Council, 24 September 2015

Review of Practice Notes

Introduction

Practice Notes exist to provide clear guidance to all parties with an interest or involvement in a Fitness to Practise investigation or Hearing. As our processes change, or there are case law or learning issues, it is necessary to review these documents. The following provides an update about the ongoing programme of review of these key Council.

Process of review

There are currently 33 Practice Notes. These documents are available on HCPC's website, and are actively referred to during the investigation and hearing processes.

We aim to review each Practice Note on an annual basis. The review has three stages: firstly, HCPC review any relevant case outcomes, complaints or learning points from bodies such as the Professional Standards Authority. Any changes to content or wording are then added. The second stage is for a review by HCPC's Special Counsel, to ascertain if any legislative changes are required. The third and final stage is to review the readability of the document prior to consideration at Council.

In most cases, there are little or no changes, or there is the requirement to edit the document to make it easier to understand or use.

The Practice Notes are not reviewed in isolation. Most relate to an element of an HCPC policy, so the review cycle of the Practice Notes is linked to the review of policies, or any operational guidance for HCPC team members.

The review cycle and number of documents is such that we envisage approximately three revised Practice Notes per Council meeting. We have prioritised the review based on operational impact on Fitness to Practise case activity, time elapsed since the previous review, and the volume of review time by Council.

Summary of changes to Practice Notes for Council approval

Six Practice Notes have been reviewed. Two of these (Assessors and Expert Witnesses, and Review of Striking Off Orders: New Evidence and Article 30(7)) have had no changes made. They are therefore not included with this paper for review.

The remaining Practice Notes have been revised and have a combination of typographical and readability improvements, along with more substantive changes that

reflect our processes. The interim orders practice note contains feedback from the registrant representative bodies, following our ongoing engagement process with them.

The Practice Notes have been reviewed by HCPC's Special Counsel, who has confirmed that the documents contain the required current legislative background to support these areas of work.

Decision

The Council is asked to discuss and approve the changes to the four Practice Notes and two Policies.

Resource implications

Accounted for in the 2014-15 Fitness to Practise Directorate Budget

Financial implications

Accounted for in the 2014-15 Fitness to Practise Directorate Budget

Appendices

Appendix One: Practice Note: Conviction and Caution allegations

Appendix Two: Practice Note: Interim orders

Appendix Three: Practice Note: Postponement and adjournment of proceedings

Appendix Four: Practice Note: Preliminary hearings

Date of paper

4 September 2015

PRACTICE NOTE

Conviction and Caution Allegations

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

Introduction

Article 22(1)(a)(iii) of the Health and Social Work Professions Order 2001 (the **Order**) provides that one of the grounds upon which an allegation may be made is that a registrant's fitness to practise is impaired by reason of:

> "(iii) a conviction or caution in the United Kingdom for a criminal offence, or a conviction elsewhere for an offence which, if committed in England and Wales, would constitute a criminal offence,".

Thus, what are often termed 'conviction allegations' include allegations that a registrant's fitness to practice is impaired as a consequence of:

- being convicted for an offence by a criminal court in any part of the UK;
- accepting a caution for an offence from a UK police force or law enforcement agency;
- being convicted by a court outside of the UK, but for an offence which is recognised as a crime in English law[1]; or
- being convicted by a Court Martial.[2]

Convictions allegations are not about punishing a registrant twice for the same offence. A conviction or caution should only lead to further action being taken against a registrant if, as a consequence of that conviction or caution, the registrant's fitness to practise is found to be impaired. The Panel's role is "*to protect the public and maintain the high standards and reputation of the profession concerned*"[3]

Cautions

The practice for administering cautions varies in England and Wales, Scotland and Northern Ireland but certain common principles apply throughout the UK.

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[1] in cases involving convictions by a court outside of the UK, at an early stage in the investigative process HCPC will seek legal advice to confirm whether the conviction is for an offence which is also an offence under English law and to identify the equivalent English law offence.

[2] Article 22(2) of the Order extends the definition of conviction to include convictions by Courts Martial.

[3] Zidderman v GDC [1976] 1 WLR 330

Cautions are generally a discretionary, non-statutory,[4] means of disposing of offences without the need for the offender to appear before a court. Typically, they are used for first time, low level offences by adults, where diversion from the courts is appropriate for both the offence and the offender.

