hpc health professions council

Council, 7 July 2010

Practice Notes

Executive summary and recommendations

Introduction

At its meeting in June 2010, the Fitness to Practise Committee considered one new and three updated practice notes and recommended that the Council approve those practice notes.

Those practice notes are as follows:

Review of Striking Off Orders: New Evidence and Article 30 (7)

This is a new practice note which provides guidance to panels on the procedure to be adopted in relation to the admission of new evidence on applications made for review under Article 30(7) of the Health Professions Order 2001. The Practice note sets out the test that practice committee panels should apply when deciding whether to grant such applications.

Conducting Hearings in Private

This practice note sets out the issues panels should consider when deciding whether all or part of a fitness to practise hearing should be held in private. The practice note has been reviewed as part of the Fitness to Practise department work plan for 2010-11 to ensure that it remains fit for purpose. It was recognised that Panels hearing cases needed some practical and general principles to apply to the interpretation of the 'public pronouncement' requirement in Article 6(1) of the European Convention on Human Rights (ECHR). Panels were sometimes uncertain about what should be pronounced when hearing (or part of it) has not been heard in public. As a result, the practice note has been amended to including guidance on announcing decisions.

Finding Fitness to Practise Impaired

This practice note has been updated to provide further information on culpability and seriousness and factors to take into consideration at the impairment stage regarding aggravation and mitigation.

Case Management and Directions

This practice note sets out the default directions that apply in fitness to practise cases. It has been updated to provide more information on the purpose of case management and directions.

Hearing Venues

This practice note has been updated to provide further guidance on the use of video links in fitness to practise proceedings.

Decision

The Council is asked to approve the practice notes:

- Review of Striking Off Orders: New Evidence and Article 30 (7);
- Conducting Hearings in Private;
- Finding Fitness to Practise Impaired;
- Case Management and Directions; and
- Hearing Venues

Background information

A number of practice notes have been produced to aid panels that make decisions relating to fitness to practise cases. Their purpose is also to assist those who appear before them on matters of law and procedure. They do not override the provisions sets out with HPC's legislation. However, the Executive do keep the practice notes under regular review and ensure that they are updated to take into account relevant case law, legislation and good practice.

Resource implications

None

Financial implications

None

Appendices

Practice Note - Review of Striking Off Orders: New Evidence and Article 30 (7);
Practice Note - Conducting Hearings in Private;
Practice Note - Finding Fitness to Practise Impaired;
Practice Note - Case Management and Directions; and
Practice Note – Hearing Venues

Date of paper

23 June 2010

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PRACTICE NOTE

Review of Striking Off Orders: New Evidence and Article 30(7)

This Practice Note has been issued by the Council for the guidance of Practice Committee Panels and to assist those appearing before them.

Introduction

Article 29(7) of the Health Professions Order 2001 (the **Order**) provides that a person who has been 'struck off' the HPC Register may not apply for restoration to the Register within five years of being struck off.

However, Article 30(7) of the Order enables a striking off order to reviewed at any time where "new evidence relevant to a striking-off order" becomes available after such an order has been made. That Article also provides for review applications to be dealt with in a manner similar to applications for restoration to the Register.

Procedure

Under Article 33 of the Order and the relevant Practice Committee procedural rules,[1] the procedure to be followed by Panels hearing Article 30(7) reviews and other restoration applications will generally be the same as for other fitness to practise proceedings, but subject to one important modification.

In cases where the application has been made by the person concerned, Rule 13(10) of the procedural rules provides for the presentation sequence to be reversed, with the applicant presenting his or her case first and the HPC responding to that case. This modification reflects the fact that the burden of proof is upon the applicant and that it is for the applicant to prove his or her case and not for the HPC to prove the contrary.

Issues to be addressed

In considering Article 30(7) review applications, Panels need to address three issues:

1. whether new evidence has become available which is relevant to the striking-off order which was made;
2. if so, whether to admit (i.e. to hear and consider) that evidence; and
3. if that evidence is admitted, having conducted a substantive review, deciding whether or not to maintain the striking-off order.

[1] the Health Professions Council (Conduct and Competence Committee) (Procedure) Rules 2003 and the Health Professions Council (Health Committee) (Procedure) Rules 2003.

