PRACTICE NOTE

Sanctions

Introduction

The decision as to what, if any, sanction should be imposed on a health professional whose fitness to practise has been found to be impaired is properly a matter for the Panel which considered the case.
Whilst it would be inappropriate for the Health Professions Council to set a fixed "tariff" of sanctions, the following guidance is offered to aid Panels in their deliberations. However, Panels are free to disregard the guidance and to make decisions as they see fit, based on the merits of each case.

The Purpose of Sanctions

The function of fitness to practise Panels is not punitive. A Panel's task is to determine whether, on the basis of the facts before it, the fitness to practise of a health professional is impaired. In effect, the task is to consider a health professional's past acts, determine whether that health professional's fitness to treat patients, clients or users is below accepted standards and to consider the risk that he or she may pose to those who may need or use his or her services in the future and thus what degree of public protection is required.
It is important to remember that a sanction may only be imposed in relation the facts which a Panel has found to be true or which are admitted by the health profesional. In particular, if there is any suggestion that a case has proceeded on the basis of "specimen" allegations, then a sanction should not be imposed on a wider basis than that revealed by those specimen allegations.
If a Panel has determined that an allegation is well founded, it is not obliged to impose a sanction and, if it is satisfied that it is appropriate to do so, may decide not to take any further action. For example, taking no further action will be appropriate for minor, isolated, lapses where there has been an apology, remorse or corrective action taken and the registrant fully understands the nature and effect of the lapse. If further action is to be taken then a range of sanctions are available which will enable a Panel to take the most appropriate steps to protect the public. Those sanctions are:

- mediation
- caution
- conditions of practice
- suspension
- striking off

Mediation

Mediation is a consensual process and will be most appropriate where issues between the health professional and another party (for example the complainant or an employer) remain unresolved.
Mediation may only be used where the Panel is satisfied that the only other appropriate course would be to take no further action. A case may only be sent for mediation if the Panel is satisfied that no further sanction is required. Clearly this will generally be only where the fitness to practise impairment is of a minor and isolated nature which is unlikely to recur, where the registrant fully understands the nature and effect of that impairment and has taken appropriate corrective action.

Caution
A caution order must be for a specified period of between one year and five years.
For slightly more serious cases where there may be a low risk of recurrence but where the lapse has been corrected and was of itself of a minor nature a caution may be the more appropriate step to take.

Conditions of Practice
A conditions of practice order must be for a specified period not exceeding three years.
Conditions of practice will be most appropriate where a failure or deficiency is capable of being remedied and where the Panel is satisfied that allowing the health professional to remain in practise, albeit subject to conditions, poses no risk of harm or future harm.
Conditions must be limited to a maximum of three years and therefore are remedial or rehabilitative in nature. Before imposing conditions a Panel should be satisfied that there is no general failure, that the matter is capable of correction and that appropriate, realistic and verifiable conditions can be formulated. A combination of conditions may be imposed , including formal education and training requirements. Whatever the conditions imposed, another Panel must be able to consider and determine whether the conditions have or are being met.
The imposition of conditions requires a commitment on the part of the health professional to resolve matters and therefore conditions of practice will not be suitable in situations where problems cannot be overcome such as serious overall failings, lack of insight, denial or matters involving abuse of patients or dishonesty.
Above all, conditions must be realistic and there is a limit to how far they may extend. For example a combination of conditions which require a practitioner not to carry out home visits, out of hours working, unsupervised treatment, or treatment outside of an NHS setting may well amount in practice to a suspension and thus be far too wide.
In relation to drug abuse cases careful consideration needs to be given as to whether conditions of practice are an appropriate remedy if they are being used as a means of controlling the setting in which a practitioner operates and thus his or her access to prescription drugs. In particular, they may not work for all professions. For example, removing a radiographer from an accident and emergency setting may well be a realistic condition but suggesting that a paramedic does not work in such settings will rarely be a viable option.

Suspension

A suspension order must be for a specified period not exceeding one year.
Suspension should be considered where conditions are insufficient to protect the public or where the allegation is serious but a realistic prospect exists that repetition will not occur and thus striking off is not merited.
Suspension is punitive in nature and this needs to be borne in mind. If the evidence suggests that the health professional will be unable to resolve or remedy his or her failings then striking off may be the more appropriate option. However, where the health professional has no psychological or other difficulties preventing him or her from understanding and seeking to remedy the failings then suspension may be appropriate.
Suspension for short periods of time is a punitive step which Panels generally should not use. However, short term suspension may be appropriate where a health professional's current status means that they would not be able to respond to and comply with conditions of practice but where there is a realistic prospect that, if they can resolve their present difficulties whilst suspended, conditions of practice could then be imposed. This approach is likely to be most appropriate in cases involving, for example, substance abuse where, at time of the case, the health professional is seeking or undergoing treatment but has not reached the stage where he or she could safely return to practice even subject to conditions.

Striking Off
A striking-off order may not be made in respect of an allegation relating to competence or health unless the registrant has been continuously suspended, or subject to a conditions of practice order, for a period of two years at the date of the decision to strike off.
Striking off is a sanction of last resort for serious, deliberate or reckless acts involving abuse of trust such as sexual abuse, dishonesty or persistent clinical failure. Striking off should be used where there is no other way to protect the public, for example, where there is a lack of insight, continuing problems or denial. An inability or unwillingness to resolve matters will suggest that a lower sanction may not be appropriate.

Review of sanctions

In making a caution order, conditions of practice order or suspension order Panels may specify a period in which an application to vary, replace or revoke the order may not be made. The specified period shall not exceed two years in the case of a conditions of practice order or 10 months in the case of a suspension order.

For a striking off order Article 33(2) of the Health Professions Order 2001 specifies that, unless new evidence comes to light, an application for restoration to the register may not be made within 5 years of the date of the order.

