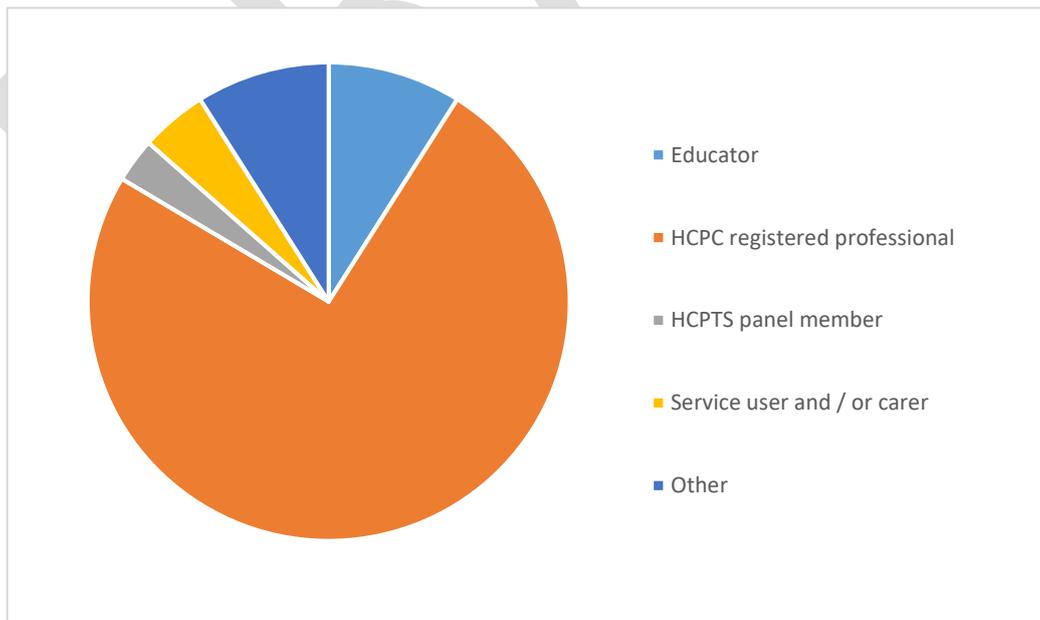
factors detailed in the Policy are appropriate?								
Q6. Do you think the types of cases which are aggravating are appropriate?	46 (70%)	8 (12%)	12 (18%)	1	13 (76%)	3 (18%)	1 (6%)	4
Q7. Is the detail provided against each of the sanctions available to the panel sufficient?	46 (71%)	13 (20%)	6 (9%)	2	10 (59%)	6 (35%)	1 (6%)	4
Q8. Does the Policy provide enough information about how a panel should approach a review hearing?	46 (71%)	14 (22%)	5 (8%)	2	11 (65%)	5 (29%)	1 (6%)	4
Q9. Do you consider there are any aspects of our proposals that could result in equality and diversity implications for groups or individuals based on one or more of the following protected characteristics, as defined by the Equality Act 2010 and equivalent Northern Irish legislation? If yes, please explain what could be done to change this. • age;	16 (25%)	46 (71%)	3 (5%)	2	3 (19%)	12 (75%)	1 (6%)	5

<ul style="list-style-type: none"> • disability; • gender reassignment; • marriage and civil partnership; • pregnancy and maternity; • race; • religion or belief; • sex; and • sexual orientation. 								
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- Percentages in the tables above have rounded to the nearest whole number and therefore may not add up to 100 per cent.

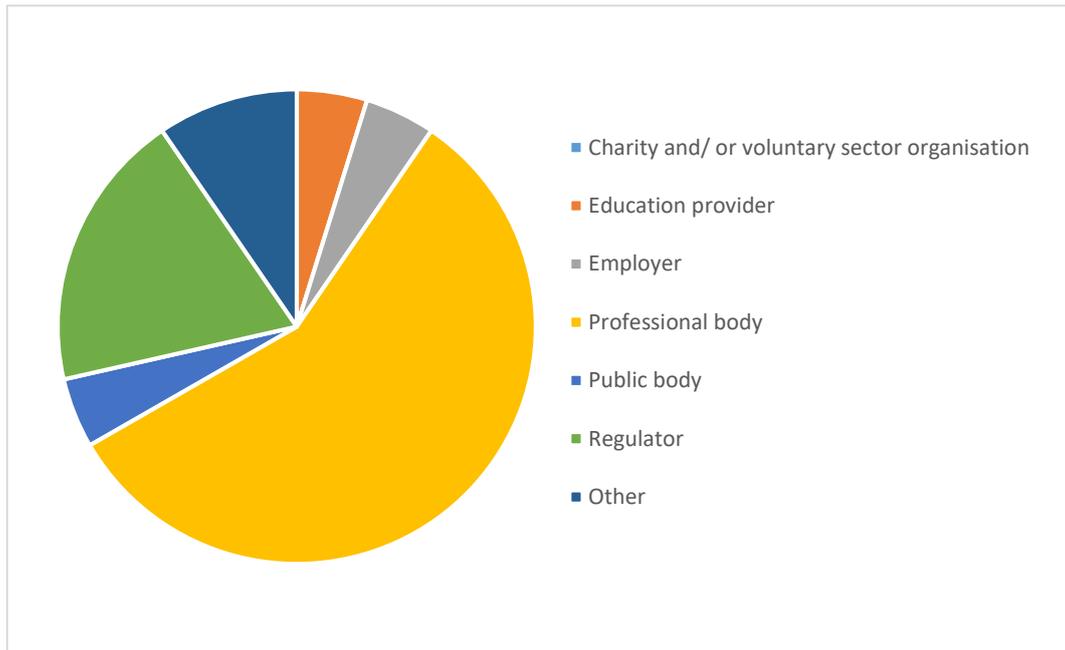
Graph 1 – Breakdown of individual respondents

Respondents were asked to select the category that best described them. The respondents who selected ‘other’ identified themselves as former or retired registrants, non-registered clinicians, representatives, lawyers working in regulation in another jurisdiction, and a dual educator, registrant and professional influencer.



Graph 2 – Breakdown of organisation respondents

Respondents were asked to select the category that best described them. The respondents who selected 'other' identified themselves as trade unions.



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3. Summary of responses

Proportionality

- 3.1 The majority of respondents (76%) agreed that the content in the Policy covering proportionality was sufficiently detailed.
- 3.2 21% of respondents felt that this section required more detail. Respondents made suggestions of which topics we should review in more detail, including:
- how the panel balances registrant and service user interests;
 - the wider context of a particular case (such as the registrant's working environment)
 - how a panel should approach sanctions (emphasising the importance of determining this in line with HCPC's overarching objectives); and
 - how proportionately applies to interim orders.

The difference between insight, remorse and apology

- 3.3 The majority of respondents (79%) agreed the Policy provided sufficient clarity around the difference between insight, remorse and apology. A small number of these caveated their response in some way, requesting more information about how these concepts interact or how the panel should approach them if they are only partially demonstrated.
- 3.4 17% felt the Policy required further clarity. It was suggested that we provide more detail on how factors such as cultural differences, the wider context of a case and the type of case would impact on insight, remorse and apology. Comments also expressed concern with how we had linked these concepts, and suggested we provide more information on how a registrant could evidence these.

The impact of insight, remorse, and apology on a panel's decision on sanction

- 3.5 The majority of respondents (67%) felt that the Policy provided sufficient guidance about how insight, remorse and apology may impact a panel's decision on sanction. Responses emphasised the importance of training panel members and making registrants aware of this section when implementing the new Policy.
- 3.6 25% of respondents felt that the Policy could provide additional guidance in this area. Some respondents advised that we take a cautious approach to the significance we place on mitigating factors when it comes to sanctions (highlighting recent case law). Others requested we clarify what evidence a registrant needs to provide to demonstrate these factors. Another highlighted that, whilst the Policy is clear on how insight can affect a sanctioning decision, remorse and apology are not mentioned within the sanction section of the

Policy. It was highlighted that a registrant's employers and the support they provide may influence any expressions of remorse, and that insight should not be measured by whether someone admits or denies an allegation.

