Fitness to Practise Committee, 14 February 2013

Practice Notes

Executive summary and recommendations

Introduction

As per the departmental work plan for 2012-13, the Executive has undertaken a review of a number of the practice notes that are in place to provide guidance to Panels and those appearing before them. As a result of this review, a number of practice notes have been reviewed, updated or produced. More detail on those practice notes can be found below:

Half-Time Submissions

This is a new Practice Note which provides guidance on the process to be followed if a registrant makes submissions at 'half time' of a final hearing that there is no case to answer. Although the procedural rules for fitness to practise proceedings make no express provision for such submissions, it is perfectly in order for a registrant to make a submission to the effect that the evidence presented by the HCPC is insufficient to prove the facts alleged or support a finding of impairment.

This practice note is felt necessary given feedback from legal assessors and the mistaken use by some of those appearing for registrants of the Case to Answer Determinations Practice Note. The Case to Answer Determinations Practice Note provides guidance on finding there is a case to answer by panels of the Investigating Committee and has a different purpose.

The Executive regularly reviews not well founded determinations as part of the quality assurance framework and learning from this review is fed into reviews of processes. The practice note Discontinuance also provides guidance on when consideration should be given to discontinuing all or part of an allegation. This also links with activity undertaken to review decisions of the Investigating Committee Panel to identify cases that are suitable to be disposed of via our consent and discontinuance processes.

Case to Answer Determinations

This Practice note has been reviewed and updated to provide more guidance on the application of the realistic prospect test and to reflect the standard of acceptance policy**.**

Discontinuance

This Practice note has been updated to provide more guidance on discontinuing part of an allegation.

Interim Orders

This Practice note has been updated to provide more guidance on adjourning/postponing interim order application hearings and to clarify the section on review, variation, revocation and replacement.

Postponement and Adjournment of Proceedings

A footnote in this practice note has been updated to the Head of Adjudication to nominate individuals to consider requests for postponement and adjournment.

The changes to current practice notes are marked as tracked changes for ease of reference.

Decision

The Committee is asked to

(a) discuss the Practice Notes:

- Half-Time Submissions
- Case to Answer Determinations
- Discontinuance
- Interim Orders
- Postponement and Adjournment of Proceedings

(b) recommend their approval by Council

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 HCPC'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 - Half-Time Submissions
Practice Note - Case to Answer Determinations

Practice Note - Discontinuance
Practice Note - Interim Orders
Practice Note - Postponement and Adjournment of Proceedings

Date of paper

04 February 2013

PRACTICE NOTE

'Half-Time' Submissions

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

Introduction

A 'half-time' submission is a submission to the effect that the party which has the burden of proof, having presented its case, has failed to discharge that burden and, in consequence, that the case (or a part of it) should not proceed further.

The Procedural Rules[1] for fitness to practise (FTP) proceedings make no express provision for half-time submissions to be made at the conclusion of the HCPC's case, but it is perfectly acceptable for a Panel to consider and rule upon a half-time submission made by or on behalf of a registrant.

In FTP proceedings, a half-time submission will be put to the Panel on the basis that there is 'no case to answer'. This is not a challenge to the earlier 'case to answer' decision made by the Investigating Committee, but to the case which the HCPC has been put before the Panel at the hearing.

The burden of proving the facts alleged rests upon the HCPC. Whether those facts amount to the statutory ground of the allegation (e.g. misconduct) and, in turn, whether fitness to practise is impaired do not require separate proof but are matters of judgment for the Panel.[2]

No useful purpose is served by a Panel continuing proceedings if, based upon the case which the HCPC has been put before it, there is no real prospect of that burden being discharged or the Panel concluding that the facts amount to the statutory ground or that fitness to practise is impaired.

Managing half-time submissions

FTP proceedings are civil in nature, but share some of the characteristics of criminal proceedings, in the sense that they are not based upon a dispute between parties but upon an allegation made against the registrant by a public authority. Consequently, in dealing with half-time submissions, Panels should have regard to the test which applies in criminal proceedings laid down in *R v Galbraith:*[3]

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1 HCPC (Investigating Committee) (Procedure) Rules 2003; HCPC (Conduct and Competence Committee) (Procedure) Rules 2003; HCPC (Health Committee) (Procedure) Rules 2003.