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However, the need to address these three distinct issues does not mean that a Panel needs to hold more than one hearing. It is open to a Panel to address all three issues at the same hearing. Equally, it may be appropriate for a Panel to deal with the first two issues at one hearing and then undertake any substantive review at a subsequent hearing. The approach adopted will depend upon the facts of the particular case, but the latter course of action may be appropriate if, for example, witnesses need to be called to give evidence at the substantive review stage.

New evidence

"New evidence" under Article 30(7) is any evidence that, for whatever reason, was not available to the Panel which made the striking-off order but which is "relevant to" the making of that order. Whether the evidence is relevant is a matter for the judgement of the Panel conducting the review but an overly restrictive approach to the question of relevance should not be adopted and, in relation to the original decision, "new evidence" may be relevant to:

- the finding that the allegations were well-founded;
- the finding that fitness to practise is impaired; or
- the decision to impose the sanction of a striking off order.

Admitting new evidence

Whether new evidence **may** be admitted is a question of law. As with other proceedings under the Order, a Panel may admit evidence if it would be admissible in civil proceedings in the part of the United Kingdom in which the case is being heard and, in addition, Rule 10(1)(c) of the procedural rules gives Panels the discretion to admit other evidence if the Panel is satisfied that doing so is necessary in order to protect members of the public;

Whether new evidence **should** be admitted is a matter of discretion for the Panel. In exercising that discretion, the factors to be taken into account and the weight to be attached to each of them will depend upon the facts of the case but should include:

- the significance of the new evidence;
- the *Ladd v Marshall*[2] criteria for reception of fresh evidence, namely:
    - o whether with reasonable diligence the evidence could have been obtained and presented at the original hearing;
    - o whether the evidence is such that it could have an important influence on the result of the case; and
    - o whether the evidence is credible;

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[2] [1954] 1 WLR 1489

- any explanation of why the new evidence could not have been presented at the original hearing or, if it could have been, whether there is a reasonable explanation for not doing so;
- if the original hearing proceeded in the absence of the registrant, evidence that the registrant did not receive proper notice of the hearing;
- the public interest, including the impact upon others if the case is re-opened (e.g. vulnerable witnesses), the need for "finality in litigation" and the countervailing public interest factor identified in *Muscat v Health Professions Council,*[3] that there is:

  "...a real public interest in the outcome of the proceedings. It [is] important from the public perspective that the correct decision [is] reached. It is not in the public interest that a qualified health professional, capable of giving good service to patients, should be struck off [the] professional register".

The weight that is given to any new evidence will depend upon the facts of the case and the nature and importance of that evidence. However, even if a Panel finds that new evidence exists it is not obliged to admit the evidence and conduct a substantive review of the striking-off order. Whether it does so will be a matter for the Panel's judgement, having regard to all the relevant factors.

Restoration following an Article 30(7) review

As with any other restoration application, Article 33(5) of the Order provides that a person must not be restored to the register following an Article 30(7) review unless the Panel is satisfied that the applicant:

- meets the general requirements for registration; and
- is a fit and proper person to practise the relevant profession, having regard to the particular circumstances that led to striking off.

If a Panel determines that a person is to be restored to the Register following an Article 30(7) review, restoration may be unconditional or the Panel may exercise its power under Article 33(7) of the Order to replace the striking off order with a conditions of practice order.

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[3] [2009] EWCA Civ 1090

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PRACTICE NOTE

Conducting Hearings in Private

This Practice Note has been issued by the Council for the guidance of Practice Committee Panels and to assist those appearing before them.

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Introduction

Although most fitness to practice proceedings are normally held in public, in appropriate cases, Panels have the discretion to exclude the press or public from all or part of a hearing.

The decision to conduct all or part of a hearing in private is a matter for the Panel concerned and that decision must be consistent with Article 6(1) of the European Convention on Human Rights (ECHR), which provides limited exceptions to the need for hearings to be held in public.

Hearings in private

The "open justice principle" adopted in the United Kingdom means that, in general, justice should be administered in public and that:

- proceedings should be held in public;
- evidence should be communicated publicly; and
- fair, accurate and contemporaneous media reporting of proceedings should not be prevented unless strictly necessary.

Historically, concerns about the conduct of proceedings have been about the failure to sit in public and, for that reason, the common law has long required that quasi-judicial proceedings should be held openly and in public on the basis that:

> "…*publicity is the very sole of justice…and the surest of all guards against improbity. It keeps the judge…, while trying, under trial*"[1].