Remediation

- 3.7 The majority of respondents (76%) felt that the Policy was clear about what remediation is and how a panel might take account of any remediation activities in making their decision. Several respondents requested that we provide more information about the role of employers and what would happen if remediation fails, whilst others suggested we review how we define serious cases for the purpose of remediation.
- 3.8 20% of respondents felt that this section could be clearer. Respondents made suggestions of what form remediation evidence should take, how this would be influenced by contextual and situational factors and what cases should be considered serious for the purpose of remediation. Some requested more detail about what would happen if a registrant fully remediated, whilst others criticised our wording which it was argued limits panels' discretion or unduly restricts remediation to prior to a hearing.

Aggravating factors

- 3.9 The majority of respondents (79%) felt that the aggravating factors detailed in the Policy were appropriate.
- 3.10 15% of respondents disagreed with the proposed aggravating factors. These respondents criticised terminology used, such as 'breach of trust', suggesting this was too vague. Respondents also felt phrases like 'likely to lead' and 'in a timely manner' unduly impose upon a panel's discretion, and stated that we should recognise insight, remorse and apology whenever it is eventually expressed. Some respondents requested further detail on factors such as a registrant's mental health, the duty of candour and interim orders would impact upon this section.

Types of cases which are aggravating

- 3.11 The majority of respondents (71%) agreed that the types of cases which are aggravating are appropriate. Respondents provided suggestions for other cases which could be included in this section, as well as highlighting that the seriousness of a case needs to be considered on a case by case basis.
- 3.12 13% of respondents did not feel that the types of cases which are aggravating were appropriate. They argued that some of the wording used was unnecessarily specific and that the examples provided were unrealistic. It was noted that dishonesty in particular is a complex area and we need to take a

more nuanced approach. We also received suggestions for further cases which could be considered serious, such as criminal convictions.

Detail of sanctions

- 3.13 The majority of respondents (68%) agreed that the detail provided against each of the sanctions available to the panel was sufficient. There was some concern from one respondent however that any increase requirement for insight would result in more strike offs. We also received requests for clarity about mediation, no action and multiple sanctions.
- 3.14 23% of respondents felt the Policy could provide more detail against each of the sanctions available to the panel. We received a wide range of comments about the different sanctions available. This included requests that mediation have its own section, that we emphasise sanctions focus on what is necessary for public protection as opposed to the impacts on registrants and that this is determined on a case by case basis, and that we clarify the section on multiple sanctions which appears contradictory.

Review hearings

- 3.15 The majority of respondents (70%) felt that the revised Indicative Sanctions Policy provided enough information about how a panel should approach a review hearing.
- 3.16 23% of respondents felt we should provide more information on this topic. Respondents noted that there is no reference to how panel's consider the findings of the original panel, nor what the impact would be of a registrant who refuses to engage with the process, or who has breached a previous orders. It was also requested that we provide more detail on the panel would expect of registrants, and how panels should apply sanction at this stage (particularly when there are multiple sanctions).

Equality and Diversity

- 3.17 The majority of respondents (72%) did not consider that our revised Indicative Sanctions Policy would result in equality and diversity implications for groups or individuals based on one or more of the protected characteristics defined by the Equality Act 2010 and equivalent Northern Irish legislation.
- 3.18 23% of respondents felt there were aspects of our proposals that may have equality and diversity implications. These respondents felt that any impact would be negative and could disproportionately affect the protected characteristics of disability, race, religion or belief, sex and sexual orientation. Respondents also discussed the potential impact on those at socioeconomic disadvantage or who had health problems (including mental health).

3.19 One respondent also felt that there could be positive equality and diversity implications of our revisions, noting the strengthened stance on equality and diversity and discrimination and predatory behaviour. This highlighted women, children and the elderly as most likely to benefit as a result.

Other comments

3.20 39% of respondents took the opportunity to add further comments to their response. These discussed a range of topics, including requests for us to include other topics (such as details of appeals, time frames and health cases) as well as amendments to general wording and structure of the Policy.

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4. Thematic analysis of responses

4.1 This section provides an analysis of the responses we received, based on the common themes we identified.

Q1. Do you think the content in the Policy covering proportionality is sufficiently detailed?

Yes

4.2 The majority of respondents (76%) agreed that the content in the Policy covering proportionality was sufficiently detailed, with a marginally larger proportion of organisations (82%) agreeing compared to individuals (74%).

4.3 Comments in favour of our current approach noted that:

- it is clearly structured and provides clear direction;
- it is both comprehensive and the manner in which it is presented is easy to read;
- it clearly explains how the panel will apply proportionality to sanctions;
- it is important that anyone reading fitness to practice panel decisions can fully understand the considerations that the panel took and the rationale for the decision; and
- having access to effective risk-based sanctions will help to raise standards across healthcare professions regulated by HCPC, by dealing with minor breaches swiftly whilst maintaining the credibility of the profession concerned.

No

4.4 A minority of respondents (21%) felt that the content on proportionality required more detail. Respondents discussed a number of areas where they felt this section could contain more information, each of which are discussed in turn:

Balancing registrant and public protection interests

4.5 Several respondents felt that this section should provide further detail on the panel's duty to balance registrants' interests with what is in the best interests of the public (in light of the HCPC's overarching objectives). It was noted that the GMC's Sanctions Guidance addresses this balancing exercise, 'which is central to the principle of proportionality'.

Consideration of wider contextual factors

4.6 To ensure decision-making is proportionate, respondents discussed the need to consider the impact of wider contextual factors, such as a registrant's working environment. One respondent provided detail of the challenges facing children's services social workers, such as excessive working hours (including

weekend working), cancelled training due to high workloads, and resulting high levels of anxiety, depression and burn out amongst staff.

Greater detail on sanction decision-making

- 4.7 It was suggested that we be more explicit about how panels determine what an appropriate and proportionate sanction is. This included:
- emphasising that sanctions are not intended to be punitive;
 - clearly linking any proposed sanction to HCPC's public protection objectives, highlighting that sanctions must reflect the seriousness of the issues identified, the risks to the public and the impact on the public interest
 - defining terms such as 'the requisite level to protect the public', to ensure greater consistency of decision making;
 - reiterating that panel members should consider the full range of sanctions available to them, starting with the least restrictive, and noting that any sanction imposed must be the minimum action required to protect the public; and
 - panels should also give reasons why they have chosen a specific sanction and why a higher sanction is not required.
- 4.8 Respondents highlighted the case of *GMC v Stone* [2017] which sets out the importance of giving reasons both for the particular sanction selected and any other sanction considered and rejected. It was also suggested that we refer to the case of *Bolton v Law Society* [1993], which considers the balance between sanctions imposed and their purpose.
- 4.9 It was also argued that this section be more explicit about the panel's role in risk assessments and how this impacts on the sanctions imposed.

Interim orders

- 4.10 It was noted that the section on proportionality does not consider interim orders. Respondents argued that proportionality acts as a substantial consideration at this stage, and therefore we ought to at least refer to this within the section to avoid any confusion. For example, one respondent suggested we explain when the time spent on an interim order will be a relevant factor in deciding an appropriate and proportionate sanction (in line with *Kamberova v NMC* [2016]).

Examples

- 4.11 Some respondents requested that we provide examples in this section from recent cases, to greater illustrate our point.
- 4.12 When providing these examples, some respondents requested that we broaden our approach from just focusing on service users, to also consider 'ordinary members of the public' and other healthcare staff.

Don't know

- 4.13 4% of respondents selected don't know in response to this question. One respondent had not been able to access the document, and therefore could not answer this question, whilst another commented that panels need to be supported in applying this section of the Policy.

Q2. Does the Policy provide adequate clarity around the difference between insight, remorse and apology?