2 *CRHP v GMC and Biswas* [2006] EWHC 464 (Admin).

3 [1981] 1 WLR 1039, per Lord Lane CJ

"If there is no evidence that the crime alleged has been committed by the defendant, there is no difficulty - the judge will stop the case. The difficulty arises where there is some evidence but it is of a tenuous character, for example, because of inherent weakness or vagueness or because it is inconsistent with other evidence.

(a) Where the judge concludes that the prosecution evidence, taken at its highest, is such that a jury properly directed could not properly convict on it, it is his duty, on a submission being made, to stop the case.

(b) Where however the prosecution evidence is such that its strength or weakness depends on the view to be taken of a witnesses reliability, or other matters which are generally speaking within the province of the jury and where on one possible view of the facts there is evidence on which the jury could properly come to the conclusion that the defendant is guilty, then the judge should allow the matter to be tried by the jury."

In relation to half-time submissions in FTP proceedings, the approach which should be adopted by a Panel in respect of each disputed allegation (or element of an allegation) is first to address the following question:

1. has the HCPC presented <u>any</u> evidence upon which the Panel could find that allegation or element proved?

If not, then the answer is straightforward. The burden of proof has not been discharged and there is no case to answer in respect of that allegation or element.

If the HCPC has presented some relevant evidence, then the Panel should move on to address the following questions:

2. is the evidence so unsatisfactory in nature that the Panel could not find the allegation or element proved?
3. if the strength of the evidence rests upon the Panel's assessment of the reliability of a witness, is that witness so unreliable or discredited that the allegation or element is not capable of being proved?

In addressing these questions the Panel must take care in applying the burden and standard of proof, remembering that it is for the HCPC to prove the facts alleged and that the requisite standard of proof is the balance of probabilities. If either question is answered in the affirmative, then again there is no case to answer in respect of that allegation or element.

If the case proceeded to its conclusion, the decision of whether it is 'well founded' would require the Panel to determine whether, in its judgement, the facts alleged:

- amount to the statutory ground of the allegation (e.g. misconduct) and,
- in turn, establish that a registrant's fitness to practise is impaired.

Consequently, in dealing with any half-time submission, the Panel may also need to address those issues by answering the following question:

4. is the evidence which the HCPC has presented such that, when taken at its highest, no reasonable Panel could properly conclude what is alleged amounts to:

   (a) the statutory ground of the allegation; or

   (b) impaired fitness to practise?

This question is likely to arise in one of two contexts, where

- where a submission is made to the effect that the evidence is unsatisfactory, for example, tenuous, vague, weak or inconsistent; or
- where some or all of the factual evidence is not disputed, but a submission is made to the effect that the allegation is misconceived, in that the facts proven or not in dispute are not sufficient to support a finding of the statutory ground or impairment.

If either limb of that question is answered in the affirmative then the Panel is entitled to conclude that there is no case to answer in respect of that allegation or element.

Proceeding further

Unlike a judge and Jury, Panels must decide matters of both law and fact. In dealing with half-time submissions Panels need to recognise that, having considered a submission, they may disagree with it. In that event, the Panel will need to proceed further, and hear any evidence that the registrant wishes to present and must do so objectively, retaining and applying an open mind in relation to all the facts at the end.

For that reason, in reaching a decision on any half-time submission, the Panel should disregard any evidence which the registrant has provided in advance but has not yet presented to the Panel and should only consider the evidence which has been presented by the HCPC.

[March] 2013

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 and Social Work 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 HCPC 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 HCPC (which has the burden of proof)[3] will be able to prove the facts alleged and, in consequence, that a Panel

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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)*.

which heard the case at a final hearing would determine that the registrant's fitness to practise is impaired.