Similarly, Article 6(1) ECHR is directed at preventing the administration of justice in secret. It guarantees the general right to a public hearing, for the purpose of protecting the parties from secret justice without public scrutiny and to maintain confidence in the courts.[2] However, there is no corresponding general entitlement for a person to insist upon a private hearing.

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[1] *Scott v Scott* 1913 AC 417

[2] *Diennet v France* (1995) 21 EHRR 554

The right to a public hearing is subject to the specific exceptions set out in Article 6(1). Consequently, there are circumstances in which proceedings can be heard in private but, unless one of those express exceptions applies, a decision to sit in private will be a violation of the ECHR.

In line with Article 6(1) ECHR, the procedural rules for each of the HPC Practice Committees provide[3] that:

> *"At any hearing... the proceedings shall be held in public unless the Committee is satisfied that, in the interests of justice or for the protection of the private life of the health professional, the complainant, any person giving evidence or of any patient or client, the public should be excluded from all or part of the hearing;..."*

Thus, there are two broad circumstances in which all or part of a hearing may be held in private:

- where it is in the interests of justice to do so; or
- where it is done in order to protect the private life of:
  - the person who is the subject of the allegation;
  - the complainant;
  - a witness giving evidence; or
  - a service user.

Deciding to sit in private

The decision to sit in private may relate to <u>all or part</u> of a hearing. Given that conducting proceedings in private is regarded as the exception, Panels should always consider whether it would be feasible to conduct only part of the proceedings in private before deciding to conduct all of the proceedings in private.

In determining whether to hear all or part of a case in private, a Panel should also consider whether other, more proportionate, steps could be taken to achieve their aim, for example:

- anonymising information;
- redacting exhibited documents;
- concealing the identity of complainants, witnesses or service users (e.g. by referring to them by initials or as "Person A" etc.).

Panels should also be aware that, unlike many courts, they do not have the 'intermediate' option of excluding the media from or imposing reporting restrictions on a hearing conducted in public.

[3] Rule 10(1) of the HPC (Conduct and Competence) (Procedure) Rules 2003 and HPC (Health Committee) (Procedure) Rules 2003; Rule 8(1) of the HPC (Investigating Committee) (Procedure) Rules 2003

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A decision on whether to sit in private may be taken by the Panel on its own motion or following a request by one of the parties. Regardless of how the issue arises and no matter how briefly it can be dealt with, the Panel should provide the parties with an opportunity to address the Panel on the issue before a decision is made.

For example, most health allegations[4] will require Panels to consider intimate details of a registrant's physical or mental condition. A Panel is justified in hearing such a case in private in order to protect the registrant's privacy, unless there are compelling public interest grounds for not doing so; a situation which is highly unlikely to arise. The decision to hear such a case in private is unlikely to be contentious but, nonetheless, is one which the Panel should make formally and after giving the parties the opportunity to make representations.

The interests of justice

In construing its statutory powers, a Panel must take account of its obligation under the Human Rights Act 1998, to read and give effect to legislation in a manner which is, so far as possible, compatible with the ECHR.

On that basis, the provision in the procedural rules that permits a Panel to conduct proceedings in private where doing so "is in the interests of justice" must be construed in line with the narrower test set out in Article 6 ECHR, which provides that proceedings may be held in private "to the extent <u>strictly necessary</u> in the opinion of the [Panel] in <u>special circumstances</u> where publicity would prejudice the interests of justice."

The narrow scope of that Article means that the exercise of the "interests of justice" exception should be confined to situations where it is strictly necessary to exclude the press and public and where doing otherwise would genuinely frustrate the administration of justice, such as cases involving:

- public interest immunity applications;
- national security issues;
- witnesses whose identity needs to be protected; or
- a risk of public disorder.

In deciding whether to conduct proceedings in private in "the interests of justice" Panels need to have regard to broad considerations of proportionality, but a fairly pragmatic approach can be adopted. For example, it has been held that prison disciplinary proceedings may be conducted in private in the interests of justice because requiring such proceedings to be held in public would impose a disproportionate burden on the State.[5]

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[4] i.e. an allegation made under Article 22(1)(a)(iv) of the Health Professions Order 2001 that fitness to practise is impaired by reason of the registrant's physical or mental health

[5] Campbell and Fell v United Kingdom (1984) 7 EHRR 165

In order to protect the private life

As noted above, a decision to hear all or part of a case in private may be taken in order to protect the private life of:

- the person who is the subject of the allegation;
- the complainant;
- a witness giving evidence; or
- a service user.