Yes

- 4.14 The majority of respondents (79%) agreed the Policy provided adequate clarity around the difference between insight, remorse and apology. Of the organisations that responded, a significantly smaller proportion (65%) agreed compared to individuals (83%).
- 4.15 The vast majority of respondents who felt this section of the Policy was clear did not provide further comment. Where comments were provided, they praised the clear examples, definitions and links to legislation throughout.
- 4.16 A small number of respondents who felt this section was sufficiently clear caveated their response in some way. It was noted that 'such clarity also makes it easier for unscrupulous people to "game play" without true remorse'. Another felt that only insight is relevant to sanction, as it shows an understanding of what happened and can be applied to future conduct, whilst remorse and apology are harder to judge.
- 4.17 One respondent suggested that, in addition to sanctions, there be follow up training in the form of mediators or coaching to ensure that registrants learn from their wrong-doing, and that there be a way of assessing the impact of unprofessional behaviour on colleagues.
- 4.18 Several respondents requested further information, such as how insight, remorse and apology interact and how the panel should consider this if, for example, there has been an apology but no evidence of remorse or a registrant only displays partial insight.

No

- 4.19 The minority of respondents (17%) felt the Policy required further clarity. Respondents suggested a range of amendments to the structure and wording of this section of the Policy. They also provided broader comments on the content, the key themes of which are discussed in turn below:

Cultural differences

- 4.20 Whilst the Policy states that 'in taking account of any insight, remorse or apology offered by a registrant, panels should be mindful that there may be

cultural differences in the way these might be expressed, both verbally and non-verbally', it was advised that we provide additional information about this.

- 4.21 One respondent provided examples which demonstrate how cultural differences may influence expressions of insight, remorse and apology. These were:
- use of linguistic constructs of their first language as opposed to English, which can result in the loss of subtlety and nuance; and
 - non-verbal cues, eye contact, facial expressions and touch which may be used differently by non-native English speakers.

The wider context

- 4.22 As above, it was suggested that we reference the wider context of a particular case, and how this may influence insight, remorse and apology. One respondent noted that registrants may be under duress to not offer an apology. Another note that compliance with duty of candour may vary dependent on the different sector or circumstances.

Linking the concepts

- 4.23 Some respondents argued that there is not enough distinction between insight, remorse and apology. One respondent therefore suggested perhaps including these all within the overarching category of insight, noting that the GMC guidance does not refer to remorse.
- 4.24 Another respondent suggested that we take a more cautious approach to how we express the links between these three concepts. This response argued that the interplay between the concepts is difficult to define with any clarity and therefore it might be more useful to remind panels that the links are not straightforward and that the interplay and relevance of each concept has to be case-specific and take into account contextual factors.

How insight, remorse and apology are evidenced

- 4.25 Several respondents provided comments on how insight, remorse and apology should be evidenced.
- 4.26 It was noted that this is a subjective concept, which will vary from person to person, and so the Policy should not be overly prescriptive. Respondents requested recognition that insight may be demonstrated during a hearing, or not offered (as some registrants may misinterpret an apology as an admission of guilt or be contesting the facts of a case). It was argued that this in itself should not result in more serious sanctions.
- 4.27 Some respondents were critical of the language and examples we had used, noting that these needed to be less stringent so that the panel has the ability to consider this on a case by case basis.

Additional factors to be addressed

- 4.28 Several respondents suggested that this section discuss or emphasise other factors, such as the importance of mitigation, remediation or the duty of candour. For example, one respondent questioned whether compliance with the duty of candour should be a mitigating factor.
- 4.29 Respondents also requested more detail about how insight, remorse and apology should be considered, depending on the type of case (such as misconduct vs performance cases). It was noted that the current approach appears to be broad brush, whereas instead mitigation needs to be considered on a case by case basis.

Don't know

- 4.30 4% of respondents selected don't know in response to this question. One respondent commented that findings have repeatedly displayed a lack of compassion, logical thinking and consideration of the vulnerabilities of professionals by HCPC.
- 4.31 Another requested that we define 'timely' in paragraph 26 of the Policy, noting that a registrant could not initially understand what they have done wrong and only on reading the legal papers relating to a case come to realise and accept, and thus offer remorse, even though this may be a period of time after the initial event.

Q3. Does the Policy provide sufficient guidance about how insight, remorse, and apology may impact a panel's decision on sanction?

Yes

- 4.32 The majority of respondents (67%) felt that the Policy provided sufficient guidance about how insight, remorse and apology may impact a panel's decision on sanction. Of the organisations that responded, a smaller proportion (59%) agreed that the level of guidance was sufficient compared to individuals (69%).
- 4.33 Respondents who felt we had included sufficient detail noted it is 'well-written and clear' and 'gives reasonable examples'.
- 4.34 Some respondents, whilst in support of the level of guidance, commented on implementation. It was noted that how this is applied in practice would depend on the panel members chosen, and that panel members would need to be trained to ensure that they are not unduly swayed by an articulate registrant. One respondent stated that, based on previous cases, insight, remorse and apology does not appear to be respected, whilst another wanted assurances that panel members would be given training to ensure they can take into account cultural differences as specified in the Policy.

- 4.35 It was suggested that, as part of implementation, we ensure that registrants are also made aware of this part of the Policy. Respondents highlighted a commonly held beliefs that an apology means admitting liability, and as such more detail and explanation would be helpful.

No

- 4.36 A minority of respondents (25%) felt that the Policy could provide additional guidance on how insight, remorse and apology may impact a panel's decision on sanction.

Significance

- 4.37 Some respondents suggested that we consider recent case law (such as *Judge v NMC* [2016]) which confirms that matters of mitigation are likely to be of considerably less significant in regulatory proceedings, because the overarching concern of the regulator is protection of the public. Therefore panels should be more cautious about identifying mitigating factors, and ensure panels properly evaluate these as opposed to simply create a list of competing factors.
- 4.38 It was highlighted to us that, whilst remorse and insight are relevant to the issue of risk, they do not necessarily mean that risk of repetition is reduced to the point that a sanction is no longer required. Instead, the panel should take account of this information and then add this into the balancing exercise of wider public interest considerations.

Remorse and apology

- 4.39 Some respondents felt that particular elements of the section (such as on insight) were clear, however other parts were not and required more detail. It was noted that remorse and apology are not mentioned in the sanction section of the Policy, which could result in inconsistent decision-making. Therefore respondents requested that we therefore include remorse and apology within each stage of the sanction section of the Policy to mitigate this risk.

Contextual and situational mitigating factors

- 4.40 One respondent noted that there are additional contextual and situational mitigating factors that may influence how insight, remorse and apology impact on sanction. This includes challenging systems in a registrant's place of work (which prevent them from raising concerns or from apologising to a patient who has been harmed), environmental issues (as registrants often work as junior members of multidisciplinary teams where challenging team hierarchies and structures could exist), ill health, and the stage of the registrant's career.

Level of detail

- 4.41 Some respondents suggested that this section does not go far enough. It was argued that this 'essentially just says they might be considered'. Another

noted concern 'that the relationships between remorse, insight and apology and the underpinning principals of public protection, the personal component of unfitness to practice, and the wider aims of protecting the profession are not drawn out in the guidance'.

- 4.42 It was highlighted that, while the definitions of insight, remorse and apology are clear, their interpretation by a panel or individuals appears to be very subjective. A panel is asked to 'assess the sincerity of an apology and to take in to account the level of remorse and insight the registrant has shown', but the respondent questioned how the level of remorse would be measured and what evidence a panel would expect to see.