The Panel only needs to be satisfied that there is a realistic or genuine possibility (as opposed to a remote or fanciful one) that the HCPC will be able to establish its case. The test does not require the Panel to be satisfied on the balance of probabilities or call for substantial inquiry, but still needs to be considered carefully. It is for the HCPC to prove the facts alleged, not for the registrant to disprove them. Wrongly concluding that there is a case to answer is not in the public interest. It is unfair to the registrant concerned and diverts regulatory resources from the protection of the public.

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 the relevant evidence.

Resolving substantial conflicts in the available evidence, such as deciding which of several differing versions of events is correct is not a task which can be undertaken by an Investigating Committee Panel. However, the mere existence of such a conflict does not mean that there is a case to answer. Even if there is conflicting evidence, it may have no real bearing on the outcome of the case. If a case to answer decision is made on the basis of such a conflict then the Panel must explain the significance of that conflicting evidence.

In deciding whether there is a case to answer, 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 <u>whole of the allegation</u>, 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.

Each of these elements should be carefully considered, in a step-wise manner.

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, as these are matters of judgement for the Panel. For example, does, 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 have regard to the HCPC Standards of Proficiency or Standards of Conduct, Performance and Ethics. However, the Panel must remember that a case to answer decision can only be made on the basis that fitness to practise is impaired. Simply establishing that the facts appear to breach those Standards is insufficient.

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.

Registrants do make mistakes or have lapses in behaviour and the HCPC 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 there is a realistic prospect of establishing impairment can sometimes be difficult. A useful starting point for Panels is to consider whether the HCPC'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 a 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.

A finding of impairment is a finding that, based on prior events, there are on-going concerns about a registrant's ability to practise his or her profession, either on a restricted basis or at all. Consequently, Panels should recognise that impairment is unlikely to be found in cases relating to:

- relatively minor issues, where the registrant has acknowledged and has insight into any failings and where local resolution or other remedial action has been taken;
- employment issues which do not compromise the safety or well-being of, service users, such as lateness or poor time keeping, absence from work or personality conflicts;
- consumer complaints where there is no abuse of the registrant-service user relationship, such as complaints about minor differences in the pricing of goods or services.

Review and amendment of allegations

In considering whether there is a case to answer, Panels should consider each element of the allegation, to see whether there is evidence to support the facts alleged and whether those facts would amount to the statutory ground and establish that fitness to practise is impaired. Panels should also consider allegations 'in the round' to ensure that they strike the right balance in terms of the case which the registrant must answer.

In doing so, the Panel may need to amend or omit elements of an allegation. As allegations are drafted at an early stage in a dynamic investigative process, it is important that Panels give critical scrutiny to the drafting of allegations put before them, to ensure that they are a fair and proper representation of the HCPC's case and fit for purpose.

If a Panel varies or extends an allegation to a material degree, the registrant concerned should be given a further opportunity to make observations on the revised allegation before a final case to answer decision is made.

Further guidance on the drafting of fitness to practise allegations is set out in the Annex to the HCPC policy document “Allegations: Standard of Acceptance”.

No case to answer

A decision that there is ‘no case to answer’ should only be made if there is no realistic prospect of a finding of impairment being made at a final hearing, for example, because there is insufficient evidence to substantiate the allegation or the evidence, even if found proved, would be insufficient for the final hearing Panel to make a finding of impairment.

Panels should not make decisions on a ‘no smoke without fire’ basis. If there is a realistic prospect of the facts being proved and the statutory ground being established, but no realistic prospect that impairment will be found, then the case should not proceed further. However, in cases where that issue is in genuine doubt, Panels should adopt a cautious approach at this stage in the process and resolve that doubt by deciding that there is a case to answer.

PRACTICE NOTE

Discontinuance 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

Occasionally, after the Investigating Committee has determined that there is a 'case to answer' in respect of an allegation, objective appraisal of the detailed evidence which has been gathered since that decision was made may reveal that it is insufficient to sustain a realistic prospect of proving the whole or part of the allegation.

