hpc health professions council

Council – 31 March 2011

Practice Notes

Executive summary and recommendations

Introduction
At its meeting in February 2011, the Fitness to Practise Committee considered seven updated practice notes and recommended that the Council approve those practice notes. Details of the changes to these practice notes are detailed below.

Adjournments and Postponements
The Adjournments and Postponements Practice Note sets provides guidance on the procedure to follow when an application for a postponement or adjournment request of a final hearing is made. It is has reviewed and updated accordingly to reference the process in relation to applying for a postponement or adjournment of a substantive review hearing or an interim order hearing.

Practice notes with reference to the burden of Proof
At a recent Legal assessor review day, a number of the attendees raised that the case law as it relates to finding fitness to practise impaired had 'firmed up' since the case of ***CRHP v. GMC and Biswas [2006] EWHC 464 (Admin).*** *Biswas* provides that

> *'the burden of proof is the civil 'balance of probabilities' and only applies to finding of facts. Whether those facts amount to the statutory ground of the allegation and constitute impairment is not a matter which needs to be 'proved' but is a matter of judgement for the Panel.'*

The accepted view now is that regulators only have to discharge the burden of proof in relation to proving the facts of the allegation. The statutory ground and the issue of impairment are matters for the judgement of the Panel based upon the proven facts

As a public authority HPC (as with all regulators), still need to make decisions on whether to take matters forward looking at fitness to practise 'in the round' (i.e looking at the facts, the statutory grounds and whether it is likely to impairment) and present the case aw a whole. However, the *Biswas* decision does mean that a few Practice Notes required some limited changes. These practice notes are:

- Case to Answer
- Case Management and Directions
- Finding Fitness to Practise is "Impaired"
- Drafting Fitness to Practise Decisions

The Practice notes Finding Fitness to Practise is “Impaired” and Drafting Fitness to Practise Decisions have also been further reviewed to take into account ***Brennan v Health Professions Council –[2011] EWHC 41 (Admin)*** and other learning that has arisen through the course of the year.

Disposal of Cases via Consent
The Executive has undertaken a review of the Practice note – Disposal of Cases via Consent and made some minor changes to the document to ensure its clarity.

Equal Treatment
Following the decision of the Fitness to Practise Committee at its meeting in October 2011, the Executive has undertaken a review of the Practice Note - Equal Treatment on the direction of the Committee. A number of changes have been made to that document and a marked up version is attached to this paper.

Decision
The Council is asked to approve the following practice notes:

- Adjournments and Postponements
- Finding Fitness to Practise is “Impaired”
- Case to Answer
- Case Management and Directions
- Drafting Fitness to Practise Decisions
- Disposal of Cases via Consent
- Equal Treatment

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 – Adjournments and Postponements
Practice Note – Finding Fitness to Practise is “Impaired”
Practice Note – Case to Answer
Practice Note – Case Management and Directions
Practice Note – Drafting Fitness to Practise Decisions (and Conditions Bank)
Practice note – Disposal of Cases via Consent
Practice Note – Equal Treatment

Date of paper
21 February 2011

hpc health professions council

PRACTICE NOTE

Postponement and Adjournment of Proceedings

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 32(3) of the Health Professions Order 2001[1] (the **Order**) requires Panels to conduct fitness to practise proceedings expeditiously and it is in the interest of all parties, and the wider public interest, that allegations are heard and resolved as quickly as possible. Where a time and venue for a hearing have been set, Panels should always aim to proceed as scheduled. Accordingly, the parties and their representatives should also be ready to proceed.

Panels proceedings should not be postponed or adjourned unless it is shown that failing to do so will create a potential injustice. Requests for postponements or adjournment which are made without sufficient and demonstrated reasons to justify them should not be granted.

Postponements and adjournments

In relation to HPC fitness to practice proceedings, a distinction is made between a postponement and an adjournment in that:

- **postponement** is an administrative action which may be taken on behalf of a Practice Committee by HPC's Head of Adjudication[2] at any time up to 14 days before the date on which a hearing is due to begin; and

- **adjournment** is a decision for the Panel or the Panel Chair, taken at any time after that 14 day limit has passed or once the proceedings have begun or are part heard.

Postponements

An application for a postponement should be made in writing (letter, email or fax) to the Head of Adjudication at the HPC at least days 14 before the hearing date. The application should set out the background to and reasons for the request and be supported by relevant evidence.

---

[1] SI 2002/254

[2] or in the Head of Adjudication's absence, any person nominated by the Head of Adjudication (other than a person who has been involved in the investigation of the case)

Draft

In considering postponement requests, the Head of Adjudication will consider whether, in all the circumstances the request is reasonable, taking into account:

- the reasons for the request;
- the length of notice that was given for the hearing;
- the time remaining before the hearing is due to commence; and
- whether the case has previously been postponed.

If a postponement application is refused, the Head of Adjudication will advise the applicant to attend the hearing. The applicant and any representative must do so ready to proceed, but subject to the right to apply to the Panel for an adjournment.

Where a postponement is granted, the Head of Adjudication will seek to agree with the parties suitable alternative dates for the hearing or, where that is not possible, to agree the arrangements which need to be put in place in order for the case to be re-listed for hearing.

Postponements should NOT be granted for hearings in respect of:

- **an application for an interim order under Article 31 of the Order (which inevitably take place at short notice); or**
- **the review of a Practice Committee order made under Article 30 of the Order, where the effect of postponement would be to permit the order to expire without it being reviewed.**

Adjournments

Applications for adjournment should be made in writing as early as possible and, other than in exceptional circumstances, no later than seven days prior to the scheduled date for the hearing. The application must specify the reasons why the adjournment is sought and be accompanied by supporting evidence, such as medical certificates.

Where time permits, adjournment applications should be put before the Panel prior to the scheduled hearing date, together with any submissions from the HPC on the application. The Panel's decision should then be communicated to the parties in writing.

Where, due to exceptional circumstances, an application for an adjournment is made less than five working days prior to the date for the hearing, it is unlikely to be considered by the Panel until that scheduled hearing date.

Panels should control and decide all requests for adjournments. In determining whether to grant an adjournment, Panels should have regard to the following factors, derived from the decision in *CPS v Picton* (2006) EWHC 1108:

- the general need for expedition in the conduct of proceedings;

Draft

- where an adjournment is sought by HPC, the interest of the registrant in having the matter dealt with balanced with the public interest;
- where an adjournment is sought by the registrant, if not granted, whether the registrant will be able fully to present his or her defence and, if not, the degree to which the ability to do so is compromised;
- the likely consequences of the proposed adjournment, in particular its likely length and the need to decide the facts while recollections are fresh;
- the reason that the adjournment is required. If it arises through the fault of the party asking for the adjournment, that is a factor against granting the adjournment, carrying weight in accordance with the gravity of the fault. If that party was not at fault, that may favour an adjournment. Likewise if the party opposing the adjournment has been at fault, that will favour an adjournment;
- the history of the case, and whether there have been earlier adjournments and at whose request and why;

The factors to be considered cannot be comprehensively stated but will depend upon the particular circumstances of each case, and they will often overlap. The crucial factor is that the registrant is entitled to a fair hearing.