Although most cautions are non-statutory disposals, they are nonetheless treated as an 'offence brought to justice' and will appear on Disclosure and Barring Service and equivalent criminal record checks. For that reason, there are safeguards in place to protect the offender in all three UK jurisdictions, the principles of which are that cautions should only be administered where:

- the evidence of guilt is sufficient to provide a realistic prospect of conviction;
- the offender makes a clear and reliable admission of the offence; and
- the offender understands the significance of, and gives informed consent to accepting, the caution.

Cautions should not be administered where there is insufficient evidence to bring a prosecution, or where a person does not admit of the offence or there are doubts about the offender's capacity to do so.

Binding Over and Discharge

The powers available to certain criminal courts include the power to 'bind over' offenders or to discharge them either absolutely or subject to conditions. These methods of disposal do not constitute a 'conviction' for the purposes of Article 22(1) of the Order.

Binding over is a preventative measure which, even though it may be imposed as a penalty, is not regarded as a criminal conviction. Similarly, the Powers of Criminal Courts (Sentencing) Act 2000 provides that 'absolute discharge' and 'conditional discharge' orders are not to be treated as a conviction for the purposes of any enactment (such as the Order) which authorises the imposition of any disqualification or disability upon convicted persons.

Consequently, in cases where a registrant is bound over or receives an absolute or conditional discharge, a conviction allegation cannot be made against the registrant, but the HCPC will investigate the circumstances which led to that action being taken, in order to determine whether an allegation of misconduct should be made against the registrant.

Dealing with conviction allegations

The procedural rules for Practice Committee Panels provide that:

[4] In England and Wales, the Police and Justice Act 2006 provides for statutory 'conditional cautions', which allow offenders to be cautioned for more serious or repeat offending, subject to complying with specified rehabilitation or reparation conditions. Panels should deal with conditional cautions in a similar manner to any other conviction or caution.

"where the registrant has been convicted of a criminal offence, a certified copy of the certificate of conviction (or, in Scotland, an extract conviction) shall be admissible as proof of that conviction and of the findings of fact upon which it was based;"[5]

Those rules also provide[6] that, evidence is admissible before a Panel if it would be admissible in civil proceedings before the appropriate court[7] in that part of the UK where the Panel is sitting. In all three UK jurisdictions, evidence that a person has been convicted of an offence is generally admissible in civil proceedings as proof that the person concerned committed that offence, regardless of whether or not the person pleaded guilty to that offence.

Consequently, in considering conviction allegations, Panels must be careful not to 'go behind' a conviction and seek to re-try the criminal case.

The Panel's task is to determine whether fitness to practise is impaired, based upon the nature, circumstances and gravity of the offence concerned, and, if so, whether any sanction needs to be imposed. A similar approach should be adopted when considering cautions, as a caution cannot be administered unless the offender has made a clear admission of guilt.

In considering the nature, circumstances and gravity of the offence, Panels need to take account of public protection in its broadest sense, including whether the registrant's actions bring the profession concerned into disrepute or may undermine public confidence in that profession. In doing so, Panels are entitled to adopt a 'retrospective' approach and consider the conviction as if the registrant was applying for registration with the HCPC.[8]

Although Panels cannot re-try criminal cases, they may have regard to whether the registrant pleaded guilty to the offence and, if so, at what stage in the proceedings. A guilty plea entered at the first reasonable opportunity is indicative of a greater insight on the part of the registrant than one entered at the last moment. A registrant who is convicted of an offence but maintains that the conviction was wrong may lack insight into their offending behaviour and this may have a significant bearing upon the sanction which a Panel should impose in order to protect the public.

In reaching its decision, a Panel should also have regard to any punishment or other order imposed by the courts, but must bear in mind that the sentence imposed is not a definitive guide to the seriousness of an offence. Panels should not assume that a non-custodial sentence implies that an offence is not serious. One factor which may have led the court to be lenient is the expectation that the registrant would be subject to regulatory proceedings.