As a public authority, the HCPC should not act in a partisan manner and seek to pursue an allegation which has no realistic prospect of success. Where such a situation arises, the HCPC should discontinue the proceedings.

Discontinuance

Once a case has been referred to a Panel of the Conduct and Competence Committee or Health Committee, if it is intended to discontinue those proceedings in whole or part, then the appropriate method of doing so is to seek the leave of the Panel to that discontinuance.

A Panel cannot simply agree to discontinuance without due inquiry, as it needs to be satisfied that the decision does not represent 'under-prosecution' on the part of the HCPC. As the Court of Appeal made clear in *Ruscillo v CHRE and GMC,*[1] Panels conducting fitness to practise proceedings:

> *"should play a more proactive role than a judge presiding over a criminal trial in making sure that the case is properly presented and that the relevant evidence is placed before it."*

In order to be satisfied that discontinuance is appropriate, a Panel does not need to undertake a detailed inquiry and must take care not to stray too far in considering the evidence, particularly if only part of the allegation is being discontinued. The Panel's task is to ensure that the HCPC has proper grounds for discontinuing the proceedings and has provided an objectively justified explanation for doing so.

[1] [2004] EWCA Civ 1356

If a Panel is asked to discontinue only part of an allegation, it must consider whether what it is being asked to leave in place amounts to a viable allegation. This is particularly important where, for example, the original allegation is based upon a pattern or sequence of events. If the effect of partial discontinuance is to remove some of those events from the fact pattern, the Panel would need to consider whether what remains would be sufficient to establish the statutory ground of the allegation or that fitness to practise is impaired.

If an allegation is partially discontinued, the Panel must also ensure that the revised allegation is coherently drafted and, in particular, that no essential background detail has been removed, as the Panel which hears the revised allegation will not be made aware of that partial discontinuance.[2]

To a large extent, the nature and scope of the Panel's inquiry will depend upon the explanation which has been provided by the HCPC for the discontinuance. In this regard, HCPC Presenting Officers are expected to assist Panels by providing a clear and evidentially robust explanation of why the decision not to proceed has been taken and why it is justified.

Presenting Officers are reminded that, in considering the prospects of proving an allegation, the HCPC is not required to establish that the allegation is capable of proof to the standard required by the Panel (the balance of probabilities) but must act fairly and justly. Consequently, the Panel will need to be satisfied that the decision not to proceed has been reached either because the HCPC has no realistic prospect of proving the allegation or because there is some other overriding public interest (for example, that a crucial witness or the registrant is seriously ill) which justifies discontinuance.

Further proceedings

In determining an application for discontinuance, Panels should consider whether the more appropriate decision, as a matter of fairness to the registrant concerned, is to record a formal finding that the allegation is not well founded.

Similarly, as a public authority the HCPC should not make repeated attempts to pursue the same allegation against a registrant. Although fitness to practise proceedings are not subject to a strict 'double jeopardy' rule prohibiting an allegation from being pursued more than once, a decision to discontinue fitness to practise proceedings is one which a registrant should be entitled to regard as final unless the contrary has been made clear to the registrant.

If the decision has been taken on the basis of insufficient evidence and there is the prospect that further proceedings may take place if new and significant evidence comes to light or circumstances arise that require action to be taken in order to protect the public, this should be specifically addressed in the Notice of Discontinuance. A template for such a notice appears in the Annex to this Practice Note.

March 2013

[2] the discontinued elements of an allegation would be part of the record that is shared with the Professional Standards Authority for audit purposes

[PRACTICE] COMMITTEE

NOTICE OF DISCONTINUANCE

TAKE NOTICE that:

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

[set out allegation(s)]

On [date] the HCPC agreed:

1. to discontinue all proceedings in relation to [paragraph(s) XXX of] the Allegation(s); and

2. that no further proceedings would be commenced in relation to [those paragraphs of] the Allegation(s) or the events giving rise to [it][them] [unless ....]