Evidence of insight, remorse and apology

- 4.43 Several respondents requested more detail regarding what is required of registrants to evidence insight, remorse and apology. It was noted that in the past registrants have undertaken a reflective piece but this is still not considered sufficient, leaving a registrant not knowing what is required of them.
- 4.44 One response was concerned that insight, remorse and apology may not be genuine. It was noted that a registrant may express remorse, but this is only for the impact it will have on their career as opposed to the public or their profession. They suggested we include further guidance on this issue as, at present, this remorse is considered inconsistently with some panels disregarding the apparent remorse, some panels seeing it as an aggravating factor and some appearing to allow limited mitigation.
- 4.45 It was suggested that any insight should be demonstrable – a registrant can say they have insight but this needs to be supported by tangible evidence of how they would do things differently for the panel to rely on. This respondent suggested mentioning that registrants are likely to be helped if they attend a hearing, so that the panel can form a view about the genuineness.
- 4.46 When considering insight, one respondent highlighted that the fact that a registrant has an unblemished record should not assist the panel. Instead, they must consider the evidence before it as to whether or not the registrant has developed insight or might develop it with more time.

Don't know

- 4.47 7% of respondents selected don't know in response to this question. These respondents commented:
- unless these factors can be measured they are of little use;
 - people can use these as a tool to get a lesser sanction;

- our current approach is ‘oppressive and short sighted’, and capacity to say the right thing should not form the basis of a panel decision (as it will depend upon employer support, vulnerability and stress).;
- insight is not measured by whether or not a registrant admits or denies an allegation;
- this should make clear these are considered at the impairment stage and consideration has been given to all circumstances around which the facts have been proven, including the registrant’s apparent motivation and premeditation; and
- registrants are reluctant (on occasions) to apologise as they wrongly equate that to admitting some aspect of legal liability and are on occasions wrongly advised by "friends" to say nothing or refrain from admitting anything. This can have significant impact on the result and it was suggested this should be discussed with registrants when the case is in its infancy by both the HCPC and their own representatives. Furthermore than more detailed guidance should be given to panels relating to this.

Q4. Is it clear from the Policy what remediation is and how a panel might take account of any remediation activities in making their decision?

Yes

- 4.48 The majority of respondents (76%) felt that the Policy was clear about what remediation is and how a panel might take account of any remediation activities in making their decision. Of the organisations that responded, a marginally larger proportion (82%) agreed that this content was sufficiently clear compared to individuals (74%).
- 4.49 Respondents who felt the Policy was sufficiently clear on remediation praised the level of detail outlining what sort of activities the registrant might undertake and that remediation should always be considered. Responses also felt it was useful to have examples where the panel are still likely to impose serious sanctions, despite registrant attempts to remediate concerns.

More information

- 4.50 Several comments requested further information about remediation. For example, one respondent questioned what would happen if remediation fails. Others reiterated that remediation needs to be considered on a case by case basis, as it is not possible to list all possible remediation activities and judgement will be required as to their relevance to a particular case.

Role of employers

- 4.51 Several respondents discussed the role of employers in remediation. A respondent noted that it is often down to the registrant’s employer to support this, whilst another suggested that remediation should involve colleagues,

thereby encouraging a Policy of openness and honesty. With this in mind, one response suggested that an additional mitigating factor be included, where an element of corporate responsibility has previously been identified as a contributory factor.

Serious cases

- 4.52 There was some concern about dishonesty being categorised as a serious case where remediation would not reduce the risk to the public or public confidence. This response noted that dishonesty is often implied and added to a charge when a registrant appears to have changed their version of events during the course of an investigation. However, memories often change each time they are recalled and therefore it was argued that a registrant may not be being deliberately dishonest in these circumstances.
- 4.53 Another respondent suggested that we review the serious cases outlined in the document further to ensure it is fully comprehensive following recent fitness to practice cases which have been undertaken by other regulators including the GMC and NMC.

No

- 4.54 A minority of respondents (20%) felt that the Policy could be clearer on remediation.

General approach

- 4.55 Respondents criticised our approach, arguing that not undertaking remediation does not necessarily indicate a lack of insight. It was suggested that non-participation could instead be the result of health or capability issues, and therefore a blanket rule should not apply.
- 4.56 Another respondent suggested that panels need more information about the working environment of registrants to aid in their decision making. This would ensure that they have a greater understanding of the lack of support that many professionals receive and the intense pressures that some professions are under.

Wording changes

- 4.57 Several suggested amendments to wording we have used or proposed additional content. One respondent felt that terminology such as 'likely to' will confuse or result in misunderstanding. They also criticised our statement that particularly serious incidents are still more likely to result in a serious sanction, despite remediation. It was argued that this must be determined by the panel, who must consider the full case in the round.

Evidence

- 4.58 Some registrants commented on the evidence that would be required to demonstrate remediation. It was suggested that we emphasise the following:

- remediation activities must be genuine and address the specific concerns that have been raised;
- decision-makers will need to take a qualitative approach in determining what evidence is required of remediation, but this might include details of any courses, the registrant's attendance and the relevance and impact of that learning on the case;
- panels should not be expected to infer this the value or impact of remediation; and
- personal reflection should be in writing and acknowledge what went wrong and why this would not be repeated.

4.59 It was suggested that we make it clear that the list of remediation activities provided is not exhaustive. One respondent suggested we also include professional development plans and support groups (in response to any medical conditions), testimonials and professional and personal references in this list.

Significance

4.60 As above, it was noted that matters of mitigation are likely to be of considerably less significant in regulatory proceedings. It was also noted that courts have found that remediation is not capable of mitigating the risk to the public or public confidence in cases relating to conduct that can be described as attitudinal or behavioural.

4.61 One registrant suggested that this section emphasis the need to protect public confidence in our registered professions. It was noted that it is difficult for remediation to address this particular overarching objective, particular where the wrongdoing is criminal, and panels should be made aware of this.

4.62 It was also noted that personal mitigation, such as how long a registrant has practised without a previous complaint, does not reduce the seriousness of previous conduct.

Other considerations

4.63 One registrant suggested that remediation would be better placed within the section on insight.

4.64 Another questioned what would happen if a registrant fully remediated any fitness to practise concerns. They considered that in these cases their fitness to practise would no longer be impaired, but were unsure.

4.65 Some respondents suggested criminal convictions be included within the list of serious sanctions where remediation would not reduce the risk to the public or public confidence.

4.66 One registrant felt that this section should not just focus on remediation before a hearing, but also future remediation. It was noted that remediation is an ongoing process and may not necessarily be complete before the hearing. In these cases, the panel should ensure they attach appropriate weight to future remediation activities as well as those already completed.

Don't know

- 4.67 5% of respondents selected don't know in response to this question. These respondents commented:
- it is challenging to prove or measure remediation;
 - there needs to be more clarity on the types of cases where remediation will not help; and
 - this could be used as a tool by registrants to get a lesser sanction.
 -

Q5. Do you think the aggravating factors detailed in the Policy are appropriate?

Yes

- 4.68 The majority of respondents (79%) felt that the aggravating factors detailed in the Policy were appropriate. Of the organisations that responded, a marginally larger proportion (82%) agreed that these factors were appropriate compared to individuals (78%).
- 4.69 Some respondents left positive comments, noting it is 'a clear and helpful expansion of the previous 2004 text' and 'there are clear indications relating to fitness to practise and how these can be impaired'. Another responded positively to the fact that each factor links to how it may impact service users.
- 4.70 Many respondents, whilst felt the factors were appropriate, provided additional feedback.

Terminology

- 4.71 Several respondents requested clarification over particular terminology used, such as 'personal mitigation', 'breach of trust' and 'service user harm'. Others highlighted inconsistencies in the examples of serious cases provided across the document.

The wider context

- 4.72 It was noted that 'having an understanding of the surrounding circumstances is important to ensure that decision-makers are fully informed about all relevant facts in a case, which they can then categorise as aggravating or mitigating, before forming a view on sanction.' One respondent suggested we

therefore consider the role of employers in managing risk when considering sanction.