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5 HCPC (Investigating Committee) (Procedure) Rules 2003, r.8(1)(d); HCPC (Conduct and Competence Committee) (Procedure) Rules 2003 and HCPC (Health Committee) (Procedure) Rules 2003, r.10(1)(d).

6 ibid, r.8(1)(b) and r.10(1)(b).

7 i.e., the High Court of Justice in England and Wales; the Court of Session; or the High Court of Justice in Northern Ireland;

8 CRHP v GDC and Fleischman [2005] EWHC 87 Admin

As Dame Janet Smith noted in the *Fifth Shipman Inquiry Report*, "*The fact that the court has imposed a very low penalty or even none at all should not lead the [regulator] to the conclusion that the case is not serious in the context of [its own] proceedings…The role of the [regulator] in protecting [service users] involves different considerations from those taken into account by the criminal courts when passing sentence…What may well appear relatively trivial in the context of general criminal law may be quite serious in the context of [professional] practice.*"

As noted in *Fleischman*,[9] if a registrant has been convicted of a serious criminal offence and is still serving their sentence at the time the matter comes before a Panel, normally the Panel should not permit the registrant to resume their practice until that sentence has been satisfactorily completed.

Community Sentences

In considering any sentence imposed, Panels need to recognise that community sentences are used to address different aspects of an individual's offending behaviour and, therefore, may not simply be an order to undertake unpaid community work but may also include other orders such as compliance with a curfew, exclusion from certain areas or an order to undergo mental health, drug or alcohol treatment.

Panels need to give careful consideration to the terms of any community sentence but, generally, should regard it as inappropriate to allow a registrant to remain in or return to unrestricted practice whilst they are subject to such a sentence.

Sex offender notification

Similar consideration needs to be given to any notification requirement under the Sexual Offences Act 2003.

Although inclusion on the sex offenders' database is not a punishment, it is intended to secure public protection from those who have committed certain types of offences. Generally, Panels should regard it as incompatible with HCPC's obligation to protect the public to allow a registrant to remain in or return to unrestricted practice whilst subject to a notification requirement as a sex offender.

Child pornography offences

The ease with which child pornography can be downloaded from the internet has resulted in a significant increase in cases involving child pornography before both the courts and regulatory bodies.

In dealing with offences relating to indecent images of children, the courts will have regard to the Sentencing Council's *Sexual Offences Definitive Guideline*,

9 CRHP v GDC and Fleischman [2005] EWHC 87 Admin

but mainly in order to distinguish between degrees of seriousness to assist them in reaching sentencing decisions.

The Council considers that any offence relating to child pornography involves some degree of exploitation or abuse of a child and, therefore, that conviction for such an offence is a serious matter which seriously undermines public trust in the registrant and the profession concerned.

September 2015

PRACTICE NOTE

Interim Orders

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

Introduction

Article 31 of the Health and Social Work Professions Order 2001[1] (the **Order**) sets out the procedure by which a Practice Committee Panel may make an interim order.

An interim order is a temporary measure that will usually apply until a final decision is made in relation to an allegation (or pending an appeal against such a final decision) and may be either:

- an interim **conditions of practice** order - which imposes conditions with which the registrant must comply for a particular period of time; or
- an interim **suspension** order - which directs the Registrar to suspend the registrant's registration for a particular period of time.

An interim order has immediate effect but is of limited duration, which must be specified in the order but cannot exceed eighteen months. Panels should not regard eighteen months as the 'default' position, as an interim order should only be imposed for as long as the Panel considers it to be necessary.[2]

When orders may be made

A Panel of the **Investigating Committee** may make an interim order:

- when an allegation has been referred to that Committee, but it has not yet taken a final decision in relation to the allegation[3];
- when, having considered an allegation, it decides that there is a case to answer, and refers that case to another Practice Committee (but the interim order must be made before the case is referred);[4] or

[1] SI 2002/254

[2] in reaching its decision a Panel should be aware that an interim order can be varied or revoked, but not extended, by a reviewing Panel.

[3] these are separate proceedings at which the panel will only consider whether an interim order should be imposed.

[4] as case to answer decisions are made 'on the papers' and without the registrant being present, this would require the Panel to reach a 'minded to' decision and then adjourn without referring the case to another Committee, in order to give the registrant an opportunity to appear before the Panel and be heard on whether an interim order should be imposed. In practice, this power is rarely used.