The Panel will exercise its discretion judicially, the crucial test being that the registrant is entitled to a fair hearing but that the convenience of the parties or their representatives is not a sufficient reason for an adjournment.

Unless advised by the Panel that an adjournment has been granted, the parties and their representatives must attend the Panel ready to proceed.

Communication

So far as possible, communications relating to postponements and adjournments should be provided in electronic form in order to ensure that they are dealt with as expeditiously as possible.

Supporting evidence

Applications for postponements or adjournments must be supported by proper evidence and both the Head of Adjudication and Panels should adopt a strict approach to evaluating such evidence.

For example, claims that a person is unfit to attend a hearing should be supported by specific medical evidence to that effect. Medical certificates which simply state that a person is “off work” or “unfit to work” should generally be regarded as insufficient to establish that a person is too ill to attend a hearing. An application for a postponement or adjournment on medical grounds should normally be supported by a letter from a doctor which expressly states that the person concerned is too ill to attend a hearing.

March 2011

Draft

hpc health professions council

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.

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, **in relation to the facts alleged**, has discharged that burden and ~~proved that~~**, in consequence, whether** the registrant’s fitness to practise is impaired.

The burden of proof is the civil ‘balance of probabilities’ and only applies to findings of fact. Whether those facts amount to the statutory ground of the allegation and constitute impairment is not a matter which needs to be ‘proved’ but is a matter of judgement for the Panel.[1]

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 **statutory** 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”.*

[1] CRHP v. GMC and Biswas [2006] EWHC 464 (Admin).
[2] [2006] EWCA Civ 1319

Draft for Approval

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.

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 taking account of the critically important public policy issues".*

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:

[3] [2008] EWHC 581 (Admin

Draft for Approval

"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…

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".

As indicated in *Brennan v HPC*,[4] in cases where a Panel makes a finding of impairment or imposes a sanction solely on the basis of the 'public' components of an allegation, it must explain the reasons for that decision. It is insufficient simply to recite that, for example, it is necessary in order to maintain public confidence in the profession.

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.

[4] [2011] EWHC 41 (Admin)

Draft for Approval

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,*[5] 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."*

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, 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*[6] 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.

---

5 [2005] EWCA Civ 250

6 [2009] EWHC 645 (Admin)

Draft for Approval

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
- 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*:[7]

> *"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."*

March 2011

Draft for Approval

[7] [2006] EWCA Civ 397

hpc health professions council

PRACTICE NOTE

"Case to Answer" Determinations

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 26(3) of the Health Professions Order 2001[1] provides that, where an allegation is referred to the Investigating Committee, it shall consider, in the light of the information which it has been able to obtain and any representations or other observations made to it, whether in its opinion, there is a "case to answer".

The "realistic prospect" test

In deciding whether there is a case to answer, the test to be applied by a Panel, based upon the evidence before it, is whether there is a "realistic prospect" that the HPC will be able to establish at a hearing that the registrant's fitness to practise is impaired.

That test (which in some proceedings is also known as the "real prospect" test) is relatively simple to understand and apply. As Lord Woolf MR noted in *Swain v Hillman*[2]:

> *"The words 'no real prospect of succeeding' do not need any amplification, they speak for themselves. The word 'real' distinguishes fanciful prospects of success… or, as [Counsel] submits, they direct the court to the need to see whether there is a "realistic" as opposed to a "fanciful" prospect of success."*

Applying the test

In determining whether there is a case to answer, the Panel must decide whether, in its opinion, there is a "realistic prospect" that the HPC (which has the burden of proof)[3] will be able to ~~establish~~ ***prove the facts alleged and, in consequence, that a determination will be made*** that the registrant's fitness to practise is impaired.

The test does not call for substantial inquiry or require the Panel to be satisfied on the balance of probabilities. The Panel only needs to be satisfied that there is a

[1] SI 2002/254

[2] [2001] 1 AllER 91

[3] **That burden of proof only applies to findings of fact. Whether those facts amount to the statutory ground and constitute impairment is a matter of judgement for the Panel conducting the final hearing *CRHP v. GMC and Biswas [2006] EWHC 464 (Admin).***

Draft for Approval

realistic or genuine possibility (as opposed to remote or fanciful one) that the HPC will be able to establish its case.

In reaching its decision, a Panel:

- should recognise that it is conducting a limited, paper-based, exercise and not seek to make findings of fact on the substantive issues;
- may assess the overall weight of the evidence but should not seek to resolve substantial conflicts in that evidence. The assessment of the relative strengths of competing evidence can only be properly undertaken at a full hearing.

It is for the HPC to prove ~~its case~~ ***the facts alleged***. Registrants are not obliged to provide any evidence but many will do so voluntarily and any such evidence should be considered by the Panel. However, it will rarely resolve matters at this stage, as it will typically conflict or compete with the HPC's evidence and, therefore, will need to be tested at a hearing.

In applying the test Panels need to take account of the wider public interest, including protection of the public and public confidence in both the regulatory process and the profession concerned.

The test applies to the whole of the allegation, that is:

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

In the majority of cases, the evidence will relate solely to the facts and, typically, this will be evidence that certain events involving the registrant occurred on the dates, and at the places and times alleged.

It will be rare for separate evidence to be provided on the 'statutory ground' or the issue of impairment, ~~and~~ as these ~~will largely be a~~ ~~matter of inference~~ ***are matters of judgement*** for the Panel. ***For example, does*** ~~, such as whether~~ the factual evidence suggests that the service provided by the registrant fell below the standard expected of a reasonably competent practitioner or that the registrant's actions constitute misconduct when judged against the established norms of the profession. In reaching that decision the Panel may wish to have regard to the HPC Standards of Proficiency or Standards of Conduct, Performance and Ethics.

Impaired fitness to practise

In deciding whether there is a realistic prospect that fitness to practise is impaired Panels should consider the nature and severity of the allegation.

Draft for Approval

People do make mistakes or have lapses in behaviour and HPC would not be enhancing public protection by creating a ‘climate of fear’ which leads registrants to believe that any and every minor error or isolated lapse will result in an allegation being pursued against them.