- 4.73 One respondent argued that there should be some allowance for the individual's profession in determining aggravating factors. For example, it would be more concerning if a paramedic working in isolation in people's homes were to be convicted of theft or fraud than a radiographer. Another suggested that the Policy differentiate between some crimes committed in a work setting and a personal setting, and acknowledge that students should be considered vulnerable service users due to a power imbalance.
- 4.74 Respondents also suggested additional aggravating factors of:
- Ignoring advice or interventions to prevent misconduct or remedy a lack of competence.
 - A registrant's failure to tell the truth during a hearing.
 - A failure to remediate when promised to do so.
 - The circumstances around an event, such as failing to work collaboratively or failing to raise concerns.

No

- 4.75 A minority of respondents (15%) disagreed with the proposed aggravating factors.

Terminology

- 4.76 As above, some respondents requested further clarity over terminology such as 'breach of trust'. It was suggested that we use further examples, as 'the present wording is vague and insufficiently clear' and could lead to complaints being 'inappropriately upheld'.
- 4.77 As above, another respondent disagreed with some of the terminology we had used, such as 'likely to lead', arguing that this imposes on the panel's independence. They argued that the mere presence of aggravating factors should not lead directly to serious sanctions, as panels are still required to make a decision based upon the individual circumstances of that case.
- 4.78 Several respondents criticised our statement about registrant's refusing to apologise in a timely manner. It was noted that insight and remorse can develop over time and a longer amount of time should not detract from the intrinsic value of that insight or remorse when it is eventually expressed. Others highlighted that a registrant may have a genuine reason to formally challenge the fitness to practise process or a panel, and therefore ought not to be at risk of a more serious sanction because they decline to apologise.

Wider context

- 4.79 Once again, it was suggested that we include greater consideration for the context in which allegations are made. It was suggested that the role of the

employer and their ability to effectively manage risk be considered when determining sanction. Along this line, respondents suggested additional aggravating factors, including poor management, poor supervision, lack of sufficient support, pressure from service users and poor leadership. They noted that these all contribute to professional stress and pressure. In particular, respondents felt that the panel should demonstrate empathy for registrants and the impact of stress, with one response noting the current drafting 'fails to treat professionals as human'.

- 4.80 It was also noted that whether or not a registrant has repeated misconduct should take into account whether that registrant was unemployed or the subject of an interim order (in which case absence of repetition cannot be seen as a positive factor).

Additional considerations

- 4.81 One respondent questioned how breaching of the duty of candour would be applied to this section.
- 4.82 It was also suggested we make it clear what approach panels should take to an interim order when considering aggravating factors. For example, panels should not give undue weight to whether a registrant has an interim order and how long the order was in place (as the GMC do).

Don't know

- 4.83 6% of respondents selected don't know in response to this question. Very few respondents commented, but where they did they asked what the process was the aggravating factors are from an outside source, and that proven facts is the incorrect term to use if a case has not been to a court of law.

Q6. Do you think the types of cases which are aggravating are appropriate?

Yes

- 4.84 The majority of respondents (71%) agreed that the types of cases which are aggravating are appropriate. Of the organisations that responded, a marginally larger proportion (76%) agreed that the cases were appropriate compared to individuals (70%).
- 4.85 The majority of respondents who agreed with the proposed types of cases did not leave further comments. Where comments were provided, they noted:
- the cases appear realistic;
 - whilst they may not cover everything, they do give a broad spectrum from which a panel could work; and
 - the change to include a broader 'serious cases' section provides greater clarity and improves the structure of the Policy.

- 4.86 It was also noted that the seriousness of behaviour will vary from case to case and therefore, to ensure any sanction is appropriate, panels must recognise that there can be a range of seriousness when considering cases which fall into one of these categories.

No

- 4.87 A small minority of respondents (13%) disagreed with the types of cases proposed.

Wording

- 4.88 Some respondents were critical of the wording we had used, which they felt was unnecessarily specific. Some argued that this section infringes on the panel's independent judgement, as it is a matter for the panel to assess whether the circumstances of a particular case justify a more serious sanction based on all the evidence they have heard.

Dishonesty

- 4.89 One respondent criticised paragraph 51 of the Policy which states that cases with an element of dishonesty 'are likely to result in more serious sanctions'. It was noted that dishonesty is a complex area of law that is constantly evolving and therefore this could result in the Policy needing to be revised on a regular basis.
- 4.90 Another suggested that, as dishonesty is 'on a spectrum', we should provide more detail on how panels approach different types of dishonesty and its impact. It was noted that we need to take a more nuanced approach in light of the case of *Lusinga v NMC* [2017], to ensure our guidance does not 'lump the thief and the fraudster together with the mere contract-breaker'.
- 4.91 Another respondent detailed the different levels of dishonesty we should explore, as well as premeditation, motivation, and the impact on service users.

Additional considerations

- 4.92 Some respondents criticised the examples we had provided, noting they were unrealistic.
- 4.93 One respondent questioned how panels should approach breaches of duty of candour. Another felt we should include appearance within discrimination.
- 4.94 It was also noted that, when considering criminal convictions and cautions, the panel should be careful not to 'effectively increase the severity of a criminal sanction'. Therefore a registrant with a caution or a suspended sentence ought not to be prohibited from practise, as this would in effect increase that sentence.

- 4.95 Another response suggested that we do not state that a striking off order is more likely in cases where a registrant denies an allegation. It was suggested that this would be construed as coercion by registrants, who would feel they have to change denials into admissions and thus compromise any potential appeal.

Don't know

- 4.96 16% of respondents selected don't know in response to this question. Some respondents noted that the question does not match the terminology used in the document, due to a discrepancy between use of the words serious and aggravating. Another respondent stated that, as each case is individual, blanket and somewhat blunt examples such as those listed must include a degree of flexibility.

Q7. Is the detail provided against each of the sanctions available to the panel sufficient?

Yes

- 4.97 The majority of respondents (68%) agreed that the detail provided against each of the sanctions available to the panel was sufficient. Of the organisations that responded, a smaller proportion (59%) agreed that this content was sufficiently detailed compared to individuals (71%).
- 4.98 The majority of respondents who felt we had included sufficient detail did not leave further comments. Positive comments noted that this 'identifies how we need to safeguard service users, be mindful of public confidence [and] protect vulnerable service users'.
- 4.99 One respondent felt the detail provided was sufficient, but expressed concern that always requiring insight in order to give a suspension will result in more strike offs than is necessary. They explained that sometimes a suspension is appropriate, despite the fact that the registrant not demonstrating insight. This might be because the registrant is absent, the conduct doesn't merit it, or the registrant might develop insight in the future. They argued the new guidance doesn't allow for this which will mean strike off is inevitable where no insight is shown e.g. the Registrant hasn't (yet) engaged.
- 4.100 Respondents also requested that we provide greater clarity on the relationship between mediation and no action, such as what happens when mediation is unsuccessful, questioned whether it was appropriate to refer to impairment as minor, and requested clarity on multiple sanctions, noting currently it is not clear what would happen to the initial allegation if an existing sanction was overridden by a more stringent sanction. It was suggested that we use practical examples to illustrate this.

No

4.101 A minority of respondents (23%) felt the Policy could provide more detail against each of the sanctions available to the panel. Various comments were raised about the structure, wording and content of this section. For clarity, comments relating to each sanction are discussed in turn:

No action

4.102 In the current wording of the Policy, we state that it is unlikely that the panel would take no action following a finding of impairment. One respondent criticised this approach, stating that it is not for the Policy to restrict outcomes available to a panel.

Mediation

4.103 Respondents noted that mediation is not listed as a sanction. It was suggested that mediation have its own section like the other sanctions.

Caution order

4.104 One respondent criticised our choice of wording in paragraph 91 of the Policy, that a caution order should be considered in cases where meaningful practice restrictions cannot be imposed 'but a suspension of practice order would be disproportionate'. This response argued that this was 'procedurally incorrect as it suggests panels need to consider the next available sanction as opposed to considering each sanction exclusively and in ascending order (stopping when they reach their decision).

4.105 Another respondent noted that it is not clear how long the caution can be taken into account if there are further matters raised against a registrant, i.e. if it is just for the term of the order or another period of time.