- when it makes an order that an entry in the register has been fraudulently procured or incorrectly made but the time for appealing against that order has not yet passed or an appeal is in progress.

A Panel of the **Conduct and Competence Committee** or **Health Committee** may make an interim order:

- when an allegation has been referred to that Committee but it has not yet reached a decision on the matter;[5] or
- when, having decided that an allegation is well founded, the Panel makes a striking-off order, a suspension order or a conditions of practice order but the time for appealing against that order has not yet passed or an appeal is in progress.

Right to be heard

Article 31(5) of the Order provides that the registrant concerned must be afforded "an opportunity" to appear before, and be heard by, a Panel before it decides whether to make an interim order. The absence of the registrant does not preclude the proceedings from taking place if the registrant has been afforded that opportunity.

Article 31 does not set out detailed notice requirements for interim order proceedings and, as they are separate proceedings held solely to consider whether and, if so, in what terms an interim order should be made, the notice requirements in the Practice Committee procedural rules[6] do not apply to them.

The nature of interim order applications means that they need to be considered promptly. Normally, the registrant should be given seven days' notice of interim order proceedings unless there are exceptional circumstances which make it necessary for the Panel to hold a hearing at shorter notice.

As interim order proceedings are usually conducted at short notice, applications to adjourn the proceedings will normally only be considered by the Panel on the day. Given the nature of interim order applications, adjournments should only be granted in the most compelling circumstances.

Imposing an order

A Panel may impose an interim order only if it is satisfied that in doing so:

- is necessary for the protection of members of the public
- is in the interests of the registrant concerned; or
- is otherwise in the public interest.

[5] these proceedings take the form of a separate hearing at which the Panel will only consider whether an interim order should be imposed.

[6] Health and Care Professions Council (Investigating Committee) (Procedure) Rules 2003 (SI 2003/1574); Health and Care Professions Council (Conduct and Competence Committee) (Procedure) Rules 2003 (SI 2003/1575; and Health and Care Professions Council (Health Committee) (Procedure) Rules 2003 (SI 2003/1576).

The appropriate place to consider and weigh all of the evidence in relation to an allegation is when that allegation is being considered at a fitness to practise hearing. Therefore, in determining whether to impose an interim order, a Panel will rarely be in a position to consider and weigh all of the relevant evidence but must act on the information that is available.

At this stage the Panel is not determining the allegation. In essence, the Panel's task is to consider whether the nature and severity of the allegation is such that:

- the registrant, if permitted to remain in unrestricted practice, may pose a risk to the public or to himself or herself; or
- for wider public interest reasons the registrant's freedom to practise should be curtailed.

In doing so the Panel may have regard to the overall strength of the evidence, whether the allegation is serious and credible and the likelihood of harm or further harm occurring if an interim order is not made.

The decision to issue an interim order is not one that should be taken lightly and will depend upon the circumstances in each case.

As the primary purpose of an interim order is public protection, an interim order which is based solely on public interest grounds (for example, to maintain public confidence in the profession) should only be imposed where it is absolutely necessary rather than merely desirable.[7]

Although this list is not exhaustive, the types of case in which an interim order is likely to be made are those where:

- there may be an ongoing risk to service users from the registrant's serious or persistent competence failures or serious lack or professional knowledge or skills;
- the registrant may pose an ongoing risk to service users, such as allegations involving violence, sexual abuse or other serious misconduct;
- a registrant with apparent serious health problems is practising whilst unfit to do so and may pose a serious risk to service users or others, or be at risk of self-harm;
- although there may be no evidence of a direct link to professional practice, the allegation is so serious that public confidence in the profession and the regulatory process would be seriously harmed if the registrant was allowed to remain in unrestricted practice (for example, allegations of murder, rape, the sexual abuse of children or other very serious offences);
- the registrant has breached an existing suspension or conditions of practice order.

The Panel must balance the need for an interim order against the consequences for the registrant and ensure that they are not disproportionate to the risk from which the

[7] *R (Shiekh) v General Dental Council* [2007] EWHC 2972

Panel is seeking to protect the public. This includes the financial and other impacts which an interim order may have on a registrant.

