

Fitness to Practise Committee -16 February 2011

Practice Note: Disposal of Cases via Consent

Executive summary and recommendations

Introduction

The Executive has undertaken a review of the Practice note – Disposal of Cases via Consent and made some minor changes to the document to ensure its clarity.

Decision

The Committee is asked to discuss the practice note and recommend that the Council approve the Practice Note – Disposal of Case via Consent

Background information

All practice notes are placed on the HPC website and provided to stakeholders where required. Reference to the appropriate practice notes is provided in standard correspondence.

Resource implications

None

Financial implications

None

Appendices

Practice Note- Disposal of Cases via Consent

Date of paper

4 February 2011

PRACTICE NOTE

Disposal of Cases by Consent

This Practice Note has been issued by the Council for the guidance of Practice Committee Panels and to assist those appearing before them.

Introduction

Disposing of cases by consent is an effective case management tool which reduces the time taken to deal with allegations and the number of contested hearings which need to be held. However, as the Health Professions Order 2001 (the **Order**) imposes broad public protection obligations upon the HPC, neither the HPC nor a Panel should agree to resolve a case by consent unless they are satisfied that:

- the appropriate level of public protection is being secured; and
- doing so would not be detrimental to the wider public interest.

Disposal by consent

The consent process is a means by which the HPC and the registrant concerned can **may** seek to conclude a case without the need for a contested hearing, by putting before a Panel an order of the kind which the Panel would have been likely to make in any event.

The HPC will only consider resolving a case by consent:

- after an Investigating Committee Panel has found that there is a “case to answer”, so that a proper assessment has been made of the nature, extent and viability of the allegation;
- where the registrant is willing to admit the allegation in full. A registrant’s insight into, and willingness to address, failings are key elements in the fitness to practise process and it would be inappropriate to dispose of a case by consent where the registrant ~~denied~~ **denies** liability; and
- where any remedial action proposed by ~~agreed between~~ **agreed between** the registrant and ~~to be embodied in the Consent Order~~ **HPC** is consistent with the expected outcome if the case was to proceed to a contested hearing.

The process may also be used when existing conditions of practice orders or suspension orders are reviewed. **This enables**, ~~enabling~~ orders to be varied, replaced or revoked without the need for a contested hearing.

Procedure

Disposal by consent does not affect the range of sanctions available to a Panel, it is merely a process by which the registrant and the HPC can propose an appropriate outcome to the case and ask the Panel, assuming that it is content with that outcome, to conclude the case on that basis.

The task for the Panel is to determine whether, on the basis of the evidence before it:

- to deal with the case in an expedited manner by approving the proposal set out in the draft Consent Order; or
- to reject that proposal and set the case down for a full contested hearing.

As the Panel must retain the option of rejecting a proposal for disposing of a case by consent, the HPC has an obligation to make it clear to registrants that co-operation and participation in the consent process will not automatically lead to a Consent Order being approved.

Equally, as the registrant is required to admit liability in order for the process to proceed, in the event that the proposal is rejected by the Panel, that admission will be treated in the same way as a “without prejudice” settlement offer and the full hearing will take place before an entirely different Panel which will not be made aware of the **consent** proposal unless the registrant chooses to bring it to their **the Panel’s** attention.

A Consent Order template is set out in Annex 1 to this Practice Note.

Voluntary Removal

Article 11(3) of the Order and Rule 12(3) of the Health Professions Council (Registration and Fees) Rules 2003 prevent a registrant from **seeking resigning to resign** from the register whilst the registrant is the subject of an allegation or a conditions of practice order or suspension order made by a Panel.

In cases where the HPC is satisfied that it would be adequately protecting the public if the registrant was permitted to resign from the Register, it may enter into a Voluntary Removal Agreement allowing the registrant to do so, but on similar terms to those which would apply if the registrant had been struck off.

In cases where an allegation is already before a ~~Panel~~ **Practice Committee** or an order is in place, such an agreement cannot take effect unless ~~those~~ **the** proceedings **in respect of that allegation** are discontinued or a Panel revokes the **extant** order. In such cases the HPC will give **a Panel** formal notice of discontinuance to the ~~Panel~~ and, if necessary, **or** ask it to revoke any **the** existing order.

A Discontinuance Notice template is set out in Annex 2 to this Practice Note.

March 2011

[PRACTICE] COMMITTEE

CONSENT ORDER

TAKE NOTICE that, in respect of the [allegation made] [review of the order made by the Committee] on [date] against [name] (**the Registrant**):

1. ~~[name of registrant]~~ the **Registrant** consents to the Committee [making] [revoking][varying] [a][the] [type] Order against ~~him~~~~her~~ **the Registrant** in respect of that matter on the terms set out below; and
2. the Council consents to the making of an Order on those terms, being satisfied that, in all the circumstances, doing so would be **secure an appropriate for the following reasons: level of public protection and otherwise be in the public interest.**

AND FURTHER TAKE NOTICE that the Panel, with the consent of the parties, and upon due inquiry being satisfied that it is appropriate to do so, now makes the following Order:

[set out Order]

Signed: _____ Panel Chair

Date: _____

Signed: _____

Signed: _____

Date: _____

Date: _____

Note: the parties may consent to the Order by all signing one copy of this form or each signing separate copies.

[PRACTICE] COMMITTEE

NOTICE OF DISCONTINUANCE NOTICE *AND*
VOLUNTARY REMOVAL FROM THE REGISTER

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 (the **Allegation**) against [name] (the **Registrant**) for hearing by this Committee:

[set out allegation]

On [date] the HPC and the Registrant entered into a Voluntary Removal Agreement, under the terms of which:

1. the HPC agreed to withdraw, and discontinue all proceedings in relation to, the Allegation; and
2. the Registrant, in consideration of that withdrawal and discontinuance, agreed:
 - a. to resign from the HPC register;
 - b. to cease to practise as a [profession] or use any title associated with that profession; and
 - c. that, if the Registrant at any time seeks to be readmitted to the HPC Register, in considering any such application the HPC shall act as if the Registrant had been struck off of the register as a result of the Allegation.

AND FURTHER TAKE NOTICE that this Committee, being satisfied upon due inquiry that it is appropriate to do so, consents to the HPC discontinuing these proceedings.

Signed: _____ Panel Chair

Date: _____