

HEALTH PROFESSIONS COUNCIL

GUIDANCE NOTE

Power to require the disclosure of information and to summon witnesses

Introduction

The Health Professions Council and its Practice Committees have the power to order persons to provide information, produce documents and to appear at hearings. Failure to comply with such an order is a criminal offence.

Background

Article 25(1) of the Health Professions Order 2001¹ (the 2001 Order) provides that, for the purpose of assisting them in carrying out their functions in respect of fitness to practise, the Council's Practice Committees may require any person who is able to supply information or produce any document which appears relevant to the discharge of any such function, to supply that information or produce that document.

Further, Article 32(2)(m) of the 2001 Order provides that the Practice Committees' Rules may include provision empowering the Committee to require persons to attend and give evidence at hearings or to produce documents at hearings. Each of the Committees' Rules² contain such powers.

In addition, Article 37(5)(i) of the 2001 Order provides that the rules which apply to the Council when it is considering appeals from registration-related decisions made by the Education and Training Committee may require persons to attend and give evidence at appeal hearings or to produce documents at such hearings. The Council's Registration Appeal Rules³ contain such powers.

Failure to comply

Article 39(5) of the 2001 Order provides that a person who, without reasonable excuse, fails to comply with any requirement imposed by the Council or a Practice Committee under Article 25(1) or (2) or under rules made by virtue of Article 32(2)(m) (or any corresponding rule) is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale (currently £5,000).

¹ SI 2002/254

² Rules 10(3) and 13(6), Health Professions Council (Conduct and Competence Committee) (Procedure) Rules 2003 (SI 2003/1575); Rules 10(3) and 13(6), Health Professions Council (Health Committee) (Procedure) Rules 2003 (SI 2003/1576); Rule 6(8) Health Professions Council (Investigating Committee) (Procedure) Rules 2003 (SI 2003/1574)

³ Rule 15(4) Health Professions Council (Registration Appeals) Rules 2003 (SI2003/1579)

Limits of the power

These powers may not be used against the health professional who is the subject of the proceedings. However, Article 25(2) of the 2001 Order does enable a Practice Committee to require that person to give it details of his or her employer or any person with whom he or she has an arrangement to provide services and of any other health or social care regulator by which he or she is authorised to practise.

The powers cannot be exercised to obtain:

- information whose disclosure is prohibited by or under any other enactment⁴ (which is defined as including enactments comprised in, or in an instrument made under, an Act of the Scottish Parliament).
- information or documents which a person could not be compelled to supply or produce in civil proceedings in any court to which an appeal from a decision of the Practice Committee would lie.

The Council and Practices Committees will take steps to avoid issuing orders which breach these limitations. However, if an order is made and the person against whom it was made believes that either of these limitations would apply, he or she may apply to have the order set aside (see below).

Exercise of powers

The Council and Practice Committees will exercise their powers by means of two forms of order (a template for which is set out in the appendix):

- Disclosure Orders requiring a person to provide certain information or documents
- Witness Orders requiring a person to attend a hearing and, if appropriate, to provide certain information or documents.

The fitness to practise and appellate functions of the Practice Committees and Council respectively are normally discharged by Panels and orders will therefore generally issued by the chairman of the relevant panel. The Panel may decide on its own motion to issue an order and parties to the proceedings may also request that a Disclosure Order or Witness Order be issued to a person. Where an Order is sought by one of the parties this will normally occur at the preliminary meetings which chairmen hold with parties to resolve procedural issues, issue directions and so on.

A person who in response to a Witness Order attends the hearing of any proceedings and gives evidence is a witness of the party on whose application the Order was issued and as

⁴ if the prohibition operates because the information is capable of identifying an individual an order can be made which allows for the information to be put into a form which is not capable of identifying that individual.

such may not be cross-examined by that party without the leave of the Panel. Normally this will only be given if the Panel decides that the witness may be treated as a hostile witness.

A person shall not be required to attend in obedience to a Witness Order unless it has been served at least seven days before the hearing or, if it has been served within that period, that person has informed the Panel that he or she is willing to attend.

Normally, the party seeking to compel a person to attend a hearing must meet their reasonable costs of doing so and the Panel chairman may require an undertaking to that effect before an Order is issued.

Where, in the case of any document, a person could comply with an Order by delivering a copy of parts of the document and making those parts available for inspection, he or she shall not be compelled in obedience to an Order to do more than:

- (a) produce a photographic or other facsimile copy of those parts of the document, and
- (b) make those parts of the document available for inspection by the Panel.

Setting aside

A person on whom an Order has been served may apply in writing to have it set aside in whole or in part. If the Order was issued at the request of a party to the proceedings, that party shall have a right to be heard on such an application.

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[DISCLOSURE][WITNESS] ORDER

TO: [name and address of witness]

The [[investigating] [Health] [Conduct and Competence] Committee of the] Health Professions Council is considering an [allegation relating to the fitness to practise of] [application for restoration to the HPC Register made by] [appeal made by]:

[name of health professional]

[A hearing in respect of that [allegation] [application] [appeal] will take place at [time] on [date] at [venue].]

In accordance with [Article 25(1) of the Health Professions Order 2001] [Rule [number] of the Health Professions Council [(rules)] Rules 2003] **YOU ARE ORDERED TO:**

[provide the following information by [date]]:

[produce the following documents by [date]]:

[attend at that hearing to give evidence] [and to produce the following documents]:

The information or documents identified above should be sent to [name] at the Health Professions Council, Park House, 184 Kennington Park Road, London SE11 4BU not later than [date]

DO NOT IGNORE THIS ORDER

Failing, without reasonable excuse, to:

- provide any information or produce any documents; or
- attend a hearing and give evidence or produce any documents;

as required by this order is a crime under Article 39 of the Health Professions Order 2001 and, on conviction, you may be liable to a fine of up to **£5000**.