Determining, on the basis of a limited, paper-based exercise, whether ~~the HPC has~~ ***there is*** a realistic prospect of establishing impairment can sometimes be difficult. A useful starting point for Panels is to consider whether the HPC’s case includes evidence which, if proven, would show that the registrant does not meet a **key requirement** of being fit to practise, in the sense that the registrant:

- is not competent to perform his or her professional role safely and effectively;
- fails to establish and maintain appropriate relationships with service users, colleagues and others; or
- does not act responsibly, with probity or in manner which justifies the public’s trust and confidence in the registrant’s profession.

A presumption of impairment should be made by Panels in cases where the evidence, if proven, would establish:

- serious or persistent lapses in the standard of professional services;
- incidents involving:
  - harm or the risk of harm;
  - reckless or deliberate acts;
  - concealment of acts or omissions, the obstruction of their investigation, or attempts to do either;
- sexual misconduct or indecency (including any involvement in child pornography);
- improper relationships with, or failure to respect the autonomy of, service users;
- violence or threatening behaviour;
- dishonesty, fraud or an abuse of trust;
- exploitation of a vulnerable person;
- substance abuse or misuse;
- health problems which the registrant has but has not addressed, and which may compromise the safety of service users;
- other, equally serious, activities which undermine public confidence in the relevant profession.

No case to answer

A decision that there is “no case to answer” should only be made if there is no realistic prospect of ~~the HPC proving its case~~ ***a finding of impairment being made***

Draft for Approval

at a final hearing, for example, because there is insufficient evidence to substantiate the allegation, ~~or~~ the available evidence is manifestly unreliable or discredited ***or the evidence, even if found proved, would be insufficient for another Panel to make a finding of impairment.*** In cases where there is any element of doubt, Panels should adopt a cautious approach at this stage in the process and resolve that conflict by deciding that there is a case to answer.

March 2011

Draft for Approval

hpc health professions council

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.

Draft for Approval

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; prove ~~its case~~ ***the facts alleged***;[1] 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;

[1] **The burden of proof only applies to findings of fact. Whether those facts amount to the 'statutory ground' of the allegation (e.g. misconduct) and constitute impairment is a matter of judgement for the Panel conducting the final hearing: *CRHP v. GMC and Biswas [2006] EWHC 464 (Admin).***

- 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.

Draft for Approval

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.

Draft for Approval

(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.

March 2011

Draft for Approval

hpc health professions council

[PRACTICE] COMMITTEE

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

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

Draft for Approval

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]

Draft for Approval

hpc health professions council

PRACTICE NOTE

Drafting Fitness to Practise Decisions

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

TO ASSIST PANELS IN THE DRAFTING OF CONDITIONS OF PRACTICE ORDERS, A 'BANK' OF DRAFT CONDITIONS IS ANNEXED TO THIS PRACTICE NOTE

Draft for Approval

Introduction

Practice Committee Panels have a legal duty to provide reasons for their decisions, both at common law and as a facet of the right to a fair hearing which is protected by Article 6 of the European Convention on Human Rights.

Beyond that legal duty, Panels have an obligation to explain the decisions they reach and the reasons for them, as part of the open and transparent processes which the HPC seeks to operate.

Background

The decision in *Threlfall v General Optical Council* [2004] EWHC 2683 (Admin) identified that Practice Committees have a duty to provide adequate reasons for their decisions and that the duty arises:

- at common law; on the basis that a Panel must give adequate reasons for its decision in order to enable the registrant concerned to exercise the right of appeal. Without knowing the basis for the decision, that right of appeal may be rendered illusory and both the parties and the appellate court must be able to understand why the Committee reached its decision.

- as part of the Article 6 ECHR obligations to provide a fair hearing associated with the determination of civil rights and obligations. In deciding whether the requirements of Article 6 are met, the whole of the proceedings, including the availability of an appeal to the courts, must be considered. Inevitably, the effectiveness of the right of appeal may depend on the Panel providing adequate reasons.

- as a practical consideration, in that Panels should give adequate reasons for their decisions to enable CHRE to consider whether it wishes to challenge the decision using its powers under section 29 of the NHS Reform and Healthcare Professions Act 2002.

What should a decision include?

Whatever decision a Panel reaches, it should be recorded in a manner which explains what the Panel decided and, just as importantly why it did so. The decision should be written in a form that enables the reasonably intelligent reader to understand the issues before the Panel, its findings and decision and the reasons for them without the need to refer to any other materials.

The decision should include:

- **any preliminary matters dealt with by the Panel;**
- **a summary of the background to the case. This should be set out in sufficient detail to enable a person to read the decision and understand the nature and circumstances of the allegations without the to refer to other documents;**
- the findings of fact made by the Panel. Allegations are based upon facts and the Panels should identify the facts which were undisputed, the facts in dispute and in relation to latter, the findings of fact which it made and why;
- the conclusions reached by the Panel on any submissions made by the parties;
- whether or not the facts amount to the **statutory** ground(s) set out in the allegation and why. For example, why the findings **are considered** to amount to misconduct, lack of competence etc.;
- in consequence, **whether or not the Panel has** determined that fitness to practise is impaired and why. **In cases where impairment is not found, the Panel should nonetheless be clear about whether the facts were found proved on the statutory ground(s) found to be met;**
- any advice that was received from the Legal Assessor and whether that advice was accepted. It is particularly important for Panels to record in detail any decision to disregard the advice given by a Legal Assessor and the reasons for so doing;
- any evidence given by way of mitigation or aggravation and the findings that the Panel made on the basis of that evidence;
- any sanction that was imposed, why it was appropriate[1] and, if it does not accord with the HPC Indicative Sanctions Policy, the specific circumstances of the case which justify that deviation;
- any other procedural issues such as requests for adjournments or Human Rights Act challenges and how they were dealt with.

Draft for Approval

[1] **As indicated in *Brennan v HPC* ([2011] EWHC 41 (Admin)), where a sanction is imposed for public interest reasons, such as maintaining professional standards or upholding public confidence in the profession concerned, the Panel must explain the reasons for that sanction and not simply recite that it is being done for those public interest purposes.**

In cases where a Panel has ruled that all or part of the proceedings are to be conducted in private, careful consideration needs to be given to the information which is included in any public decision issued at the conclusion of those proceedings.

The case law of the Strasbourg Court, notably *B v United Kingdom*[2] makes clear that the Article 6(1) requirement for decisions "to be pronounced publicly" should not be interpreted literally and that doing so in cases where evidence has been heard in private may frustrate the primary aim of that Article:

This issue is dealt with in more detail in the HPC Practice Note 'Conducting Hearings in Private'.

Drafting Style

The length and detail of decisions will vary according to nature and complexity of case before the Panel and the decision it has reached. However, Panels should seek to establish a consistent approach to drafting decisions and, so far as possible, they should be comprehensive and written in plain English.

