

Agenda Item 9

Enclosure 8

**Health and Care Professions Council
21 September 2017**

Review of the indicative sanctions policy

For discussion and approval

From Katherine Timms, Policy Manager

Council, 20 September 2017

Review of the Indicative Sanctions Policy

Executive summary and recommendations

Introduction

The Indicative Sanctions Policy sets out the principles Practice Committee Panels should consider when deciding what, if any, sanction should be applied in fitness to practise cases. It aims to ensure that decisions are fair, consistent and transparent.

The primary function of any sanction is to address public safety from the perspective of the risk which the registrant concerned may pose to those who use or need his or her services. The document covers the purpose of sanctions, proportionality, insight and remorse, aggravating and mitigating factors and details on the sanctions available to the panel.

Panels make independent decisions, and the policy is intended to be a guide, however, where a panel deviates from the policy, they must provide clear and detailed reasons.

Amendments have been made to the policy where required, mainly to reflect changes in relevant case law. However, we consider it is appropriate to undertake a more comprehensive review to ensure the document is up to date, reflects public opinion and continues to ensure panels make fair and proportionate decisions.

The review is underway. At the start of the project, we reviewed the policies and guidance of other regulators, before holding workshops with employees to obtain their views and experience, enabling us to refine the project scope. We have outlined the proposed areas for review in appendix A. This will be further informed by a number of other engagement activities, ahead of a public consultation on the revised policy early next year:

- A paper to the Tribunal Advisory Committee in September to seek their thoughts, as users of the policy, about the proposed areas of review. A verbal update of their discussion will be provided at the meeting.
- Market research - we expect the public consultation to primarily elicit responses from organisations including professional bodies, and so we have commissioned GfK research to research public views about the principles outlined in the Indicative Sanctions Policy.
- Survey of registrants to be promoted in our 'In focus' newsletter, on our website and at HCPC events.

- Article in the FTP bulletin outlining the areas of focus and seeking views from professional bodies and unions.

Decision

- The Council is invited to discuss the scope of the review at appendix A, and the broad timescales outlined in appendix B.

Background information

- The current version of the document can be found on the HCPTS website: <https://www.hcpts-uk.org/assets/documents/1000536EPracticeNoteIndicativeSanctions.pdf>
- The Indicative Sanctions Policy is a Policy of the Council. The views of the Tribunal Advisory Committee are, however, being sought during this review.

Resource implications

The resource implications associated with undertaking market research and a public consultation have been taken into account in departmental work plans for 2017/2018.

The resource implications associated with the publication and launch of the revised guidance will be included in departmental work plans for 2018/19.

Financial implications

The financial implications, including the market research, have been accounted for in budget planning 2017/2018.

The financial implications, including reprinting the guidance, will be included in budget planning for 2018/19.

Appendices

- Appendix A: Scoping paper
- Appendix B: Timescales

Date of paper

8 September 2017

Appendix A - Scoping paper

Introduction

As outlined in the covering paper, this document sets out in more detail the areas of the Indicative Sanctions Policy we propose focusing our review on.

1. Mitigating factors

i. Insight, apology and remorse

The current policy provides some information around insight, apology and remorse, but we propose strengthening this to provide clarity around the detail of each and how panels should take account of them during decision making.

- The policy details that there are important differences between remorse and insight but we may provide further clarity on what those differences are and how each factor might affect a decision on sanction.
- The policy outlines factors which panels should consider when determining a registrant's level of insight, but these are framed in both positive and negative terms and we think these might be confusing to the reader. We would like to explore the language we use in this area.
- The policy does not explicitly cover the statutory obligations around duty of candour, or how panels should treat a lack of apology where culture may be a factor. This is an area we would like to focus on, with the intention of considering more detailed guidance to panels.

ii. Remediation

Remediation is a key consideration for panels when assessing what sanction, if any, should be applied following a finding of impairment. Whilst the current policy addresses remediation, we would like to explore whether or not we could provide further detail, and include examples of remediation (a non-exhaustive list).

We would also like to consider providing more detail on how panels should approach remediation, covering the approach to be taken in very serious cases (and whether or not remediation is possible in these cases).

In addition we would like to explore language or best practice on how remediation is taken account of when determining sanctions and how that is communicated to registrants.

2. Aggravating factors

i. Abuse of professional position

Trust underpins the relationship professionals have with service users and the importance of being honest and trustworthy is set out very clearly in our Standards of conduct, performance and ethics.

