

The Role of Fitness to Practise Panels

Introduction

The three statutory fitness to practice committees never consider individual allegations. This work is undertaken by panels which are comprised of partners. This is because a clear division is required between the strategic policy making roles of Council and its Committees and the partners who implement the policy set by the Council.

The Council has also taken steps to remove Council members from chairing fitness to practise panels. This measure was passed in December 2004. Article 6 of the European Convention on Human Rights requires tribunals to be “independent and impartial”. The Council has an obligation to ensure that, so far as possible in the context of professional self-regulation, that impartiality and independence is achieved and seen to be achieved in order to avoid any suggestion of bias. This is the key reason why Council has removed itself from the decision making process of the fitness to practise panels.

Members of the three Practice Committees perform a key audit function involving review of the arrangements that are set up to protect the public from people whose fitness to practice is impaired. This involves looking at the work of the panels, approving practice notes and reviewing the processes which the panels operate.

The functions of the Practice Committees is set out in The Health Professions Council (Practice Committees)(Constitution) Rules Order of Council 2003. Rule 8(3) (a) states that at least once in every year a Practice Committee shall meet ‘to review the allegations heard by the Committee during the previous 12 months.

As part of the Director of Fitness to Practises regular reports to the three Committees, a range of statistics are provided to help the Committee to meet this function. They are as follows:

- allegations received. This includes a breakdown of by home country, route to registration, profession, type of allegation, type of complainant and nationality
- what type of cases are referred by panels of the Investigating Committee
- sanctions imposed by panels of the Conduct and Competence Committee and Health Committee
- numbers of Interim Orders applied for and granted
- cases by profession pending hearing
- decision by profession

Fitness to Practise Panels

Paragraph 19(6) of Schedule 1 to the Health Professions Order 2001 (“the 2001 Order”) sets out how a panel should be constituted. It states that

The panel of a Practice Committee considering an allegation or taking any other action under Part V shall comprise at least three members who shall be selected with

due regard to the former, current or proposed professional field of the person concerned as the case may be and to the nature of the matters in issue, provided that

- (a) at least one member is registered in that part of the register in which, as the case may be, the person under consideration is or was registered or in respect of which he has made an application to be registered;*
- (b) there is at least one lay member, who shall not be a registered medical practitioner*
- (c) where the health of the person is relevant to the case, there is at least one registered medical practitioner;*
- (d) subject to sub-paragraph (f), the panel shall comprise both registrant and lay members none of whom is a Council member and the number of registrant members may exceed the number of lay members but may not exceed them by more than one;*
- (e) no one who has been involved in the case in any other capacity may sit on the panel; and*
- (f) the person presiding may but need not be a member of the Council.*

Areas that are considered by Fitness to Practise Panels

There are four key areas within Part V of the Health Professions Order 2001 that involve the use of panels. They are:

- Allegations
- Interim Orders
- Review of Orders
- Restoration

The relevant law used by the panels is as follows:

- The Health Professions Order 2001
- Statutory Rules
- HPC Standards
- Human Rights Act.

A number of practice notes and training notes have been produced in order to assist the panels. The practice notes are as follows:

- Restoration
- Assessors and Expert Witnesses
- Summoning Powers
- Self-Referrals
- Sanctions
- Equal Treatment
- Welsh Language
- Allegations
- Preliminary Meetings

- Interim Orders

The sanctions practice note is intended to be a living document and will be continually updated. It is also the intention to create a fitness to practise bench book as an aid to all those involved in the fitness to practise processes.

Allegations

HPC can consider allegations to the effect that a registrant's fitness to practise is impaired by reason of their:

- lack of competence;
- misconduct;
- conviction or caution;
- physical or mental health; or a
- determination by another regulator responsible for health or social care.

HPC can also consider allegations to the effect that an entry into the register was fraudulently procured or incorrectly made.

It is the role of panels of the Investigating Committee to determine whether there is a case to answer in relation to the allegation that has been made. Panels meet three times a month to consider allegations and meet in private to determine on the documents alone whether there is a case to answer.

Panels are required to determine whether or not there is a *prima facie* case to answer in relation to the allegation that the registrant's fitness to practise is impaired. The test that has to be applied is whether it is probable, that the allegation, if not rebutted, will be found to be well founded. The test requires the Panel to determine:

- a) if the information put before them amounts to an allegation which is within Article 22 of the Health Professions Order 2001; and
- b) whether it is probable that the allegation would be found to be well founded.

It is not the panel's task to weigh and determine the evidence, and therefore evidence which may rebut the allegation is a matter for any future panel which may hear the case. However, if the registrant has provided any definitive information to rebut a material element of that allegation or which undermines the Council's case, that can be taken into account when considering whether there is a case to answer.

The panel must also determine which committee the case will be referred too.

Health allegations must be heard by the health committee, fraudulent or incorrect entry allegations must be heard by the Investigating Committee and all other allegations must be heard by the Conduct and Competence Committee.

The Investigating Committee will retain control over incorrect or fraudulent entry cases and it is the role of panels of this committee to determine whether the entry to

the register was incorrect or fraudulent. If this is found to be the case, the panel can remove or amend the entry to the register.

Cases that are referred by panels of the Investigating Committee are generally held in public unless there is a good reason for not doing so. A verbatim transcript of the hearing is taken and a Legal Assessor is present to give advice on law and procedure.

At such hearings, it is the role of the HPC to prove its case. The civil rules of evidence and civil standards of proof are applicable in this jurisdiction

It is the role of panels of the Health and Conduct and Competence Committee to determine whether the allegation that the registrant's fitness to practice is well founded.

There are three elements that the panels have to take into account when considering whether an allegation is well founded. The panel have to find that:

- the facts as alleged happened;
- that those facts amount to misconduct/lack of competence etc;
- the misconduct amounts to impairment of fitness to practice.

If the allegation is found to be proved then the panel have to impose the necessary sanction. The sanctioning powers of the panels are set out in Article 29 of the Health Professions Order 2001. The orders available are for the panel to:

- take no further action;
- send the case for mediation;
- caution the registrant for a period of up to 5 years;
- impose conditions of practice for a period of up to 3 years
- suspend the registrant for up to one year; or
- remove the registrant from the register.

The registrant has 28 days to appeal against a decision of the Conduct and Competence or Health Committee. Furthermore, the Council for Healthcare Regulatory Excellence (CHRE) look at all decisions of panels of the Conduct and Competence Committee to determine whether a sanction imposed was unduly lenient.

When considering what sanction to impose, the panels should have regard to the Sanctions practice note. The panels have to consider whether the sanction imposed adequately protects the public. The HPC fitness to practice procedures are not intended to be punitive.

Interim Orders

Article 31 of the 2001 Order sets out the grounds upon which an interim order can be applied for and granted. It is the role of the panel of the Committee within whose remit the case falls to consider whether an interim order should be granted because the serious nature of the allegation means that it is

- necessary for protection of the public;
- in the public interest; or
- in the interests of the person concerned.

Review of Orders

Orders imposed by panels of the Health or Conduct and Competence Committee are routinely reviewed before they expire. At such hearings, the panel can vary, revoke or replace the order. Panels have to consider whether the public will be adequately protected by any decision that has been taken

Restoration

When a panel take the decision to remove someone from the register, it is in effect forever. However, an individual can apply after 5 years have passed to apply for restoration to the register. Any application for restoration is made before the Committee that ordered that the registrant be removed from the register.

Decision

The Committee is requested to note the document. No decision is required.

Background information

None

Resource implications

None

Financial implications

None

Background papers

None

Appendices

None

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