The protection of a person's private life is not subject to the 'strict necessity' test under Article 6(1), but nonetheless Panels do need to establish a compelling reason for deciding that a hearing should be held in private. It is not justified merely to save parties, witnesses or others from embarrassment or to conceal facts which, on general grounds, it might be desirable to keep secret. The risk that a person's reputation may be damaged because of a public hearing is not, of itself, sufficient reason to hear all or part of a case in private unless the Panel is satisfied that the person would suffer disproportionate damage.

Children

Although not expressly mentioned in the procedural rules, Article 6(1) ECHR provides a broad protection for children, enabling all or part of a hearing to be held in private "where the interests of juveniles… so require". The protection of 'juveniles' is not limited to protecting their "private life" and it will rarely be appropriate for Panels to require a child to be identified or participate in public proceedings.

There is no single law in the United Kingdom which defines the age of a child. Different ages are set for different purposes and varying provision is made by the laws of England & Wales, Scotland and Northern Ireland.

The UN Convention on the Rights of the Child, which has been ratified by the United Kingdom, defines a child as a person under the age of 18. Child protection agencies across the UK all work on the basis that a child is anyone who has not yet reached their 18th birthday. Panels should regard any person under the age of 18 as being subject to the protection for 'juveniles' afforded by Article 6(1) ECHR unless they are advised that doing so would conflict with a specific legal provision which applies in the UK jurisdiction in which they are sitting and to the proceedings before them.

Public pronouncement of decisions

Article 6(1) ECHR provides for all judgments "to be pronounced publicly", but the relevant case law, notably *B v United Kingdom*[6] makes clear that, in this regard, Article 6(1) should not be interpreted literally. The Strasbourg Court has held, in the following terms, that doing so in cases where evidence has been heard in private may frustrate the primary aim of that Article:

[6] (2002) 34 EHRR 19

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"Having regard to the nature of the proceedings and the form of publicity applied by the national law, the Court considers that a literal interpretation of the terms of Article 6(1) concerning the pronouncement of judgments would not only be unnecessary for the purposes of public scrutiny but might even frustrate the primary aim of Article 6(1), which is to secure a fair hearing."

At the conclusion of any case which has been heard wholly or partly in private, the Panel will need to consider what, if any, 'public pronouncement' it will make. In doing so Panels should adopt the following approach:

1. The obligation under Article 6(1) ECHR for Panel decisions to be pronounced publicly should not be interpreted literally. Where a Panel has proper grounds for hearing all or part of a case in private, it is not obliged to follow the usual practice of delivering its full decision in public if doing so would negate or frustrate a purpose of hearing that case in private.
2. Whilst, in such cases, a Panel does not have to pronounce its full decision in public, it must consider the extent to which the evidence it has heard, its decision and the reasons for that decision can and should be made public. In doing so the Panel should take account of:
   (a) the nature of the case and reasons why it was heard in private;
   (b) the 'fair administration of justice' objective of Article 6(1) ECHR; and
   (c) the HPC's objective under Article 3(4) the Health Professions Order 2001 to protect the public.
3. Where a reason for hearing proceedings in private was to protect the identity of, or sensitive information relating to, particular individuals and that protection can be maintained by doing so, the Panel should deliver its decision in the normal manner but in an appropriately anonymised or redacted form.
4. In cases where delivery or publication of even an anonymised or redacted decision may negate or frustrate a purpose of hearing the proceedings in private, as a minimum the Panel should deliver a brief decision:
   (a) stating whether or not any allegation was well founded and the sanction (if any) it has imposed (and directing the Registrar to amend the HPC register accordingly); and
   (b) recording that the Panel's decision will be provided in writing to the Registrar who may make it available (in an appropriately anonymised or redacted form) to any person who has good grounds for seeking the information.

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PRACTICE NOTE

Finding that Fitness to Practise is "Impaired"

This Practice Note has been issued by the Council for the guidance of Practice Committee Panels and to assist those appearing before them.

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Introduction

In determining whether allegations are "well founded", Panels of the Conduct and Competence Committee and the Health Committee are required to decide whether the HPC, which has the burden of proof, has discharged that burden and proved[1] that the registrant's fitness to practise is impaired.