Decisions should:

- be written in clear and unambiguous terms; avoiding jargon, technical or esoteric language or explaining any which must be used;
- be written using short sentences and short paragraphs;
- avoid complicated or unfamiliar words and use precise but everyday language (e.g. "start" instead of "commence);
- be written for the target audience, so that the registrant concerned, any complainant and other interested parties can understand the decision reached and the reasons for it;
- be self-contained so that, without any other materials, the reasonably intelligent and literate reader is able to understand the case before the Panel, the decision it reached and why it did so;

Drafting Orders

Where a Panel finds a registrant's fitness to practise is impaired and imposes a sanction upon the registrant, its decision must clearly set out the Order which it has made.

Caution Orders, Suspension Orders and Striking Off Orders should all be expressed in a form which is addressed to the Registrar who, in accordance with the Panel's decision, must annotate or amend the Register from the date that the order takes effect (i.e. once any period for making an appeal has expired, or any such appeal has concluded or been withdrawn). For example:

---

[2] (2002) 34 EHRR 19

Draft for Approval

Caution Order

ORDER: That the Registrar is directed to annotate the register entry of [name] with a caution which is to remain on the register for a period of [three] year(s) from the date this order comes into effect.

Suspension Order

ORDER: That the Registrar is directed to suspend the registration of [name] for a period of [x] year(s) from the date this order comes into effect.

Striking Off Order

ORDER: That the Registrar is directed to strike the name of [Registrant] from the Register on the date this order comes into effect.

The opening paragraph of any Conditions of Practice Orders should similarly be addressed to the Registrar, but making appropriate reference to the registrant, and the detailed conditions should be written in the second person so that they are clearly addressed to the registrant concerned. For example:

Conditions of Practice

ORDER: The Registrar is directed to annotate the Register to show that, [for a period of [time]] from the date that this Order comes into effect ("the Operative Date"), you, [name of registrant], must comply with the following conditions of practice:

1. Within [time period] of the Operative Date you must etc.....

Drafting Conditions of Practice

From the above examples it is clear that the drafting of Conditions of Practice Orders is the more difficult task. This is especially so given that Orders do not take effect on a fixed date, but only when the relevant appeal period has expired or any appeal has been disposed of or withdrawn.

For the other forms of Order, which simply run for a fixed period of years, this does not cause much difficulty. However, conditions of practice inevitably involve periodic compliance arrangements. If conditions of practice are to work, then the dates on which evidence of compliance is to be sent to the HPC must be clear and certain, so that appropriate follow up action can be taken in respect of those who fail to comply. The simplest means of overcoming this difficulty is to define the date on which the Order finally takes effect as its "Operative Date" and then to relate all other dates and time limits to that Operative Date.

Draft for Approval

In drafting Conditions of Practice Orders, Panels also need to consider the following three issues:

- **are the conditions realistic?**

  Will the registrant be able to comply with these conditions; are they proportionate; do they provide the necessary level of public protection; and will they work if the registrant changes jobs?

  For example, if the conditions require the registrant to improve treatment premises, facilities or equipment, they should only be set at the standard reasonably required of a typical practitioner from the profession or specialism concerned. In setting conditions of this kind, Panels should take account of any relevant guidance issued by professional bodies or similar organisations.

  Equally, if conditions have been prepared with the support of the registrant's employer and are thus job-related, it may be necessary to include a condition requiring the registrant to inform HPC of any job changes.

- **are the conditions verifiable?**

  Do they impose obligations that require straightforward 'yes' or 'no' compliance decisions; do they simply require the registrant to do something or must they also prove it has been done; can the due dates be clearly determined?

  For example, conditions requiring a registrant not to deal with certain types of case or service user may not need ongoing proof of compliance but many other conditions will need to be supported by evidence, such as periodic written confirmation that the registrant is continuing to undergo alcohol dependency treatment. Where evidence is required it should be in a form which allows 'yes' or 'no' decisions to be made. Conditions requiring registrants to submit documents or records to the HPC for assessment or audit will not meet this requirement.

  In cases where compliance with conditions may need to be verified by HPC by means of inspection - for example, conditions to improve premises, facilities or record keeping systems or chaperoning arrangements - the Panel's order should include a specific requirement that the registrant must allow and co-operate with inspection by the HPC upon reasonable notice.

- **are the conditions directed at the right person?**

  Do the conditions clearly impose obligations on the registrant; are any conditions mistakenly directed at someone else?

  It is for the registrant to comply with the conditions which have been imposed and, in drafting orders, care must be taken not to inadvertently

Draft for Approval

impose a condition on a third party, such as an employer or GP. There is a significant difference between "you must submit to the Committee evidence from the doctor treating you that..." and "your GP must submit to the Committee evidence that..."

In addition, care must be taken in determining exactly what evidence should be sought from third parties, to ensure that registrants are not asked to provide evidence which they cannot obtain. For example, many alcohol or drug dependency support and self-help organisations may be willing to confirm that a person is attending meetings etc. but, as a matter of policy will not comment further.

Conditions Bank

Example conditions of practice are provided in the 'Conditions Bank'' set out in the Annex to this Practice Note. Those conditions are not intended to be either prescriptive or definitive but are intended to assist Panels in the drafting of Conditions of Practice Orders.

Advice from the Legal Assessor

Panels are reminded that Article 34(3) of the Order allows Legal Assessors to assist the Panel in drafting their decisions. Panels should take advantage of the expertise Legal Assessors can offer in helping them to draft decisions, especially in relation to decisions which include conditions of practice orders.

The Legal Assessor's role is to assist in the drafting of the decision, not in the making of that decision. Panels should have established a clear outline of their, decision, including their findings they have made in relation to the evidence and **their determination** on the issue of impairment, before asking the Legal Assessor to join them to assist in drafting their decision.

It is important for Panels to ensure that no confusion arises on the part of the registrant or any other party about the role of the Legal Assessor in that part of the process. Before retiring to make their decision, Panels should invite the Legal Assessor to explain this aspect of their role to the parties. Alternatively, the Panel should return from its deliberations and explain to the parties that it has reached a decision and that the Legal Assessor is now being asked to assist the Panel in the drafting of that decision.

March 2011

Draft for Approval

ANNEX

CONDITIONS BANK

A. INTRODUCTORY PARAGRAPH

ORDER: The Registrar is directed to annotate the HPC Register to show that, [for a period of [time]] from the date that this Order takes effect ("the Operative Date"), you, [name of registrant], must comply with the following conditions of practice:

1. [set out conditions as numbered paragraphs]

B. EDUCATION AND TRAINING REQUIREMENTS

1. Within [time period] of the Operative Date you must (1) satisfactorily complete [name of course etc] and (2) forward a copy of your results to the HPC.