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

Signed: _____ Panel Chair

Date: _____

PRACTICE NOTE

Interim Orders

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 31 of the Health and Social Work Professions Order 2001[1] (the 2001 Order) sets out the procedure by which a Practice Committee Panel may make an interim order, to take effect either before a final decision is made in relation to an allegation or pending an appeal against such a final decision.

A Panel may only make an interim order if it is satisfied that:

- it is necessary for the protection of members of the public;
- it is otherwise in the public interest; or
- it is in the interests of the registrant concerned;

for that person's registration to be suspended or to be made subject to conditions.

Types of order

An interim order may be either:

- an interim **conditions of practice** order - which imposes conditions with which the registrant must comply for a particular period of time; or
- an interim **suspension** order - which directs the Registrar to suspend the registrant's registration for a particular period of time.

An interim order has effect immediately and its duration should be set out in the order but cannot be for more than eighteen months.

When orders may be made

A Panel of the **Investigating Committee** may make an interim order:

[1] SI 2002/254

- when an allegation has been referred to that Committee, but it has not yet taken a final decision in relation to the allegation[2];
- when, having considered an allegation, it decides that there is a case to answer, and refers that case to another Practice Committee (but the interim order must be made before the case is referred)[3]; or
- when it makes an order that an entry in the register has been fraudulently procured or incorrectly made but the time for appealing against that order has not yet passed or an appeal is in progress.

A Panel of the **Conduct and Competence Committee** or **Health Committee** may make an interim order:

- when an allegation has been referred to that Committee but it has not yet reached a decision on the matter[4]; or
- when, having decided that an allegation is well founded, the Panel makes a striking-off order, a suspension order or a conditions of practice order but the time for appealing against that order has not yet passed or an appeal is in progress.

Procedure

Before a Panel decides that it is appropriate to make an interim order, Article 31(15) of the 2001 Order provides that it must give the registrant concerned the opportunity to appear before it and allow him or her the right to be heard. As with other HCPC proceedings, the hearing will be held in the UK country in which the registrant is registered

In relation to interim orders made whilst an allegation is still pending this will take the form of a separate hearing held solely to consider whether an interim order should be made and, if so, its terms.

Article 31 does not specify any detailed procedural requirements for such hearings but, normally, the registrant should be given seven days' notice of such a hearing unless there are exceptional circumstances which make it necessary for the Panel to hold a hearing at shorter notice.

As interim order proceedings are conducted at short notice, applications to adjourn the proceedings will normally only be considered by the Panel on the day. Given the

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[2] these proceedings take the form of a separate hearing which will only consider whether an interim order should be imposed. The panel concerned does not take any other action at that hearing.

[3] as case to answer decisions are made 'on the papers' and without the registrant being present, this would require the Panel to adjourn without referring the case on, in order to give the registrant an opportunity to appear before the Panel and be heard on whether an interim order should be imposed. In practice this power is not used.

[4] these proceedings take the form of a separate hearing which will only consider whether an interim order should be imposed. The panel concerned does not take any other action at that hearing.

nature of interim order applications, adjournments are unlikely to be granted other than in the most compelling circumstances.

In deciding whether to impose an interim order, a Panel will not be in a position to weigh all of the evidence but must act on the information that is available. The appropriate place to consider and weigh all of the evidence in relation to an allegation is when that allegation is being considered at a fitness to practise hearing.

In essence, the Panel's task is to consider whether the nature and severity of the allegation is such that the registrant, if he or she remains free to practise without restraint, may pose a risk to the public or to himself or herself or that, for wider public interest reasons, freedom to practise should be restrained.

In doing so the Panel may have regard to the overall strength of the evidence, whether the allegation is serious and credible and the likelihood of harm or further harm occurring if an interim order is not made.

The decision to issue an interim order is not one that should be taken lightly and will depend upon the circumstances in each case. However, cases in which restraining freedom to practise may be appropriate include those involving serious or persistent competence failures; cases involving violence, sexual abuse or serious misconduct; cases where it appears that the registrant's health means he or she may pose a risk to others or be capable of self-harm; and cases where the broader public interest, such as public confidence in the regulatory process or the profession concerned, may be at risk.