Impairment

An allegation is comprised of three elements, which Panels are required to consider sequentially:

1. whether the facts set out in the allegation are proved;
2. whether those facts amount to the 'ground' set out in the allegation (e.g. misconduct or lack of competence); and
3. in consequence, whether the registrant's fitness to practise is impaired.

It is important for Panels to note that the test of impairment is expressed in the present tense; that fitness to practice "is impaired". As the Court of Appeal noted in *GMC v Meadow*:[2]

> *"…the purpose of FTP procedures is not to punish the practitioner for past misdoings but to protect the public against the acts and omissions of those who are not fit to practise. The [Panel] thus looks forward not back. However, in order to form a view as to the fitness of a person to practise today, it is evident that it will have to take account of the way in which the person concerned has acted or failed to act in the past".*

Thus, although the Panel's task is not to "punish for past misdoings", it does need to take account of past acts or omissions in determining whether a registrant's present fitness to practice is impaired.

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1 to the civil standard of proof, the balance of probabilities

2 [2006] EWCA Civ 1319

Factors to be taken into account

In *Cohen v GMC*[3] the High Court stated that it was "critically important" to appreciate the different tasks which Panels undertake at each of step in the adjudicative process.

The initial task for the Panel is:

> *"to consider the [allegations] and decide on the evidence whether the [allegations] are proved in a way in which a jury… has to decide whether the defendant is guilty of each count in the indictment. At this stage, the Panel is not considering any other aspect of the case, such as whether the [registrant] has a good record or… performed any other aspect of the work… with the required level of skill".*

Subsequently, the Panel is:

> *"concerned with the issue of whether in the light of any misconduct [etc.] proved, the fitness of the [registrant] to practise has been impaired <u>taking account of the critically important public policy issues</u>".*

Those "critically important public policy issues" which must be taken into account by Panels were described by the court as:

> *"the need to protect the individual patient and the collective need to maintain confidence in the profession as well as declaring and upholding proper standards of conduct and behaviour which the public expect… and that public interest includes amongst other things the protection of patients and maintenance of public confidence in the profession".*

Thus, in determining whether fitness to practise is impaired, Panels must take account of a range of issues which, in essence, comprise two components:

1. the 'personal' component:	the current competence, behaviour etc. of the individual registrant; and
2. the 'public' component:	the need to protect service users, declare and uphold proper standards of behaviour and maintain public confidence in the profession.

As the court noted in *Cohen*, the sequential approach to considering allegations means that not every finding of misconduct etc. will automatically result in a Panel concluding that fitness to practice is impaired, as:

> *"There must always be situations in which a Panel can properly conclude that the act… was an isolated error on the part of the... practitioner and that the chance of it being repeated in the future is so remote that his or her fitness to practise has not been impaired…*

[3] EWHC 581 (Admin

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It must be highly relevant in determining if... fitness to practise is impaired that... first the conduct which led to the charge is easily remediable, second that it has been remedied and third that it is highly unlikely to be repeated".

It is important for Panels to recognise that the need to address the "critically important public policy issues" identified in *Cohen* - to protect patients, declare and uphold proper standards of behaviour and maintain public confidence in the profession - means that they cannot adopt a simplistic view and conclude that fitness to practise is not impaired simply on the basis that, since the allegation arose, the registrant has corrected matters or "learned his or her lesson".

Degree of harm and culpability

In assessing the likelihood of the registrant causing similar harm in the future, Panels should take account of:

- the degree of harm caused by the registrant; and
- the registrant's culpability for that harm.

In considering the degree of harm, Panels must consider the harm caused by the registrant, but should also recognise that it may have been greater or less than the harm which was intended or reasonably foreseeable.

The degree of harm cannot be considered in isolation, as even death or serious injury may result from an unintentional act which is unlikely to be repeated. The registrant's culpability for that harm should also be considered. In assessing culpability, Panels should recognise that deliberate and intentional harm is more serious than harm arising from the registrant's reckless disregard of risk which, in turn, is more serious than that arising from a negligent act where the harm may not have been foreseen by the registrant.

Character evidence

In deciding whether conduct "is easily remediable, has been remedied and is highly unlikely to be repeated", Panels may also need to consider 'character evidence' of a kind which, in other proceedings, might only be heard as mitigation or aggravation as to sanction after a finding had been made.