2. Within [time period] of the Operative Date you must (1) take and pass [name of examination etc.] and (2) forward a copy of your results to the HPC.

3. Before undertaking [type of practice, work or procedure] you must (1) satisfactorily complete [a period of supervised practice/refresher training/ examination etc.] and (2) forward a copy of your results to the HPC.

C. PRACTICE RESTRICTIONS

4. You must confine your professional practice to [set out restriction]

5. You must not carry out [type of work or procedure][unless directly supervised by a [type of person]].

6. You must maintain a record of every case where you have undertaken [type of work or procedure] [which must be signed by [supervisor]] and you must:

   A. provide a copy of these records to the HPC on a [monthly etc.] basis, the first report to be provided within [time] of the Operative Date, or confirm that there have been no such cases during that period; and

   B. make those records available for inspection at all reasonable times by any person authorised to act on behalf of the HPC.

7. You must not undertake [work/consultations] with [type(s) of service user]

Draft for Approval

8. You must not undertake intimate examinations of service users.

9. You must not undertake any out-of-hours work or on-call duties [other than at [location]][without the prior approval of the HPC].

10. You must not [prescribe][administer][supply][possess][any or type of prescription medicines]

11. You must not prescribe [any or type of prescription medicines] for [yourself/a member of your family/etc.].

12. You must not act as a supplementary prescriber.

D CHAPERONES

13. Except in life threatening emergencies, you must not be involved in the direct provision of services to [female service users/male services users/service users under the age of X etc.] without a chaperone being present.

14. You must maintain a record of:

    A. every case where you have be involved in the direct provision of services to [female service users etc.], in each case signed by the chaperone; and

    B. every case where you have be involved in the direct provision of services to such service users in a life-threatening emergency and without a chaperone being present.

15. You must provide a copy of these records to the HPC on a [monthly etc.] basis, the first report to be provided within [time] of the Operative Date or, alternatively, confirm that there have been no such cases during that period and must make those records available for inspection at all reasonable times by any person authorised to act on behalf of the HPC.

E. SUPERVISION REQUIREMENTS

16. You must place yourself and remain under the supervision of [workplace supervisor, medical supervisor etc.] approved by the HPC, attend upon that supervisor as required and follow their advice and recommendations.

Draft for Approval

F. TREATMENT REQUIREMENTS

17. You must register with and remain under the care of a [general practitioner/occupational health specialist etc] and inform him or her that you are subject to these conditions.

18. You must inform your [general practitioner/occupational health specialist etc] about these conditions of practice and authorise that person to provide the HPC with information about your health and any treatment you are receiving.

19. You must keep your professional commitments under review and limit your professional practice in accordance with the advice of your [general practitioner/occupational health specialist/therapist].

20. You must cease practising immediately if you are advised to do so by your [general practitioner/occupational health specialist/therapist].

G SUBSTANCE DEPENDENCY

21. You must comply with arrangements made on behalf of the HPC for the testing [including unannounced testing], of your [breath, blood, urine, saliva, hair] for the [recent and/or long-term] ingestion of alcohol and other drugs.

22. You must attend regularly meetings of [Alcoholics Anonymous/Narcotics Anonymous] or any other support group approved by the HPC and must provide the HPC with evidence of your attendance at such meetings

23. You must [limit your][abstain absolutely from the] consumption of alcohol.

24. You must refrain from self-medication [, [including][apart from] over the counter medicines [containing [active ingredient] and] which do not require a prescription,] and only take medicines as prescribed for you by a healthcare practitioner who is responsible for your care.

H. INFORMING HPC AND OTHERS

25. You must promptly inform the HPC if you cease to be employed by your current employer or take up any other or further employment.

26. You must promptly inform the HPC of any disciplinary proceedings taken against you by your employer.

Draft for Approval

27. You must inform the following parties that your registration is subject to these conditions:

    A. any organisation or person employing or contracting with you to undertake professional work;

    B. any agency you are registered with or apply to be registered with (at the time of application); and

    C. any prospective employer (at the time of your application).

I. PERSONAL DEVELOPMENT

28. You must work with [supervisor etc.] to formulate a Personal Development Plan designed to address the deficiencies in the following areas of your practice:

    [List areas found to be unacceptable or a cause for concern, or which the Panel have determined to be of concern]

29. Within three months of the Operative Date you must forward a copy of your Personal Development Plan to the HPC.

30. You must meet with [supervisor etc.] on a [monthly etc.] basis to consider your progress towards achieving the aims set out in your Personal Development Plan.

31. You must allow [supervisor etc.] to provide information to the HPC about your progress towards achieving the aims set out in your Personal Development Plan.

32. You must maintain a reflective practice profile detailing every occasion when you [specify activity etc.] and must provide a copy of that profile to the HPC on a [monthly etc.] basis or confirm that there have been no such occasions in that period, the first profile or confirmation to be provided within [time] of the Operative Date.

J. COSTS, APPROVALS ETC.

33. You will be responsible for meeting any and all costs associated with complying with these conditions.

34. Any condition requiring you to [provide any information to] [obtain the approval of] the HPC is to be met by you [sending the information to the offices of the HPC, marked for the attention of] [obtaining written approval from] the Director of Fitness to Practise.

Draft for Approval

hpc health professions council

PRACTICE NOTE

Disposal of Cases by Consent

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

DRAFT

Introduction

Disposing of cases by consent is an effective case management tool which reduces the time taken to deal with allegations and the number of contested hearings which need to be held. However, as the Health Professions Order 2001 (the **Order**) imposes broad public protection obligations upon the HPC, neither the HPC nor a Panel should agree to resolve a case by consent unless they are satisfied that:

- the appropriate level of public protection is being secured; and
- doing so would not be detrimental to the wider public interest.

Disposal by consent

The consent process is a means by which the HPC and the registrant concerned ~~can~~ **may** seek to conclude a case without the need for a contested hearing, by putting before a Panel an order of the kind which the Panel would have been likely to make in any event.

The HPC will only consider resolving a case by consent:

- after an Investigating Committee Panel has found that there is a "case to answer", so that a proper assessment has been made of the nature, extent and viability of the allegation;
- where the registrant is willing to admit the allegation in full. A registrant's insight into, and willingness to address, failings are key elements in the fitness to practise process and it would be inappropriate to dispose of a case by consent where the registrant ~~denied~~ **denies** liability; and
- where any remedial action ~~proposed by~~ **agreed between** the registrant and ~~to be embodied in~~ the ~~Consent Order~~ **HPC** is consistent with the expected outcome if the case was to proceed to a contested hearing.