In making an interim order application, the HCPC may ask specifically for an interim suspension order or an interim conditions of practice order to be imposed by the Panel. However, regardless of the terms of an application, a Panel should always consider whether an interim conditions of practice order would be the more proportionate means of securing a degree of protection which the Panel considers necessary. An interim suspension order should only be imposed if the Panel considers that a conditions of practice order would be inadequate for that purpose.

In imposing an interim conditions of practice order, a Panel must take account of the fact that it is doing so on an interim basis and has not heard all of the evidence in the case. Normally, it should not impose the kind of conditions which may be appropriate after an allegation has been determined to be well founded at a final hearing, such as conditions requiring the registrant to undertake additional training.

Consequently, interim conditions of practice are likely to be limited to specific restrictions on practice, for example, not to provide services to children, not to act as an expert witness or not to undertake unsupervised home visits. An interim conditions of practice order may also specify supervision requirements, including a requirement to provide regular supervisory reports to any Panel reviewing the order.[8]

Reasons

The draconian nature of an interim order means that a Panel must be very clear in its decision as to why a interim order is necessary and, if applicable, why an interim suspension order has been imposed rather than interim conditions of practice.

Interim orders during appeal periods

Where the Panel is considering imposing an interim order at the conclusion of a final hearing (in order to restrict or remove the registrant's right to practise during the appeal period) the decision will be made as part of that hearing and not in separate proceedings.

Imposing an interim order should not be regarded as an automatic and inevitable step at the end of a final hearing just because a relevant sanction was imposed. If a Panel is considering imposing an interim order, it should give the registrant an opportunity to address the Panel on whether doing so is necessary.

Review, variation, revocation and replacement

Interim orders must be reviewed on a regular basis; at a minimum within six months of the date on which the order was made and then every three months from the date of the preceding review until the interim order ceases to have effect. A registrant

[8] If conditions of this kind would be appropriate if the registrant was practising but the registrant is unemployed, that should not be regarded as an obstacle to their imposition (*Perry v NMC* [2012] EWHC 2275 (Admin)).

may also ask for an interim order to be reviewed at any time if new information becomes available or circumstances change.

If an interim order is replaced by another interim order or extended by the court before it is first reviewed, that first review does need not to take place until six months after the order was replaced or extended. If replacement or extension occurs after the first review, then the next review must take place within three months of the order being replaced or extended.

Orders may be varied or revoked at any time and the person who is subject to the order may also apply to the appropriate court for the order to be varied or revoked.

If one type of interim order is replaced by another, the replacement order may only have effect up to the date on which the original order would have expired (including any time by which the order was extended by a court).

The HCPC may apply to the appropriate court[9] to extend an interim order for up to twelve months.

Terminating an interim order

Interim orders can be brought to an end in three ways:

- by the court, on the application of the person who is subject to the order;
- by the Practice Committee currently dealing with the allegation to which the interim order relates; or
- automatically, when it lapses or the circumstances under which the order was made no longer exist:
    - if the order was made before a final decision is reached in respect of an allegation, when that final decision is made (but a further interim order may be made at that time); and
    - if an order was made after a final decision was reached, to have effect during the 'appeal period', either when that period expires or, if an appeal is made, when the appeal is concluded or withdrawn.

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[9] The High Court in England and Wales or Northern Ireland or, in Scotland, the Court of Session.

PRACTICE NOTE

Postponement and Adjournment 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

Article 32(3) of the Health and Social Work Professions Order 2001[1] requires Panels to conduct fitness to practise proceedings expeditiously and it is in the interest of all parties, and the wider public interest, that allegations are heard and resolved as quickly as possible. Where a time and venue for a hearing have been set, Panels should always aim to proceed as scheduled. Accordingly, the parties and their representatives should also be ready to proceed.

Panels proceedings should not be postponed or adjourned unless it is shown that failing to do so will create a potential injustice. Requests for postponements or adjournment made without sufficient and demonstrated reasons to justify them should not be granted.

Postponements and adjournments

In relation to the HCPC fitness to practice proceedings, a distinction is made between a postponement and an adjournment in that:

- **postponement** is an administrative action which may be taken on behalf of a Practice Committee by the HCPC's Head of Adjudication[2] at any time up to 14 days before the date on which a hearing is due to begin; and

- **adjournment** is a decision for the Panel or the Panel Chair, taken at any time after that 14 day limit has passed or once the proceedings have begun or are part heard.