Whilst it is appropriate for Panels to do so, in admitting character evidence for the purpose of determining impairment, they must exercise caution. As the Court of Appeal noted in *The Queen (Campbell) v General Medical Council,*[4] issues of culpability and mitigation are distinct and need to be decided sequentially and:

"The fact that in some cases there will be an overlap, or that the same material may be relevant to both issues, if they arise, does not justify treating evidence which is exclusively relevant to personal mitigation as relevant to the prior question, whether [the allegation] has been established."

4 [2005] EWCA Civ 250

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In deciding whether to admit character evidence, Panels must draw a distinction between evidence which has a direct bearing on the findings it must make and evidence which is simply about the registrant's general character. The latter will only be relevant if the Panel needs to hear mitigation against sanction.

When considering impairment, Panels may properly take account of evidence such as the registrant's competence in relation to the subject matter of the allegation; the registrant's actions since the events giving rise to the allegations; or the absence of similar events. However, Panels should not normally rely on such evidence if it is disputed by the registrant and has not yet been the subject of a determination by a professional regulator or a court

Character evidence of a more general nature which has no direct bearing on the findings to be made by the Panel, ~~such as the registrant's standing in the community,~~ should not be admitted at this point. Expressions of regret or remorse will usually fall within the latter category. However, where there is evidence that, by reason of insight, that regret or remorse has been reflected in modifications to the registrant's practice, then it may be relevant to the question of impairment.

In deciding whether to admit character evidence at the impairment rather than the sanction phase, Panels need to consider whether the evidence may assist them to determine whether fitness to practise is impaired. Whilst caution needs to be exercised, an over-strict approach should not be adopted as, it is important that all evidence which is relevant to the question of impairment is considered, such as evidence as to the registrant's general competence in relation to a competence allegation.

In considering evidence of impairment, Panel's will readily recognise and be able to disregard character evidence of a general nature which is unlikely to be relevant. However, as the decision in *Cheatle v GMC*[5] highlights, Panels must be careful not to refuse to hear evidence at the impairment phase about a registrant's general professional conduct which, when heard at the sanction phase, raises doubts about their conclusion that the registrant's fitness to practise is impaired.

The sequential approach

As noted above, Panels should adopt a sequential approach to determining whether fitness to practise is impaired. In doing so Panels should act in a manner which makes it clear that they are applying the sequential approach by:

- first determining whether the facts as alleged are proved;
- if so, then determining whether the proven facts amount to the 'ground' (e.g. misconduct) of the allegation;
- if so, hearing further argument on the issue of impairment and determining whether the registrant's fitness to practise is impaired; and

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5 [2009] EWHC 645 (Admin)

- if so, hearing submissions on the question of sanction and then determining what, if any, sanction to impose.

It is important that these four steps should be and be seen to be separate but that does not mean that Panels must retire four times in every case. Whether the Panel needs to retire at each and every step in the process will depend upon the nature and complexity of the case.

Whilst there is no general obligation in law to give separate decisions on finding of fact, in more complex cases it may be necessary to do so. As the Court of Appeal stated in *Phipps v General Medical Council*:[6]

> *"every Tribunal ... needs to ask itself the elementary questions: is what we have decided clear? Have we explained our decision and how we have reached it in such a way that the parties before us can understand clearly why they have won or why they have lost?*
>
> *If in asking itself those questions the Tribunal comes to the conclusion that in answering them it needs to explain the reasons for a particular finding or findings of fact that, in my judgment, is what it should do. Very grave outcomes are at stake. Respondents ... are entitled to know in clear terms why such findings have been made."*

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[6] [2006] EWCA Civ 397

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PRACTICE NOTE

Case Management and Directions

This Practice Note has been issued by the HPC for the guidance of Practice Committee Panels and to assist those appearing before them.

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Introduction

Practice Committee Panels determine whether an allegation is well founded by means of an adversarial hearing process which is civil in nature and, consequently, to which the civil rules of evidence and the civil standard of proof ("the balance of probabilities") apply. However, in such proceedings:

- it is for the HPC to prove its case; and
- the registrant has a right against self-incrimination.