4.106 A respondent noted that our explanation of a caution order contradicts earlier information, as if the issue is minor, isolated and there is good insight and remediation, then, by definition, current fitness to practise is not impaired. Conversely, if impairment has been found the respondent did not feel that no action would be appropriate. It was requested that we clarify this point, and whether the focus is on impairment at the point of wrong-doing, or at the time of the hearing. It was also suggested that caution orders have a specific aim, such as training or remediation which once completed can be removed.

4.107 Another respondent suggested that we highlight that panel members should provide a clear explanation of why they have chosen a non-restrictive sanction, even though they may have found that there is a risk of repetition usually at the impairment stage.

4.108 One respondent questioned why we could issue cautions for up to five years. Another noted if a caution order is likely to be an appropriate sanction for cases in which the issue is isolated, limited or relatively minor in nature, the

suggestion of an imposed term of up to 5 years appears excessive and should be reduced to a maximum of 3 years duration.

Conditions of practice order

4.109 A respondent felt we should suggest time scales for when a registrant should be expected to complete conditions, in light of *Annon v NMC* [2017] where a registrant was in 'professional limbo' and it was recommended there be a time limit on completion of conditions.

4.110 One respondent suggested we include the following cases within our list of examples of when a conditions of practice order would be appropriate:

- Health cases;
- Cases where performance issues have been raised; and
- Retraining, as an opportunity to demonstrate remediation.

4.111 A respondent criticised the statement that 'conditions of practice are unlikely to be suitable in cases in which the registrant has failed to engage with the fitness to practise process or where there are serious or persistent failings'. It was noted that there may be a good reason why a registrant is not engaging with the process or there might be an entirely plausible explanation for the abovementioned failings. It was argued that this will 'encroach upon the panel's discretion to exercise its independent judgement based on the particular circumstances of that case'.

4.112 It was also suggested that we reference the conditions bank that panel member's use, and make it clear that a conditions of practice order falls on the registrant and not their current or future employer.

Suspension order

4.113 It was noted that any suspension order (of any length) is likely to have significant professional and financial consequences to a registrant and so needs to be properly considered. The respondent was concerned with the suggestion that short term suspension orders are likely to be appropriate where a staged return to practise is required. They highlighted that the panel can impose extremely restrictive conditions which protect the public and allow the registrant to continue practising and attempt to remediate, which a suspension order would otherwise prevent.

4.114 By comparison, another respondent suggested that our section 'how long should a suspension order be imposed for?' overly focuses on the impact on registrants, and that this could be misinterpreted by a panel. They noted that even if it may cause a long term impact on a registrant, the sanction should focus on what is necessary to protect the public.

4.115 In paragraph 112 of the Policy we discuss cases which involve substance dependency. One respondent suggested that the panel seek medical advice

in these cases (or indeed any health condition) before they set any expectations for registrants.

- 4.116 One respondent questioned why suspensions are only one year, noting that if someone has a medical condition it may take longer than a year to suitably rehabilitate.

Striking off order

- 4.117 It was requested that we provide further clarity about when a person will be struck off in health cases.

Multiple sanctions

- 4.118 It was suggested that repetition of conduct which gave rise to the first sanction be grounds for a more stringent sanction, as it is not for the Policy to encroach on the panel's independent judgement which is to be made in light of the specific facts of the case.

- 4.119 It was also suggested that we remove paragraph 126 of the Policy, which states more stringent sanctions might override more lenient sanctions, as each case should be judged on its own merits.

General comments

- 4.120 Respondents suggested that we greater emphasise the need for cases to be considered on an individual basis throughout the Policy.
- 4.121 It was also suggested that the relationship between these sanctions and insight, remorse and apology be made clearer, and in what circumstances the presence or absence of these factors would make it appropriate for the level of sanction to be decreased or increased.
- 4.122 Another respondent suggested we make clear where the lack of a duty of candour would fall within the sanction spectrum, and make better references to risk throughout the section (such as where ongoing risks can lead to a more serious sanction).
- 4.123 One respondent commented on how the Policy would ensure consistency of decision-making, and suggested guidance being incorporated to reduce the appearance of subjectivity.
- 4.124 Some respondents requested case studies or a flow chart be used to illustrate how this section should be applied. Others requested more clarity on particular terms, such as 'minor impairment'.

Don't know

- 4.125 9% of registrants stated they did not know whether the Policy contained sufficient detail on each of the sanctions. Comments criticised the point of a

caution order, highlighted confusion with the no action section, and highlighted the need for panel members to receive evidence about professionals' frontline practice so they can make an informed decision of what is or is not good practice.

Q8. Does the Policy provide enough information about how a panel should approach a review hearing?

Yes

4.126 The majority of respondents (70%) felt that the revised Indicative Sanctions Policy provided enough information about how a panel should approach a review hearing. Broadly, organisations and individuals did not differ in their response to this question.

4.127 Of the respondents who felt the Policy provided sufficient information in this area, some commented that it provides:

- clarity but allowing for an individualised approach and understanding;
- clear signposting throughout, which relates to the standards of conduct throughout, focuses on conduct inside and outside the workplace, and focuses on protecting the public and the registrants conduct since prior hearing was undertaken; and
- clear definitions.

No

4.128 A minority of respondents (23%) felt the Policy could provide more information on how a panel should approach review hearings. These respondents provided suggestions of where this section could provide additional detail. These are set out in turn below:

Consideration of the original panel's findings

4.129 It was requested that we include more information about the interplay between the approach panels should take considering impairment and sanction at a review hearing and the relevance of the original panel's findings to ensure that the panel does not inadvertently go behind them.

Consideration of registrant conduct

4.130 Respondents suggested that we explain how panels should consider breaches of previous orders or panel recommendations, as well as registrants who are not engaging with the review hearing.

4.131 In addition, it was suggested that this section include some general information for registrants on what the panel would expect them to demonstrate. A respondent suggested including references to particular

paragraphs in the Policy to direct registrants to the criteria in which a panel would consider to maintain, revoke or replace an existing sanction.

Sanctions

4.132 There was a general request for more information about applying sanctions at this stage.

4.133 It was noted that there is no specific guidance on how to approach sanctions and when to step down, e.g. from a suspension to conditions. Similarly it was advised that there be more information about the options a panel has if a registrant has been subject to a suspension order for more than two years. It was suggested that the Policy make it clearer that in these circumstances strike off becomes more likely.

4.134 There was also some confusion around multiple sanctions. One respondent asked for clarity on how a review panel would undertake a review of multiple sanctions, given that it is not possible for a review panel to implement an additional sanction. Another noted 'it says a panel cannot impose a second sanction, but then says they need to establish if any further sanction is required', which appeared contradictory.

Wider context

4.135 As in previous questions, we received comments requesting that we take into consideration the wider context of a case. This included:

- how long a registrant has been waiting for their case to be reviewed;
- any character references (especially from professionals);
- reflective pieces submitted by the registrant; and
- if a registrant has been unable to secure employment as a result of the HCPC investigation.

Don't know

4.136 A small number of respondents (7%) did not know whether the Policy provided enough information. One respondent noted that they did not participate in their review hearing and so could not comment. Another commented that, whilst there is currently sufficient information in this section, we ought to review this more frequently than the stated five years due to the current changes in health and social care provision and recent cases from other regulators.

Q9. Do you consider there are any aspects of our proposals that could result in equality and diversity implications for groups or individuals based on one or more of the following protected characteristics, as defined by the Equality Act 2010 and equivalent Northern Irish legislation? If yes, please explain what could be done to change this.

- age;

- **disability;**
- **gender reassignment;**
- **marriage and civil partnership;**
- **pregnancy and maternity;**
- **race;**
- **religion or belief;**
- **sex; and**
- **sexual orientation.**

4.137 The majority of respondents (72%) felt that our revised Indicative Sanctions Policy would not result in equality and diversity implications for groups or individuals based on one or more of the Equality Act 2010's protected characteristics (or that of the equivalent Northern Irish legislation).