Postponements

An application for a postponement should be made in writing (letter, email or fax) to the Head of Adjudication at the HCPC at least 14 days before the hearing date. The application should set out the background to and reasons for the request and be supported by relevant evidence.

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1 SI 2002/254

2 ora person nominated by the Head of Adjudication (other than a person who has been involved in the investigation of the case)

In considering postponement requests, the Head of Adjudication will consider whether, in all the circumstances the request is reasonable, taking into account:

- the reasons for the request;
- the length of notice that was given for the hearing;
- the time remaining before the hearing is due to commence; and
- whether the case has previously been postponed.

If a postponement application is refused, the Head of Adjudication will advise the applicant to attend the hearing. The applicant and any representative must do so ready to proceed, but subject to the right to apply to the Panel for an adjournment.

Where a postponement is granted, the Head of Adjudication will seek to agree with the parties suitable alternative dates for the hearing or, where that is not possible, to agree the arrangements which need to be put in place in order for the case to be re-listed for hearing.

Adjournments

Applications for adjournment should be made in writing as early as possible and, other than in exceptional circumstances, no later than seven days prior to the scheduled date for the hearing. The application must specify the reasons why the adjournment is sought and be accompanied by supporting evidence, such as medical certificates.

Where, due to exceptional circumstances, an application for an adjournment is made less than five working days prior to the date for the hearing, it is unlikely to be considered by the Panel until that scheduled hearing date.

Panels should control and decide all requests for adjournments. In determining whether to grant an adjournment, Panels should have regard to the following factors, derived from the decision in *CPS v Picton* (2006) EWHC 1108:

- the general need for expedition in the conduct of proceedings;
- where an adjournment is sought by the HCPC, the interest of the registrant in having the matter dealt with balanced with the public interest;
- where an adjournment is sought by the registrant, if not granted, whether the registrant will be able fully to present his or her defence and, if not, the degree to which the ability to do so is compromised;
- the likely consequences of the proposed adjournment, in particular its likely length and the need to decide the facts while recollections are fresh;
- the reason that the adjournment is required. If it arises through the fault of the party asking for the adjournment, that is a factor against granting the adjournment, carrying weight in accordance with the gravity of the fault. If that party was not at fault, that may favour an adjournment. Likewise if the party opposing the adjournment has been at fault, that will favour an adjournment;

- the history of the case, and whether there have been earlier adjournments and at whose request and why;

The factors to be considered cannot be comprehensively stated but will depend upon the particular circumstances of each case, and they will often overlap. The crucial factor is that the registrant is entitled to a fair hearing.

The Panel will exercise its discretion judicially, the crucial test being that the registrant is entitled to a fair hearing but that the convenience of the parties or their representatives is not a sufficient reason for an adjournment.

Unless advised by the Panel that an adjournment has been granted, the parties and their representatives must attend the Panel ready to proceed.

Communication

So far as possible, communications relating to postponements and adjournments should be provided in electronic form in order to ensure that they are dealt with as expeditiously as possible.

Supporting evidence

Applications for postponements or adjournments must be supported by proper evidence and both the Head of Adjudication and Panels should adopt a strict approach to evaluating such evidence.

For example, claims that a person is unfit to attend a hearing should be supported by specific medical evidence to that effect. Medical certificates which simply state that a person is "off work" or "unfit to work" should generally be regarded as insufficient to establish that a person is too ill to attend a hearing. An application for a postponement or adjournment on medical grounds should normally be supported by a letter from a doctor which expressly states that the person concerned is too ill to attend a hearing.

Interim Orders

Article 31 of the Health and Social Work Professions Order 2001 allows the HCPC to make an application for an Interim Order where it considers that information has been received during the course of the investigation that indicates there is a current risk to members of the public, the public interest and/or the registrant concerned. In these circumstances it is important that a hearing takes place at the earliest suitable opportunity to determine whether it is necessary to impose an interim restriction on a registrant's practice.