The interests of justice are best served by a process which is simple, accessible and fair and where the issues in dispute are identified at the earliest opportunity. Those objectives can be secured by case management procedures which require:

- the HPC to set out its case;
- the registrant to identify in advance those elements of the HPC's case which he or she disputes; and
- the parties to provide information to assist the Panel in the management of the case.

Expecting registrants to participate in this process is not contrary to their rights as, if they wish to deny every element of an allegation, they retain the right to do so.

Case management

Effective case management is a process which enables:

- the issues in dispute to be identified at an early stage;
- arrangements to be put in place to ensure that evidence, whether disputed or not, is presented clearly and effectively;
- the needs of any witnesses to be taken into account; and
- an effective programme and timetable to be established for the conduct of the proceedings.

Article 32(3) of the Health Professions Order 2001 requires fitness to practise proceedings to be conducted expeditiously. Panels should meet that obligation by using their case management powers to ensure that cases are dealt with fairly and justly. This includes dealing with cases in a manner which:

- is proportionate to its importance and complexity, the resources of the parties and the anticipated costs;
- encourages the engagement of and co-operation among the parties;
- avoids inflexibility or unnecessary formality in the proceedings;
- ensures, so far as practicable, that the parties are able to participate fully in the proceedings;
- makes effective use of the Panel's expertise; and
- avoids undue delay.

Directions

Article 32(3) enables Practice Committees to give directions for the conduct of cases and for the consequences of failure to comply with such directions.

Where appropriate, Panels are expected to use their powers to give Directions to ensure that, at an early stage, the parties:

- exchange documents;
- identify the written evidence they intend to introduce and the other exhibits or material they wish to present;
- identify witnesses that are expected to give oral evidence, the order in which they will do so and any special arrangements which need to be made for a witness;
- request any witness or disclosure orders which are required to compel the attendance of a witness or the production of evidence;
- draw attention to any point of law that they intend to raise which could affect the conduct of the hearing; and indicate the timetable they expect to follow.

Standard Directions

To improve the management of cases, the following Standard Directions will apply automatically as "default" directions in every case.

Panels should actively manage cases to ensure compliance with those Directions or, where a Panel considers it appropriate, the Panel may (of its own motion or at the request of one of the parties) give Special Directions for the conduct of that case which disapply, vary or supplement the Standard Directions.

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Standard Direction 1. Exchange of Documents

(1) The HPC shall, no later than 42 days before the date fixed for the hearing of the case, serve on the registrant a copy of the documents which the HPC intends to rely upon at that hearing.

(2) The registrant shall, no later than 28 days before the date fixed for the hearing of the case, serve on the HPC a copy of the documents which he or she intends to rely upon at the hearing.

(3) The parties shall, at the same time as they serve documents in accordance with this Direction, provide the Panel with five copies of those documents.

Standard Direction 2. Notice to admit facts

(1) A party may serve notice on another party requiring that party to admit the facts, or part of the case of the serving party, specified in the notice.

(2) A notice to admit facts must be served no later than 21 days before the date fixed for the hearing of the case.

(3) If the other party does not, within 14 days, serve a notice on the first party disputing the fact or part of the case, the other party is taken to admit the specified fact or part of the case.

Standard Direction 3. Notice to admit documents

(1) A party may serve notice on another party requiring that party to admit the authenticity of a document or exhibit disclosed to that party and specified in the notice.

(2) A notice to admit documents (together with those documents unless they have already been provided to the other party) must be served no later than 21 days before the date fixed for the hearing of the case.

(3) If the other party does not, within 14 days, serve a notice on the first party disputing the authenticity of the documents or exhibits, the other party is taken to accept their authenticity and the serving party shall not be required to call witnesses to prove those documents or exhibits at the hearing.

Standard Direction 4. Notice to admit witness statements

(1) A party may serve notice on another party requiring that party to admit a witness statement disclosed to that party and specified in the notice.

(2) A notice to admit a witness statement (together with that statement unless it has already been provided to the other party) must be served no later than 21 days before the date fixed for the hearing of the case.

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(3) If the other party does not, within 14 days, serve a notice on the first party requiring the witness to attend the hearing and give oral evidence (and thus be available for cross examination), the other party is taken to accept the veracity of the statement and the serving party shall not be required to call the witness to give evidence at the hearing.

Standard Direction 5. Withdrawal of admissions

The Panel may allow a party, on such terms as it thinks just, to amend or withdraw any admission which that party is taken to have made in relation to any notice served on that party under Standard Directions 2 to 4.