The Indicative Sanctions Policy briefly discusses abuse of trust, but this is a complex area and we would like to consider how we might strengthen the guidance to help panels establish the seriousness of the concerns before them, and the action required. In doing so, we would like to provide greater clarity on vulnerability and predatory behaviour.

ii. Vulnerability

We would like to look at how we might provide more detail on the definition of 'vulnerable' and how panels should consider this when making decisions. Specifically we propose providing more detail on the circumstances in which someone may be considered vulnerable or find themselves in a vulnerable situation.

iii. Sexual misconduct

Sexual misconduct is a serious matter and one which has a particularly significant impact on service users and public confidence in the profession. Often sexual misconduct will lead to a 'striking off' order, which the current policy explains. However, we would like to explore how we might provide further detail in this area, to help panels navigate the more complex cases they are presented with.

We may also look to review the content covering 'child pornography' to make sure the language we use is appropriate and the detail is sufficient.

iv. Discrimination

Discrimination is unacceptable in modern society and the Standards of conduct, performance and ethics clearly explain that a professional should not discriminate against service users, carers or colleagues.

We would like to review whether or not we should strengthen the guidance in the Indicative Sanctions Policy in this area to support panels in making decisions where discriminatory acts have been found proved.

3. Proportionality

The guidance clearly covers the key principles panels should take account of in relation to proportionality. However, we believe it might be helpful to explore the principles

panels consider and clearly outline how panels should approach this during their decision-making process. For example, taking account of the impact on the registrant, but only as far as possible, and in very serious cases, having limited scope in this area.

We also think further clarity on the need for panels to consider sanctions from least to most restrictive may be helpful in the policy.

In addition, we propose providing more guidance on the reasoning panels should give in a decision on sanction, for example listing why other sanctions were not appropriate with particular reference to suspension sanctions under 12 months.

4. Equality and diversity

The HCPC is committed to preventing discrimination, valuing diversity and achieving equality of opportunity in all that we do. We think it is important that the Indicative Sanctions Policy makes clear the statutory obligations those acting for the HCPC have in this area and therefore propose building on the content currently in the guidance, ensuring that our language is clear and prevents inappropriate interpretation.

We would also like to consider highlighting cultural impacts in key areas throughout the guidance, for example cultural differences in framing apologies, to ensure panels consider cultural impact when making their decision on sanction.

5. Other areas

i. Whistleblowing

The policy does not currently address whistleblowing and how this should be considered when determining sanction. We would like to explore whether or not we should provide a definition in the Indicative Sanctions Policy and detail on how to approach information relating to whistleblowing when determining what sanction might be appropriate. This might include the information being referenced in the determination.

ii. Details on sanctions

We would like to consider whether or not further guidance could be given to panels in relation to the factors to be considered when determining what sanction to impose, in particular, conditions and suspension.

The Indicative Sanctions Policy discusses exceptional circumstances in which a conditions of practice order may be appropriate in cases which would usually have resulted in a suspension order. This is an area we would like to explore further, to ensure we provide panels with further guidance where necessary.

iii. Review hearings

Review hearings are important in ensuring that professionals do not resume unrestricted practice until it is appropriate for them to do so. We therefore propose providing more detail to panels on the considerations they should take at review hearings, particularly around revoke / replace sanctions decisions.

iv. Mediation

The current policy gives mediation as an option for sanction if the Panel is satisfied that the only other appropriate course would be to take no further action. We would like to explore whether it is appropriate for this to remain in the Indicative Sanctions Policy and whether the content may be better covered in another document.

Appendix B - Timescales

| Area | Actions | Dates |
|----------------|--|-----------------------------|
| Scoping | Early scoping – engagement with adjudication employees | May 2017 – June 2017 |
| | Market research (public opinion and engagement with TAC) | August 2017 – November 2017 |
| | Engagement with professional bodies/unions – Fitness to Practise Forum article | August 2017 |
| | Engagement with registrants - survey | October 2017 |
| | Discussion at TAC | September 2017 |
| | Discussion at Council | September 2017 |
| Drafting | Policy team drafting | November 2017 – March 2018 |
| | Council review and approve | March 2018 |
| Consultation | Consultation live | April 2018 – June 2018 |
| | Consultation analysis | July 2018 |
| | Policy amendments | July 2018 – August 2018 |
| | Council review and approve | September 2018 |
| Implementation | Publication | November 2018 |
| | Events | November 2018 |