

Fitness to Practise Committee – 21 October 2010

Practice Note: Discontinuance

Executive summary and recommendations

Introduction

A recent case considered by a panel of the Conduct and Committee highlighted that further guidance was needed by panels and those appearing before them as to how panels should address their obligations as set out in *Ruscillo v CHRE and GMC*. Ruscillo provides that in conducting fitness to practise proceedings, panels:

‘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.’

The attached practice note endeavors to provide more guidance on this topic.

Background Information

The decision to apply for discontinuance in a case, will be made by the Head of Case Management or the Director of Fitness to Practise after taking the necessary and appropriate legal advice. The Executive also proposes to produce fitness to practise operating guidance (FOG), which will set out the operational processes to be followed by the Executive.

Decision

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

Resource implications

None

Financial implications

None

Appendices

Practice Note – Discontinuance

Date of paper

4 October 2010

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, HPC 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 HPC 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 HPC. 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 HPC has proper grounds for discounting proceedings and has provided an objectively justified explanation for doing so.

¹ [2004] EWCA Civ 1356

To a large extent, the nature and scope of the Panel's inquiry will depend upon the explanation which has been provided by the HPC for the discontinuance. In this regard, HPC 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 HPC 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 HPC 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 HPC 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 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.

[PRACTICE] COMMITTEE

NOTICE OF DISCONTINUANCE

TAKE NOTICE that:

On [date] the Investigating Committee, being satisfied that there was a realistic prospect of the Health Professions Council (**HPC**) 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 HPC 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 HPC discontinuing these proceedings.

Signed: _____ Panel Chair

Date: _____