

HEALTH PROFESSIONS COUNCIL

GUIDANCE 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 improper for HPC to set a fixed “tariff” of sanctions, the following guidance is offered to aid Panels in their deliberations. However, they 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 but is to determine whether, on the basis of the facts before it, the health professional’s fitness to practise is impaired. In effect, the task is to consider past acts, determine whether fitness to treat patients is below accepted standards and to consider the risk that the health professional may pose to patients 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 registrant. 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 “specimens”.

The range of sanctions available enables a Panel to take the most appropriate steps to protect the public and those sanctions are:

- mediation
- no action
- caution
- conditions of practise
- 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.

If a case is sent for mediation the Panel will need to be satisfied that no further sanction is required. Clearly this will generally be only where the fitness to practise impairment is minor in nature.

No Action

For other cases at the lower end of the spectrum in which there are no unresolved issues, no further sanction may be necessary and thus though no action may be appropriate.

Taking no further action will be most 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.

Caution

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 Practise

Conditions of practise will be most appropriate where a failure or deficiency is capable of being remedied and allowing the health professional to remain in practise 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. These can be a combination of conditions which include an educational element but whatever conditions are 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 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 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 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

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 more 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.

Striking 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.

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.