Although this list is not exhaustive, the types of case in which an interim order is likely to be made are:

- cases where, if the allegation is well founded, there is an on-going risk to service users from the registrant's serious lack of professional knowledge or skills;
- cases which may not be directly related to practice but where, if the allegation is well founded, the registrant may pose a risk to service users; for example allegations of indecent assault or where it appears that a registrant with serious health problems is practising whilst unfit to do so;
- cases where, although there may be no evidence of a direct link to practice, the allegation is so serious that public confidence in the regulatory process would be seriously harmed if the registrant was allowed to remain in practice on an unrestricted basis; for example, allegations of murder, rape, the sexual abuse of children or other very serious offences;
- cases where the registrant has breached a conditions of practice order or suspension order previously imposed by a Panel.

A Panel may be asked to impose one or other kind of interim order in a particular case, but will in every case need to consider whether, if it is necessary to impose an order to protect the public, the registrant or the public interest, an interim conditions of practice order will secure the necessary degree of protection. An interim

suspension order should only be imposed if the Panel regards conditions of practice as being an insufficient safeguard.

In imposing an interim conditions of practice order a Panel must take account of the fact that it has not heard all of the evidence in the case. Therefore it should not impose the kind of conditions which may be appropriate after a case has been heard and the allegation has been determined to be well founded; for example, conditions requiring the registrant to undertake additional training. Consequently, interim conditions of practice are likely to be limited to specific restrictions on practice, for example, not to provide services to children or not to undertake unsupervised home visits.

Interim orders during appeal periods

Where the Panel is considering imposing an interim order at the conclusion of a final hearing (in order to restrain the registrant's freedom to practise during the appeal period) the decision will be made as part of that hearing and not in separate proceedings.

However, such orders should not be regarded as an automatic outcome to such proceedings and, before imposing such an interim order, the Panel should give the registrant an opportunity to address it specifically on the issue of whether or not an interim order should be made.

Review, variation, revocation and replacement

Interim orders must be reviewed on a regular basis; as a minimum within six months of the date on which the order was made and then every three months from the date of the preceding review until the interim order ceases to have effect. A registrant may also ask for an interim order to be reviewed at any time if new information becomes available or circumstances change.

If an interim order is replaced by another interim order or extended by the court before it is first reviewed, that first review does need not to take place until six months after the replacement or extension order was imposed. If replacement or extension occurs after the first review, then the next review must take place within three months of the replacement or extension order being imposed.

Orders may be varied or revoked at any time and the person who is subject to the order may also apply to the appropriate court for the order to be varied or revoked. On application by the HCPC, an interim order may be extended for up to 12 months by the appropriate court.

If one type of interim order is replaced by another, the replacement order may only have effect up to the date on which the original order would have expired. (including any time by which the order was extended by a court). The 'appropriate court' is, in England and Wales or Northern Ireland, the relevant High Court and in Scotland, the Court of Session.

Terminating an interim order

Interim orders can be brought to an end in three ways:

- by the court, on the application of the person who is subject to the order;
- by the Practice Committee currently dealing with the allegation; or
- automatically, when the circumstances under which the order was made no longer exist, namely:
    - if the order was made before a final decision in respect of an allegation, when that final decision is made (but a further interim order may be made at that time); and
    - if an order was made after a final decision, to have effect during the 'appeal period', either when that period expires or, if an appeal is made, when the appeal is concluded or withdrawn.

March 2013

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 and Social Work Professions Order 2001[1] 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 made without sufficient and demonstrated reasons to justify them should not be granted.

Postponements and adjournments

In relation to the HCPC 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 the HCPC'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 HCPC at least 14 days before the hearing date. The application should set out the background to and reasons for the request and be supported by relevant evidence.

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1 SI 2002/254

2 ora person nominated by the Head of Adjudication (other than a person who has been involved in the investigation of the case)

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.

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, 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;
- where an adjournment is sought by the HCPC, 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 2013