The process may also be used when existing conditions of practice orders or suspension orders are reviewed**. This enables**~~, enabling~~ orders to be varied, replaced or revoked without the need for a contested hearing.

Procedure

Disposal by consent does not affect the range of sanctions available to a Panel, it is merely a process by which the registrant and the HPC can propose an appropriate outcome to the case and ask the Panel, assuming that it is content with that outcome, to conclude the case on that basis.

The task for the Panel is to determine whether, on the basis of the evidence before it:

- to deal with the case in an expedited manner by approving the proposal set out in the draft Consent Order; or
- to reject that proposal and set the case down for a full contested hearing.

As the Panel must retain the option of rejecting a proposal for disposing of a case by consent, the HPC has an obligation to make it clear to registrants that co-operation and participation in the consent process will not automatically lead to a Consent Order being approved.

Equally, as the registrant is required to admit liability in order for the process to proceed, in the event that the proposal is rejected by the Panel, that admission will be treated in the same way as a “without prejudice” settlement offer and the full hearing will take place before an entirely different Panel which will not be made aware of the **consent** proposal unless the registrant chooses to bring it to ~~their~~ **the Panel’s** attention.

A Consent Order template is set out in Annex 1 to this Practice Note.

Voluntary Removal

Article 11(3) of the Order and Rule 12(3) of the Health Professions Council (Registration and Fees) Rules 2003 prevent a registrant from **seeking** ~~resigning~~ **to resign** from the register whilst the registrant is the subject of an allegation or a conditions of practice order or suspension order made by a Panel.

In cases where the HPC is satisfied that it would be adequately protecting the public if the registrant was permitted to resign from the Register, it may enter into a Voluntary Removal Agreement allowing the registrant to do so, but on similar terms to those which would apply if the registrant had been struck off.

In cases where an allegation is already before a ~~Panel~~ **Practice Committee** or an order is in place, such an agreement cannot take effect unless ~~those~~ **the** proceedings **in respect of that allegation** are discontinued or a Panel revokes the **extant** order. In such cases the HPC will give **a Panel** formal notice of discontinuance ~~to the Panel and, if necessary,~~ **or** ask it to revoke ~~any~~ **the** existing order.

A Discontinuance Notice template is set out in Annex 2 to this Practice Note.

March 2011

DRAFT

[PRACTICE] COMMITTEE

CONSENT ORDER

TAKE NOTICE that, in respect of the [allegation made] [review of the order made by the Committee] on [date] against [name] **(the *Registrant*)**:

1. ~~[name of registrant]~~ the **Registrant** consents to the Committee [making] [revoking][varying] [a][the] [type] Order against ~~[him][her]~~ **the Registrant** in respect of that matter on the terms set out below; and

2. the Council consents to the making of an Order on those terms, being satisfied that, in all the circumstances, doing so would ~~be~~ **secure an** appropriate ~~for the following reasons:~~ **level of public protection and otherwise be in the public interest.**

AND FURTHER TAKE NOTICE that the Panel, with the consent of the parties, and upon due inquiry being satisfied that it is appropriate to do so, now makes the following Order:

[set out Order]

DRAFT

Signed: ____ Panel Chair

Date: ______________________

Signed: _________________________ Signed: ________________________

Date: _________________________ Date: ________________________

Note: the parties may consent to the Order by all signing one copy of this form or each signing separate copies.

hpc health professions council

[PRACTICE] COMMITTEE

NOTICE OF DISCONTINUANCE NOTICE *AND VOLUNTARY REMOVAL FROM THE REGISTER*

DRAFT

TAKE NOTICE that:

On [date] the Investigating Committee, being satisfied that there was a realistic prospect of the Health Professions Council (**HPC**) proving its case, referred the following allegation (the **Allegation**) against [name] (the **Registrant**) for hearing by this Committee:

[set out allegation]

On [date] the HPC and the Registrant entered into a Voluntary Removal Agreement, under the terms of which:

1. the HPC agreed to withdraw, and discontinue all proceedings in relation to, the Allegation; and
2. the Registrant, in consideration of that withdrawal and discontinuance, agreed:
   a. to resign from the HPC register;
   b. to cease to practise as a [profession] or use any title associated with that profession; and
   c. that, if the Registrant at any time seeks to be readmitted to the HPC Register, in considering any such application the HPC shall act as if the Registrant had been stuck off of the register as a result of the Allegation.

AND FURTHER TAKE NOTICE that this Committee, being satisfied upon due inquiry that it is appropriate to do so, consents to the HPC discontinuing these proceedings.

Signed: ____ Panel Chair

Date: ______________________

hpc health professions council

PRACTICE NOTE

Equal Treatment

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

Introduction

Many people will find appearing before a Panel to be a daunting experience and it is vital that Panels, whilst remaining fair, independent and impartial, are aware of and responsive to the differing needs of those who appear before them.

Social diversity includes not only race and ethnicity but also differences in linguistic, religious and cultural backgrounds, as well as issues of gender, sexuality and disability. Unless everyone involved in proceedings before a Panel can understand the process, the material put before them and the meaning of the questions asked and answers given in the course of the proceedings, the process is at best impeded and, at worst, justice may be denied.

In a modern and diverse society, equal treatment does not simply mean treating everybody in exactly the same way, it is about ensuring fairness. In some cases it means providing special or different treatment, in order that justice is both done and seen to be done.

By its very nature, this Practice Note can only deal briefly with a broad and complex area or practice. For further and more detailed guidance Panels are advised to consult more comprehensive guidance, such as the *Equal Treatment Benchbook* published by the Judicial Studies Board.

Effective communication

People with personal impairments or who are disadvantaged in society are entitled to a fair hearing, as are those who may have difficulty coping with the language, procedures or facilities of Panel proceedings.

Panels should make effective use of communication and recognise that, for example, just because someone remains silent does not mean that they necessarily understand or feel that they have been adequately understood. They may simply feel too intimidated or too inarticulate to speak up.

All of us view the world from our own perspective, based on our own knowledge understanding and cultural conditioning. There is a fine line between Panel members relying on this and resorting to stereotypes which can lead to injustice.

SOME BASIC DOS AND DON'TS

DO:

- ascertain how parties wish to be addressed;
- **take reasonable steps to** obtain **in** advance information about any disability or health problem which a person who is appearing before you may have;
- allow more time for special arrangements, breaks etc. to accommodate special needs at hearings;
- be understanding of people's difficulties and needs;
- try to put yourself in their position – the stress of attending a hearing should not be made worse unnecessarily, through a failure to anticipate foreseeable problems;
- bear in mind the problems facing unrepresented parties;
- ensure that appropriate measures are taken to protect vulnerable witnesses.

