

Fitness to Practise Committee – 3 June 2010

Practice Note – Case Management Directions

Executive summary and recommendations

Introduction

The Practice Note 'Case Management and Directions' sets out the default directions that apply in fitness to practise cases. It also sets out the default directions applied in cases. The practice note has been updated to provide more information on the purpose of case management and directions.

Decision

The Committee is asked to discuss the practice note and recommend that the Council approve the Practice Note – Case Management and Directions

Resource implications

None

Financial implications

None

Appendices

Practice Note – Case Management and Directions

Date of paper

20 May 2010

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.

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; 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;
- 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.

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.*

(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.

July 2010

DRAFT FOR APPROVAL

[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):

- 1.
- 2.
- 3.

RESPONSE*

Admit/Dispute
Admit/Dispute
Admit/Dispute]

[the authenticity of the following document(s):

- 1.
- 2.
- 3.

RESPONSE*

Admit/Dispute
Admit/Dispute
Admit/Dispute]

[the statement(s) made by the following witness(es), [a copy][copies] of which [is][are] are enclosed with this notice:

- 1.
- 2.
- 3.

RESPONSE*

Admit/Dispute
Admit/Dispute
Admit/Dispute]

* delete as appropriate

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]