

A CASE TO ANSWER

Introduction

Article 26 of the Health Professions Order 2001 ('the 2001 Order') requires the Investigating Committee to investigate any allegation which is referred to it and consider whether, in the Committee's opinion, there is "a case to answer".

Determining whether there is a case to answer is a preliminary, paper-based exercise, which involves examination of:

- the original complaint;
- any written representations made by the registrant concerned;
- any further information provided, at the Committee's request, by the complainant in response to those representations; and
- any other information which has been obtained in relation to the allegation.

The function of this preliminary procedure is to help ensure that a registrant is not required to answer an allegation unless the Council has established a *prima facie* case against him or her.

In addition to preventing weak cases from proceeding further, in appropriate cases the process also enables evidence to be sifted, the issues in dispute to be defined and ensures that any case which a registrant is required to answer is appropriate to the facts disclosed.

The Panel's task

The task for the Panel is to consider, in the light of the evidence put before it, whether in respect of an allegation under Article 22(1)(a) of the 2001 Order there is a case to answer that the registrant's fitness to practise is impaired by reason of:

- misconduct,
- lack of competence,
- a conviction or caution
- his or her physical or mental health, or
- a determination by another health or social care regulator.

The test is whether the Panel is satisfied that, on the basis of evidence which has been put before it, if the registrant is unable to contradict that evidence, it is probable that any Panel of the Conduct and Competence Committee or Health Committee which eventually hears the case would find that the allegation is well founded.

The Council's Case

It is for the Council to establish its case and, therefore, the Panel's initial consideration of an allegation should disregard any representations from the registrant and focus upon whether the Council has put sufficient information before the Panel to meet that requirement.

In effect, an allegation under Article 22(1)(a) consists of three elements:

- the facts on which the allegation is based;
- the "ground" (for example, misconduct) in that Article which it is suggested that those facts constitute; and
- the suggestion that, on the basis of that ground and any other supporting facts, the registrant's fitness to practise is impaired.

Consequently, at the case to answer stage, the Panel must be satisfied that the Council has provided sufficient evidence of all relevant elements of an allegation. This requires three questions to be answered:

- what are the material facts which comprise the allegation – the events or outcome and surrounding circumstances which led to the allegation being made - and is there sufficient evidence to suggest that those facts are true?
- does it appear that those facts, if true, amount to one of the "grounds" set out in Article 22(1)(a) (for example, misconduct or lack of competence)?
- is there evidence to support the suggestion that, on the basis of that ground and any supporting facts, the registrant's fitness to practise is impaired?

If the Council is able to establish all the elements of its case then there will be a case to answer, unless the registrant is able to rebut or discredit a material element of that case.

Rebuttal by the registrant

Determining whether there is a case to answer is a paper-based exercise and therefore the Panel is not in a position fully to assess all of the evidence in the case. That task will be carried out by a Panel of the Conduct and Competence Committee or Health Committee which will hear all of the evidence, be able to put question to the witnesses, assess their demeanour and so on. Consequently, the provision of evidence from the registrant to show that he or she has a credible defence to the allegation is insufficient to justify a decision that there is no case to answer. The proper course is for that defence to be tested at a hearing.

However, if the registrant is able to provide evidence which disproves or discredits a material element of the Council's case – for example, to be able to establish that he or she is not the registrant concerned or was not in the country at the relevant time – or which, by its nature, means that it is improbable that a Panel would consider the allegation to be well founded, then the proper conclusion for the Panel to reach is that there is no case to answer.

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