DON'T

- underestimate the stress and worry faced by those appearing before you;
- overlook the use – unconscious or otherwise – of gender-based, racist or other stereotyping as an evidential short-cut;
- allow over rigorous cross-examination of vulnerable witnesses;
- allow anyone to be put in a position where they face hostility or ridicule;
- use inappropriate "value laden" language, for example, 'girl' other than when speaking to a child or 'British' as a synonym for white, English or Christian.

PEOPLE WITH DISABILITIES

~~The Disability Discrimination Act 1995 (DDA) defines a disabled person as "someone with a physical or mental impairment that has a substantial, adverse, long-term effect on their ability to carry out normal day-to-day activities". For the purpose of the DDA "long term" means as lasting for more than 12 months.~~

The Equality Act 201 defines disability as a physical or mental impairment which has a substantial and long-term adverse effect on a person's ability to carry out normal day-to-day activities.

Disability may, for example, relate to mobility, manual dexterity, physical co-ordination, incontinence, speech, hearing or sight, memory or ability to concentrate, learn or understand. ~~It is estimated that at least 8.5 million people in the UK meet the definition of disabled person under the DDA~~.

Panels have a duty ~~under the DDA~~ to take account of disabilities and, therefore, steps must be taken to accommodate the special needs of parties, witnesses or

advocates appearing before the Panel. It is important that Panels identify such needs as early as possible, so that appropriate steps can then be taken such as arranging for hearings to take place in accessible rooms or for suitable facilities to be made available. Wherever possible, hearings should take place at venues which are accessible and fitted with a hearing induction loop.

Often simple solutions will help. Short breaks in the proceedings may help those whose concentration is impaired or who need to eat or drink more frequently, take medication or go to the lavatory at frequent intervals. A pre-arranged signal for an urgent trip to the lavatory may be appropriate. The presence of a carer or helper may be necessary. It may also help to re-arrange the order in which evidence is heard so that witnesses are not kept waiting.

Panels also need to consider how to overcome difficulties which may arise in the course of the proceedings, for example:

- by adopting a different approach to questioning where a witness has difficulties with memory or comprehension; or
- by using visual aids or providing sign language or ~~speech interpreters~~ **other interpretative support** to overcome communication difficulties.

In many instances the best solution will be for the Panel to find out what the best method of communicating should be, ahead of the hearing, from the person concerned or to seek assistance from those with specialist training if this is required.

The obligation imposed on Panels extends not only to the conduct of the proceedings but also to the decisions they reach. Panels must take care to ensure that decisions do not unfairly discriminate against disabled people.

This is best achieved by Panels dealing with every case on its merits and avoiding stereotypes or judgements about what disabled people can or cannot do. By considering each case individually, Panels will avoid making assumptions about disabled people or disability and instead make an informed decision based on the individual case.

RACE AND RELIGIOUS BELIEF

Many of the steps which Panels need to take to address issues of race or religious belief are about differences, such as different naming systems or different forms of oath. Understanding those differences is important, but it is not an end in itself. The true purpose is to assist Panels to ensure that they treat everyone who comes before them equally and with dignity and respect.

Panel members should remember:

- fair treatment involves taking account of difference, treating everyone in the same way is not the same thing as treating everyone fairly;
- everyone has prejudices, so recognise and guard against your own;
- do not make assumptions: all white people are not the same, nor are all black, or Asian, or Chinese or Middle Eastern people;

- do not project cultural stereotypes, for example that "all Asian people" avoid eye contact;
- when in doubt, ask. A polite question about how to pronounce a name or about a particular religious belief or language requirement will not be offensive when prompted by a genuine desire to get it right.

However committed Panel members may be to fairness and equality, they may still give the opposite impression by using inappropriate, dated or offensive words. There is no fixed code; language and ideas are living and developing all the time. Panel members need to be aware that acceptable language changes and seek to keep abreast of such change. For example, "black", which was once regarded as too direct is now acceptable to **<u>many</u>** people of African or Caribbean origin whereas "coloured" is now an offensive term that should not be used.

Similarly, broad descriptors such as "Asian" should be used with care. People may prefer to identify themselves by reference to a specific country, region or religion and people of Asian origin born in Britain may refer to themselves as British or British Asians.

Names and naming systems vary considerably between minority groups and some are complex. It is more important for Panel members to treat people with courtesy and address them properly than to try to learn all the different naming systems. Ask people how they would like to be addressed, how to pronounce their name and how to spell it. Ask for their full name or first, middle and last names. Do not ask for their "Christian name" or "surname".

Religious Diversity in the UK

~~Christianity has not only played a major part in the evolution of society among the white population in the UK, but has also attracted a significant number of adherents within minority groups. There are a number of Asian and Chinese Christian churches, and black churches are currently the fastest growing within the Christian communion. However~~, Panels will undoubtedly encounter people with a variety of different religious beliefs - or none. There are, in addition, many degrees of devotion within the practice of any faith.

Oath-taking

The Oaths Act 1978 provides for the forms in which oaths may be administered and that a solemn affirmation is of the same force and effect as an oath.

In today's multicultural society everyone should be treated sensitively when making affirmations or swearing oaths. The question of whether to affirm or swear an oath should be presented to all concerned as a solemn choice between two procedures, which are equally valid in legal terms. The primary consideration should be what binds the conscience of the individual and Panels should not assume that an individual belonging to a minority community will automatically prefer to swear an oath rather than affirm.

As a matter of good practice and to confirm the importance of giving truthful evidence, Panel members should sit quietly and pay attention to a person whilst they are swearing an oath or affirming.

All faiths have differing practices with regard to court proceedings and these should be handled by Panels sensitively **and** with respect ~~and not as though they are a nuisance~~.

Some witnesses may wish to perform some form of ritual washing, to remove shoes or cover their heads or bow with folded hands whilst taking an oath on their holy scripture. Panels should treat such requests sympathetically, especially as in some faiths the holy scripture is believed to contain the actual presence of Divinity and the request is being made in order to manifest respect to the presence of the Divine.

Jewish, Hindu, Muslim and Sikh women may prefer to affirm if having to give evidence during menstruation or shortly after childbirth.

Panels should ensure that holy books of are available at hearings. It is likely that most demand will be for:

Bible (Old and New Testaments);

Hebrew Bible;

Qur'an (Muslim);

Gita (Hindu); and

Sunder Gutka (Sikh).

Holy books should be covered at all times when not in use in cloth or velvet bags. When uncovered, they should only be touched by the person taking the oath, not by Panel members or staff.

CHILDREN

Children rarely appear before Panels but, when they do, cases should be expedited as far as possible.