4.138 Broadly, organisations and individuals did not differ in their response to this question, with a marginally larger number of organisations considering that there would be no equality and diversity implications compared to individuals.

No equality and diversity implications

4.139 Most respondents who considered that our revised Indicative Sanctions Policy would cause no equality and diversity implications did not comment further.

4.140 Where these respondents provided comments, these included the following points:

- all equality and diversity implications appear to have been considered;
- protected characteristics should not influence HCPC's expectations of a health or care professional;
- panels should be mindful of conscious and unconscious bias when conducting their hearings; and
- request for clarity over how competing equality and diversity implications for registrants and service users are to be managed.

Negative equality and diversity implications

4.141 23% of respondents felt that our revised Indicative Sanctions Policy could result in equality and diversity implications. All of these respondents felt that any impact would be negative and could disproportionately affect the protected characteristics of disability, race, religion or belief, sex and sexual orientation. Those at socioeconomic disadvantage, or suffering from a health condition (including mental health) were also discussed as being negatively affected.

4.142 A respondent noted that by applying the same rules to everybody, this unavoidably results in implications for people with protected characteristics. Another highlighted that men are typically more often the subject of Fitness to Practise proceedings, and that this may also be the case for other

characteristics. It was suggested that research be undertaken, and this acknowledged within the Policy.

- 4.143 There were also concerns that registrants with particular protected characteristics, such as learning difficulties (including Asperger's, Dyspraxia and Dyslexia) and mental health conditions, could be discriminated against due to an assumption that they are unfit to practise as a result.
- 4.144 It was highlighted that many registrants are not present at hearings, and steps must be taken to ensure that they are not held back from participating in the process due to their protected characteristics or other factors (such as their socioeconomic status or mental health).
- 4.145 Several respondents felt that the Policy could make clearer how equality and diversity considerations are to be balanced against the interests of service users, and whose interests ought to be prioritised. It was noted that there may be times when registrant's and service users' rights are incompatible, such as due to religious beliefs.
- 4.146 One comment suggested we consider where particular characteristics are in the minority of a particular practice environment, and the impact this may have on those registrants.
- 4.147 A couple of respondents discussed broader health concerns. One respondent noted that the fact that the Policy does not make it clear that a strike off is not an option in health cases means that there is a risk that someone could be unfairly discriminated against as a result. Another suggested that not being able to issue a suspension for longer than a year could discriminate against long term health conditions and therefore it should be possible for panels to suspend someone for longer than a year to reflect the prognosis and management of their condition.

Positive equality and diversity implications

- 4.148 It was suggested by one respondent that, in addition to negative implications, the revised Indicative Sanctions Policy would have positive equality and diversity implications for certain groups due to its more expansive Equality and Diversity section, and its strengthened guidance on discrimination and predatory behaviour, vulnerability and sexual misconduct.
- 4.149 In particular, women, elderly people and children were seen to benefit due to being overrepresented in the categories of victims for the abovementioned concerns. More broadly, legally protected characteristics were seen to benefit as a result of the Policy highlighting the seriousness of discrimination.

Other comments

4.150 One respondent noted that it was difficult to assess the equality and diversity implications of the revised Indicative Sanctions Policy without an equality and diversity impact assessment and data analysis.

4.151 Another respondent acknowledged the need for regulators to support panels in incorporating equality, diversity and inclusion principles and that there should be an individual approach to these issues on a case by case basis to ensure all protected characteristics are taken into account.

Q10. Do you have any other comments about the revised Policy?

4.152 39% of respondents took the opportunity to add further comments to their response. Some comments contained duplicate arguments to those discussed under earlier sections of this analysis. These arguments have not been repeated here.

Positive comments

4.153 Some respondents used this question to reiterate positive comments they had about the Policy. This included comments about the overall layout and more detailed content, which means it is 'more comprehensive and user-friendly'.

Purpose of the Policy

4.154 It was suggested that we set out an intention that the Policy also be for complainants and registrants appearing before panels, as well as members of the public, to help them understand the approach panels will take.

4.155 On this basis, it was also suggested that we reference registrant's right to appeal and who panel members are.

Wording

4.156 Several respondents provided us with detailed comments regarding particular wording or terminology which we had used throughout the document. This included highlighting minor grammatical errors and typos and inconsistencies in how we had described particular terms.

4.157 There were also some broader concerns about specific wording we had used. This included use of the following terms:

- Serious - Some respondents were critical of our use of the word serious in describing the most restrictive or severe sanctions or cases. They noted all cases which require sanctions are serious, and therefore we should use alternative wording.
- Vulnerable – A respondent noted this is often defined in safeguarding guidance and therefore may be confusing.
- Service users or carers – One respondent suggested that this be expanded to make it clear that we will consider wrong doing against

members of the public on the whole as opposed to just to these groups.

- Likely to – It was noted that whenever this is used, it is constraining the panel's independence and discretion.

4.158 It was also highlighted that paragraph 9 of the Policy does not match our legislative objectives and therefore should be revised for consistency. In particular, this response raised the fact that we have no legislative objective to promote public confidence in the regulatory process.

4.159 In addition to the above, we were requested to define numerous terms throughout the document, or alternatively include a glossary of terms.

Reference to existing guidance

4.160 Several respondents suggested that we make explicit references to other HCPC documentation, such as practice notes or policies and procedures, to ensure that registrants are made aware of their rights of appeal and indicative timescales.

4.161 One respondent suggested that this could be in the form of an appendix, whilst another suggested footnotes.

Additional topics

4.162 A number of respondents suggested additional topics or sections which we could address in the Policy. This included:

- social media
- conflicts of interest (particularly in relation to roles where they are acting in a professional / commercial capacity);
- deep-seated altitudinal issues or behaviours;
- protection of the function of podiatrists / chiropractors;
- how to approach health cases;
- the appeals process and grounds for appeal;
- expected timescales for indicative sanctions and review hearings;
- more detail on sanctions for lack of competence; and
- how to handle malicious complaints.

4.163 It was also suggested that the Policy reference case law throughout.

4.164 In addition to the above, a couple of respondents highlighted that the consultation document had stated that the revised Policy would include a section on the relevance of the stage of the registrant's career. It was noted that this is not in the Policy, but ought to be taken into consideration 'in order for decision-makers to take a rounded approach to deciding on the appropriate sanction'.

Flexibility

4.165 There were some concerns that there is too much flexibility in interpretation in some areas, and therefore might result in professionals losing confidence in the regulatory process with sanctions being perceived as ‘weak, ineffective, inconsistent in their application, or indeed open to abuse’. It was suggested that we review these areas to ensure that the Policy is not vulnerable to manipulation by less scrupulous professionals.

Implementation

4.166 Several respondents commented on how this Policy ought to be implemented. Many emphasised the need for panel member training and guidance, with one arguing panel training needs to ensure they respond ‘with compassion’.

4.167 Others suggested we issue more detailed guidance for panel members. One respondent suggested this include detail on how panels consider ‘organisational and systemic factors when looking at each case’.

DRAFT

5. Our comments and decisions

5.1 We have carefully considered all the comments we received to the consultation and have used them to amend the revised Sanctions Policy. The following section explains our decisions in some key areas.

Name change

5.2 We have removed the word 'Indicative' from the title of this Policy. The amendments we have made to the Policy make it clear that panels are ultimately responsible for decisions relating to sanction, and that this Policy is only guidance. It is therefore no longer necessary to state this explicitly within the title of the document.

Proportionality

5.3 The majority of respondents supported the content on proportionality, however, in response to some suggestions for further detail, we have:

- clarified that a sanction will be proportionate if it strikes a proper balance between the need to protect the public and the rights of registrants;
- clarified that sanctions should not be punitive and should be the minimum action necessary to protect the public, having regard to the concerns and risks identified and the full facts of a case; and
- addressed how panels should approach any previous interim order when making decisions about sanction.