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[PRACTICE] COMMITTEE

NOTICE TO ADMIT [FACTS] [WITNESS STATEMENTS] [AUTHENTICITY OF DOCUMENTS]

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To: [name and address of party]

TAKE NOTICE that in the proceedings relating to [identify proceedings] [the HPC or name of other party], for the purpose of those proceedings only, requires you to admit:

[the following fact(s):

	RESPONSE*
1.	Admit/Dispute
2.	Admit/Dispute
3.	Admit/Dispute]

[the authenticity of the following document(s):

	RESPONSE*
1.	Admit/Dispute
2.	Admit/Dispute
3.	Admit/Dispute]

[the statement(s) made by the following witness(es), [a copy][copies] of which [is][are] are enclosed with this notice:

	RESPONSE*
1.	Admit/Dispute
2.	Admit/Dispute
3.	Admit/Dispute]

* delete as appropriate

AND FURTHER TAKE NOTICE that, if you do not within 14 days of the date of this notice serve a notice on [the HPC or name of other party] disputing [any of those facts] [the authenticity of any of those documents] [any of those witness statements], they shall be admitted by you for the purpose of those proceedings.

Signed: ______________________________ Date: ___________________

For [the HPC or name of other party]
[Address]

DO NOT IGNORE THIS NOTICE

If you dispute [any of the facts][the authenticity of any of those documents][any of those witness statements] set out above you should respond to this Notice (by striking out "Admit" or "Dispute" as appropriate) and returning a copy of it to the address shown above by no later than [date].

If you fail to respond to this Notice in the time allowed, you will only be able to [dispute those facts][dispute the authenticity of those documents][ask for the witnesses who made those statements to attend and give oral evidence] with the leave of the Panel.

RESPONSE

The [facts] [authenticity of the documents][witness statements] set out above are admitted or disputed by [the HPC or name of other party] as I have indicated above.

Signed: ______________________________ Date: ___________________

For [the HPC or name of other party]
[Address]

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hpc health professions council

PRACTICE NOTE

Hearing Venues

This Practice Note has been issued by the Council for the guidance of Practice Committee Panels and to assist those appearing before them.

Introduction

Article 22(7) of the Health Professions Order 2001 provides that:

> *"Hearings and preliminary meetings of the Practice Committees at which the person concerned is entitled to be present or to be represented are to be held in –*
>
> *(a) the United Kingdom country in which the registered address of the person concerned is situated; or*
>
> *(b) if he is not registered and resides in the United Kingdom, in the country in which he resides; and*
>
> *(c) in any other case in England."*

Panels have a discretion as to exactly where a hearing is held within the home country of the registrant concerned and hearings do not need to be confined to Belfast, Cardiff, Edinburgh and London. The HPC adopts a flexible approach to hearing venues and, subject to the finite resources and funds available, seeks to accommodate the reasonable needs of all those who must attend hearings.

The HPC has dedicated video conferencing facilities at its offices in London. In certain cases panels may determine that it is appropriate for evidence to be given via video-link. Such circumstances may include (but are not limited to) occasions where the witness is based outside of the United Kingdom, has accessibility difficulties and for vulnerable witnesses.

Procedure

Wherever possible, hearing venues will be dealt with as an operational matter by the Fitness to Practise Department following appropriate consultation.

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If agreement cannot be reached, the Panel Chair may be asked to give directions as to the venue for the hearing, usually electronically. In exceptional circumstances, the Panel Chair may need to conduct a preliminary hearing for this purpose.

In reaching a decision, the Panel Chair should take the following factors into account:

- the personal circumstances of the registrant concerned, for example, whether the registrant is the carer of elderly relatives or young children;
- the needs of witnesses, particularly where vulnerable witness orders have been made or witnesses are disabled or elderly;
- the effect that the location of the hearing may have on the quality of evidence given by witnesses at the hearing;
- the number of witnesses and their respective locations. Including the financial implications of witness travel and the impact the hearing may have on the services provided by witnesses from a single organisation;
- the financial implications for both the HPC and the registrant concerned, including whether, in the opinion of the Panel, a decision in favour of the HPC would cause undue hardship to the registrant concerned.

This is not intended to be an exhaustive list of the factors which need to be considered by Panels in reaching their decision.

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