In legal terms a child is a person under the age of 18. Therefore the way in which Panels deal with children who appear as witnesses will to some extent depend upon the age of the child. However, research has shown that children's fears about going to court do not decrease with age, and adolescent witnesses are more likely to exhibit adverse psychological reactions than younger ones.

Panels need to be aware of the sort of stresses and worries going through a child's mind when involved in legal proceedings. This can relate to a fear of the unknown, pressure to withdraw the complaint, fear of retaliation or of publicity, having to relate intimate personal details in front of strangers and insensitive questioning. Children may worry about having to repeat bad language, being shouted at, not being believed, having to give their address, being sent away or being sent to prison. Perhaps the greatest problem that a child might have to cope with is a feeling of guilt.

Panels should never underestimate how little of the proceedings a child understands. A child may not admit to the fact that they do not understand something, so vigilance and some second-guessing are vital.

The procedural rules[1] for Panels allow a broad discretion as to how evidence is given in the proceedings, and permit a child witness to give evidence through a video link or by any other means such as the video tape of an interview conducted in the context of a criminal investigation.

This power is particularly important where children are concerned in terms of achieving the overriding objective of dealing with cases justly, including ensuring that the parties are on an equal footing. What a child has said on a previous occasion can also be put before the Panel in the form of hearsay evidence.

If a child does have to give evidence in person then the Panel should:

- make appropriate arrangements to avoid any confrontation between the child and any party to the proceedings. This includes welfare provision during breaks and after the evidence is concluded.
- adopt procedures to ensure that the child's testimony may be adduced effectively and fairly.
- permit a third party, such as a parent, to sit near to the child provided that they do not disrupt the child's testimony;
- admit the child's evidence unless the child is incapable of giving intelligible testimony. The Panel must form a view on the child's competence at the earliest possible ~~moment~~ **opportunity**;
- ensure that advocates do not attempt over-rigorous cross-examination and use language that is free of jargon and appropriate to the age of the child.

GENDER

There have been many positive changes in society regarding gender roles but, even though women comprise more than half of the adult population, they remain disadvantaged in many areas of life. The disadvantages that women can suffer range from inadequate recognition of their contribution to the home or society to an underestimation of the problems women face as a result of gender bias.

Stereotypes and assumptions about women's lives can unfairly impede them and frequently undermine equality. Panels members must take care to ensure that their own experiences and aspirations, as women or of women they know, are not taken as representative of the experiences of all women. Factors such as ethnicity, social class, disability status and age affect women's experience and the types of disadvantage to which they might be subject.

In legal proceedings, women often feel humiliated, patronised and disbelieved and this is likely to be particularly true when any intimate health issue or issue of sexuality arises.

---

[1] HPC (Investigating Committee) (Procedure) Rules 2003; HPC (Conduct and Competence Committee) (Procedure) Rules 2003; HPC (Health Committee) (Procedure) Rules 2003.

Panels need to be aware that it is a common misconception that a witness's demeanour, when giving evidence, will reflect the truthfulness of their account. This is not necessarily so. Victims of sexual or indecent acts ~~often~~ **may** exhibit a controlled response and in fact mask their feelings, appearing calm and composed. A woman may appear to minimise the impact of sexual harassment or sexual assault out of embarrassment and a wish to end the ordeal.

The procedural rules[2] for Panels allow a broad discretion as to how evidence is given in proceedings. **In cases where witnesses have been assessed as vulnerable (for instance, where the allegation against the registrant is of a sexual nature and the witness was the alleged victim), measures adopted by the Panel may include the use of video links, the use of pre-recorded evidence as the evidence-in-chief of a witness or the use of screens.**

Sexual complainants, including those complaining of sexual harassment, can suffer when there is unnecessarily over-rigorous cross-examination regarding their previous sexual history or where the assailant is known to them. In cases involving allegations of a sexual nature, the procedural rules enable Panels to prevent a witness from being cross-examined by their alleged assailant but ~~skilful and remorseless~~ questioning by a**n**~~ detached~~ advocate can be an equally demeaning experience. Panels should intervene to restrain insulting or offensive questions or the humiliation of a witness. The Human Rights Act also has implications for the extent to which a witness's right to respect for **his or** her private and family life may be infringed. **Panels should be especially vigilant to ensure that witnesses are not subjected to inappropriate or irrelevant cross-examination about their sexual history.**

SEXUAL ORIENTATION

There is a historical background of widespread discrimination against homosexuals. Sexual orientation is just one of the many facets of a person's identity. Being a lesbian or a gay man is sometimes described as being as much an emotional orientation as a sexual one.

There is no evidence that being gay implies a propensity to commit any particular type of offence. A common, and extremely offensive stereotype, links homosexuality with a paedophile orientation. ~~Most sexual abuse of children happens in the home, is committed by someone the child knows well, and is not gender specific~~. There is no evidence that gay men are more likely to abuse children than heterosexual men. Panels need to be aware of the harm caused by such stereotypical assumptions. It is equally misguided to:

- attribute feminine characteristics to gay men, or masculine characteristics to lesbians. Such attributions are not only offensive but can lead to dangerous assumptions, for example, that a lesbian may be more resilient to harassment than her heterosexual counterpart;

[2] HPC (Investigating Committee) (Procedure) Rules 2003; HPC (Conduct and Competence Committee) (Procedure) Rules 2003; HPC (Health Committee) (Procedure) Rules 2003.

- assume that AIDS and HIV positive status are necessarily indicative of homosexual activity. HIV treatment can prevent a person from developing the symptoms of AIDS indefinitely, but the fear and stigmatisation resulting from an out-of-date understanding of the issues can be very damaging;

Transexuals and Transvestites

Many transsexual and transvestite people would not consider themselves gay or lesbian and should not be considered as merely a dimension or extension of gay and lesbian culture.

Panels should not make any assumptions as to the sexual orientation of transvestites or transsexuals. Where there is a question relating to a person's gender, the person should be asked what gender they consider themselves to be and treated as a member of that gender.

Additionally, there are basic differences within and between the transsexual and transvestite experiences. For many transvestites, cross-dressing is not a fetish, but an inescapable emotional need, which, particularly in public places, generates risk of conflict or ridicule. It is unlikely that a transvestite who cross-dresses in private and sometimes in public, will cross-dress when appearing before a Panel. However, this may not always be the case, and a desire or need to cross-dress may still be a relevant and important issue.

The process of gender reassignment is extremely complex, requiring great personal determination, with emotional and psychological factors playing a large role. Not all transsexual people undergo surgery, but for those that do, it is just part of a wider sequence of events and processes that are intended to help the physical identity match the person's inner sense of gender identity. Panels need to be aware that these events and processes are likely to involve great strain, and bring the transsexual person into situations of unwanted tension.

March 2011