5.4 Whilst we don't think it is appropriate to use case studies in the Policy, we will consider using case studies as part of training.

Insight, remorse and apology

5.5 The majority of respondents agreed the Policy provided sufficient clarity on insight, remorse and apology, and how these factors may impact a panel's decision on sanction. However in response to requests for further detail, we have:

- set out the importance of panels properly evaluating these factors in the round, with regards to the full facts of a case and any wider contextual factors;
- addressed the fact that insight may be expressed during a hearing, but that it is likely to carry more weight if expressed in advance;

- included failure to raise concerns within our serious cases section; and
- made it clear in the introduction that this Policy does not ultimately constrain a panel's independence, but is intended to support fair, consistent, and proportionate decisions.

5.6 We have refrained from including any specific examples within this section. This includes how cultural differences may influence expressions of insight, remorse and apology. Panels should assess the relevance of these on a case by case basis and should apply the training they receive on equality, diversity and inclusion when making these decisions. We will however take forward respondents' comments regarding the practical issues around the application of insight remorse and apology as part of future reviews of our practice notes and supporting guidance.

Remediation

5.7 The majority of respondents felt that the Policy was sufficiently clear on remediation, and therefore we have not made significant changes to this section of the Policy.

5.8 Whilst some respondents requested it, we have decided not to include a section on the role of employers. This is because, from a regulatory perspective, the fitness to practise process and compliance with it is solely the responsibility of registrants. We have included a paragraph at the beginning of the mitigating factors section which emphasises the need for panels to consider these factors in the round, considering the full context of a particular case, and therefore we believe this sufficiently covers the point around ensuring panel members consider the influence of a registrant's employer.

5.9 Whilst we don't think it is appropriate to address what is required to evidence remediation the Policy, we will take consider these suggestions as part of future reviews of our practice notes and supporting guidance.

Aggravating factors

5.10 The majority of respondents felt that the aggravating factors detailed in the Policy were appropriate. However we received some comments suggesting we provide some additional detail. We have therefore:

- set out the importance of panels properly evaluating these factors in the round, with regard to the full facts of a case and any wider contextual factors;
- included failure to raise concerns and failure to work in partnership in our serious cases section of the Policy; and
- clarified some of the wording we have used throughout the section.

Types of cases which are aggravating

5.11 The majority of respondents agreed that the types of cases set out in the draft Policy as aggravating are appropriate. However we also received some suggestions for additional serious cases, or amendments to the wording that we have used. In light of these, we have:

- added failure to raise concerns, failure to work in partnership and violence to the list of serious cases;
- revised our examples of dishonesty;
- taken a more nuanced approach to dishonesty to reflect the fact that some dishonesty is more serious than others;
- aligned the bullet point lists of serious cases throughout the Policy with the serious cases set out in this section; and
- made some minor amendments to the overall structure and order of the section, to reflect the above changes.

5.12 One respondent had concerns about the potential for regulatory sanctions to increase the severity of criminal sanctions. The primary purpose of the fitness to practise process is to ensure that the public is protected. However, changes we have made to earlier sections make it clear that panels should ensure any sanction is proportionate, having regard to any wider circumstances. Therefore panels will need to weigh up any increase in the severity of a criminal sanction against the need to protect the public, and ensure that they impose the least restrictive sanction necessary for the purposes of public protection.

5.13 Some respondents felt the use of the term 'likely' in the Policy may fetter the panels' discretion in decision making. We have taken legal advice on this matter and do not believe this to be the case.

5.14 We have decided not to provide any detail on the type of evidence to be expected as we believe this is more appropriate within more operational guidance, such as practice notes. We will however take forward these concerns as part of future reviews of our practice notes and supporting guidance.

Detail of sanctions

5.15 Whilst the majority of respondents agreed that the detail provided against each of the sanctions available to the panel was sufficient, some respondents requested further information or clarity to which we have:

- included mediation in our list of available sanctions, and set out in greater detail what mediation is and why it is unlikely to be an appropriate action in the majority of cases;
- clarified how caution orders may be taken into account if a further allegation is made against a registrant, and highlighted that panels should, in appropriate cases, provide a clear explanation of their reasons for imposing such an order;
- provided more detail on the length of time for which a suspension order should be imposed, retaining some additional detail from the old Indicative Sanctions Policy;
- expressly stated our expectation that medical evidence will be provided in substance dependency cases ; and
- clarified when someone can be struck off for a lack of competence issue.

5.16 We note one registrant's concerns around the need typically for insight when making a suspension order. We have however decided not to amend this, as we believe the current wording makes clear that this is not in every case ('will typically exhibit') and therefore will need to be determined considering the full facts in the round.

Review hearings

5.17 The majority of respondents felt that the revised Policy provided enough information about how a panel should approach a review hearing.

5.18 We did however receive a number of comments requesting we provide some more information on matters such as the relevance of an original panel's findings or how panels approach decisions about sanction at this stage. We have decided to amend this section to:

- clarify that the review process is not a mechanism for appealing against or 'going behind' the original finding that a registrant's fitness to practise is impaired;
- explain what we mean by a review panel being unable to impose a second, additional sanction, and what effect this has on cases where there are multiple sanctions against a registrant; and
- explicitly mention the need for panels to consider the wider circumstances of a particular case in making their decision.

- 5.19 We have decided not to include any more detailed information about how the panel approaches review, as this is already contained within practice notes and the intention is not to duplicate such content within this Policy.

Equality and Diversity

- 5.20 The majority of respondents did not consider that there were equality and diversity implications associated with the revised Policy.
- 5.21 It is important to the HCPC to be a fair and inclusive regulator. We are conscious that our decisions should not discriminate against groups or individuals with protected characteristics. However, our over-arching objective is to protect the public.
- 5.22 We believe that our amendments to the proportionality section of the guidance will, to some extent, address some of the concerns regarding how equality and diversity implications will be balanced against the interests of service users. We have also clarified that a strike off cannot be considered in health cases until a registrant has been suspended for two years or more.
- 5.23 We are currently in the process of reviewing our policy to assess any equality and diversity impacts. This will provide us with another opportunity to assess whether or not there are any implications and how these can be addressed.

Other comments

- 5.24 We received some requests to amend the introduction of the Policy so that it expressly stated it was also targeted at complainants and registrants, and provided some more details on the wider hearings process. It is not appropriate to include this information in the Policy, but we will review our existing guidance and website resources to see if there is a need for additional resources in this area.
- 5.25 We have reviewed comments about terminology and content throughout the Policy, and have taken legal advice. We have updated terminology where appropriate.
- 5.26 It was suggested that we amend the section in our introduction, which explains the functions of sanctions, and instead reference our statutory objectives. We have sought legal advice relating to this paragraph, which intended to provide panels with more targeted advice about the factors they should consider against the backdrop of those objectives. This confirmed that there was no legal issues with this section of the Policy, and therefore we have decided to proceed as originally drafted.
- 5.27 We have decided not to include references to other HCPC guidance or practice notes. This is because the Policy is a standalone document. Likewise we feel it is not appropriate to cite case law in the Policy as this changes

frequently and would result in the Policy quickly becoming out of date.

- 5.28 Finally, we note the suggestions regarding training and implementation and will take these on board as part of our internal implementation plan.

DRAFT

6. List of respondents

Below is a list of all the organisations that responded to the consultation.

Abertawe Bro Morgannwg University Health Board

Academy for Healthcare Science One Voice

Association for Perioperative Practice

Association of Educational Psychologists

BLM and the Royal College of Speech and Language Therapists

British Society of Hearing Aid Audiologists

Care Quality Commission

General Medical Council

HCPTS Tribunals Advisory Committee

Health Education England

Institute of Biomedical Science

National Community Hearing Association

Professional Standards Authority

Royal College of Occupational Therapists

Royal College of Radiologists

The British and Irish Orthoptic Society

The College of Paramedics

The College of Podiatry

The Society of Sports Therapists

UNISON

Unite the Union