Article 31 does not specify any detailed procedural requirements for such hearings but, normally, the registrant should be given seven days' notice of such a hearing unless there are exceptional circumstances which make it necessary for the Panel to hold a hearing at shorter notice.

As interim order proceedings are conducted at short notice, applications to adjourn the proceedings will normally only be considered by the Panel on the

day. Given the nature of interim order applications, adjournments are unlikely to be granted other than in the most compelling circumstances.

September 2015

PRACTICE NOTE

Preliminary Hearings

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

Introduction

Panels have the power to hold preliminary hearings in private with the parties for the purpose of case management. In many fitness to practise cases such a hearing will not be required, but they are of assistance in those cases where substantial procedural or evidential issues need to be resolved before a full hearing takes place.

Background

The procedural rules[1] for fitness to practise proceedings provide that a Panel may hold a preliminary hearing[2] in private with the parties, their representatives and any other person it considers appropriate if, in the opinion of the Panel (or the Chair) such a meeting would assist the Panel to perform its functions.

A preliminary hearing may be held by the Panel Chair alone, acting on behalf of the Panel, and that practice should be adopted in most cases.

The primary purpose of a preliminary hearing is to assist the Panel in regulating the proceedings at a substantive hearing, by identifying the issues in the case, determining how the case will be conducted and what the timetable for the case should be.

A preliminary hearing should not be used to deal with decisions about the merits of a case. Further, as the Panel is trier of both fact and law, a Panel Chair conducting a preliminary hearing alone must take care not to make determinations which are properly a matter for the whole Panel at a substantive hearing, such as the admissibility or relevance of evidence.

Procedure

The Panel may decide to hold a preliminary hearing of its own motion or at the request of one of the parties.

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1 HCPC (Investigating Committee) (Procedure) Rules 2003, r.7; HCPC (Conduct and Competence Committee) (Procedure) Rules 2003, r. 7; HCPC (Health Committee) (Procedure) Rules 2003, r.7.

2 The legislation refers to "preliminary meetings" but that term has been found to mislead some parties as to the nature of the proceedings and the term "preliminary hearing" has therefore been adopted

Where a party requests that a preliminary hearing is held, before arranging to do so, the Panel should ask that party to outline the reasons for the request and the issues which will be raised if the hearing is held.

As many preliminary issues can be resolved by correspondence, a Panel should normally only agree to a preliminary hearing being held where it is satisfied that there are substantial procedural or evidential issues which need to be resolved.

Normally the parties should be given at least 14 days' notice of a preliminary hearing. In setting the time and place for that hearing, Panels must take account of Article 22(7) of the Health and Social Work Professions Order 2001,[3] which requires preliminary hearings to be held in the UK country in which the registrant concerned is registered.

At a preliminary hearing the Panel (or Chair, if sitting alone) should verify compliance to date with all requirements relating to the proceedings, including any standard directions which apply to those proceedings and may;

- consider issues relating to the hearing of the case including:
    - the extent to which any evidence is agreed including, where facts are not in dispute, requiring the parties to produce a statement of agreed facts;
    - where agreed between the parties, directing that witness statements are to stand as evidence in chief;
    - ordering the joinder of allegations;
    - issuing Witness Orders or Production Orders;
    - where any party is seeking to introduce expert evidence, requiring that party to tender an expert witness;
    - determining applications for all or part of the hearing to be held heard in private;
    - ordering special measures or providing for any other needs of vulnerable witnesses;
    - determining whether any facilities are required for particular evidence, such interpreters or equipment for recordings or other exhibits;
- make arrangements for any further investigation which the Panel has agreed to have conducted and which the registrant has requested or consented to (e.g. a medical examination or test of competence);
- set a date for (or the arrangements for setting the date for) the hearing or, a further preliminary hearing, including requiring the parties to provide dates to avoid and time estimates;
- giving any special directions for the exchange of documents prior to the hearing, including:

[3] SI 2002/254

- requiring the mutual disclosure of documents and setting time limits or other requirements for disclosure or service;
- requiring agreed bundles or skeleton arguments to be submitted (if the parties are legally represented).

However, Panels should not agree to hold a preliminary hearing simply because a party is asking the Panel to deal with one or more of the matters listed above if those matters can be adequately resolved by correspondence.

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