Before they expire conditions of practice orders and suspension orders must be reviewed by a Panel (but not necessarily the one that made them) and caution orders may but need not be similarly reviewed. Following any review the Panel may:

- confirm the order;
- extend the period for which the order has effect (but a conditions of practice order may not be extended by more than three years at a time or a suspension order by more than one year at a time);
- replace the order with one it could have made at the time it made the order being reviewed;
- make a conditions of practice order which takes effect when a suspension order expires;
- reduce the duration of an order (but a caution order may not be reduced to a duration of less than one year);
- revoke or vary any condition imposed by the order;
- revoke the order.

Sanctioning procedure

The range of sanctions available to Panels should not influence the decision as to whether or not an allegation is well founded and the finding of fact and sanctioning phases of a hearing should be (and be seen to be) separate elements of the process.

To reinforce this point, Panels should first retire to determine whether or not an allegation is well founded and then return to announce their decision and the reasons for that decision. Where the Panel has decided that an allegation is well founded it should then hear any submissions on behalf of the parties in relation to mitigating or aggravating factors before retiring for a second time to determine what sanction to impose and then return to announce that sanction and reasons for that sanction.

Whilst it may appear obvious, Panels must ensure that registrants fully understand any sanction which is being imposed upon them. The Panel Chairman should carefully explain what sanction, if any, the Panel has imposed, the reasons for it and its consequences for the registrant in clear and direct speech which leaves no room for misunderstanding or ambiguity. In particular, Chairmen should avoid the temptation to give homilies or lectures, which often obscure clear communication of the Panel's decision.

Drafting decisions

In drafting their decisions Panels should explain that they considered all of the sanctions options available to them and what sanction they decided imposed. For example:

The Committee has considered each of the sanctions available to it and has decided that, given the severity of the case, to take no further action or to impose a caution or conditions of practice in this case would not adequately protect the public. Consequently, the remaining options are suspension or striking off. Taking account of the steps which you are taking to address your conduct, the Committee reached the conclusion that striking off would not be appropriate. Accordingly, the Committee has decided to suspend your registration for a period of one year. In all the circumstances we believe this to be a proportionate sanction.

The Panel must also set out clearly the Order which they have made. Cautions, conditions or practice, suspension and striking off orders should be written in a form which is addressed to the Registrar who must annotate or amend the register in accordance with the Panel's decision. For example:

Caution Order

ORDER: That the Registrar be directed to annotate the register entry of [name] with a caution which is to remain on the register for a period of [x] year(s).

Conditions of Practice Order

ORDER: That the Registrar be directed to annotate the register entry of [name] to show that, from the date that this order takes effect ("the operative date"), [name] is to comply with the following conditions or practice:

1. **within [time period] of the operative date, he shall undertake, and provide evidence to the Committee that he has undertaken training in [subject];**
2. **three months from the operative date and at quarterly intervals thereafter for a period of [time], he shall submit to the Committee [evidence of ???];**
3. **for a period of [time] from the operative date, promptly inform the Committee if he ceases to be employed by [employer].**

Suspension Order

ORDER: That the Registrar be directed to suspend the registration of [name] for a period of [x] year(s).

Striking Off Order

ORDER: That the Registrar be directed to strike [name] off the register.

Drafting Conditions of Practice

From the above examples it will be seen that the drafting of Conditions of Practice Orders is the more difficult task. This is especially so given that Orders do not take effect until the relevant appeal period has expired or, if there is an appeal, it has been disposed of or withdrawn. As a result the date from which an Order takes effect will not a fixed date. For most other Orders, which simply run for a fixed period of years, this does not cause much difficulty. However, conditions of practice inevitably involve periodic compliance arrangements and, if conditions of practice are to work, the dates on which evidence of compliance is to be sent to HPC must be clear and certain, so that appropriate follow up action can be taken in relation to those who breach an Order. The simplest way to overcome 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 lime limits to that operative date.

In drafting conditions of practice Panels also needs to consider the following questions:

Are the conditions realistic?

- Will the health professional be able to comply with these conditions?
- Do they properly reflect the level of public protection which the Panel had in mind?
- Will they work if the health professional changes jobs?

For example, if the conditions have been prepared with the support of the health professional's employer and are therefore job-related, it may be necessary to include a condition requiring HPC to be told if the health professional changes jobs.

Are the conditions verifiable?

- Do they impose obligations that require straightforward yes or no compliance decisions?
- Do they simply require the health professional to do something or must they also prove it has been done?
- Can the due dates be clearly determined from the Order?

For example, conditions requiring a health professional not to treat certain types of case or patient may not need ongoing proof of compliance but many other conditions will need to be supported by evidence, such as periodic written confirmation from a clinic that the health professional 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 a health professional to submit documents or records to HPC for assessment or audit will not meet this requirement.

Are the conditions directed at the right person?

- Do the conditions clearly impose obligations on the health professional?
- Are any conditions mistakenly directed at someone else?

It is for the health professional to comply with the conditions which have been imposed and care must be taken in drafting orders not to inadvertently impose a condition on a third party, such as an employer of 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..."

Advice from the Legal Assessor

Panel members are reminded that Article 34(3) of the 2001 Order provides that one of the functions that legal assessors may perform is to assist the Panel in drawing up their decisions. Panels should therefore take advantage of the expertise legal assessor can offer in this regard, particularly in relation to the drafting of conditions of practice.

Panels must take steps to ensure that no confusion arises on the part of the registrant or any other party as to role the legal assessor is playing, for example, by making it clear in open session that the Panel has reached a decision and is now asking the legal assessor to join them to assist in the drafting of the decision or inviting the legal assessor to explain this particular aspect of their role to the parties once the sanctioning phase of a hearing has been reached.

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