

---

# PRACTICE NOTE

## Concurrent Court Proceedings

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

### Introduction

Article 32(3) of the Health Professions Order 2001<sup>1</sup> requires Panels to conduct fitness to practise proceedings expeditiously and it is in the interest of all parties that allegations are heard and resolved as quickly as possible.

As a general principle, whilst it may be appropriate for HPC fitness to practise proceedings to be postponed if the person concerned is being tried concurrently for related criminal charges, postponement will rarely be appropriate simply because the person concerned or the subject matter of the allegation is the subject of civil proceedings.

### Concurrent criminal proceedings

A potential injustice may arise if regulatory proceedings are conducted at the same time as a related criminal trial. As more restrictive rules of evidence will apply in criminal proceedings, there is a risk that evidence which has not been admitted at that trial may enter the public domain by being admitted in the course of the regulatory proceedings. For that reason, HPC fitness to practise proceedings may be postponed until any related criminal trial has concluded.<sup>2</sup>

In addition, acquittal in the criminal courts will not always mean that no regulatory action will follow, as the grounds for acquittal may be irrelevant for the purpose of fitness to practise proceedings. For example, a registrant who is charged with a sexual offence against a client may be acquitted on the basis of doubts about the client's consent or lack of it, but may still face an allegation of misconduct based upon the inappropriate nature of the relationship with the client.

### Concurrent civil proceedings

In relation to civil proceedings similar issues do not arise and the courts have shown a marked reluctance to stay regulatory proceedings when asked to do so by parties who are the subject of a concurrent civil action. As Stanley Burnton J. stated in *R v Executive Counsel of the Joint Disciplinary Scheme*<sup>3</sup>:

---

<sup>1</sup> SI 2002/254

<sup>2</sup> where FTP proceedings are postponed, it is open to HPC to seek an interim order in appropriate cases

<sup>3</sup> [2002] EWHC 2086

*“Regulatory investigations and disciplinary proceedings perform important functions in our society. Furthermore, the days have gone when the High Court could fairly regard the proceedings of disciplinary tribunals as necessarily providing second class justice”.*

The need for the discretion to stay one set of concurrent civil and regulatory proceedings to be exercised sparingly and with great care was highlighted by the Court of Appeal in *R v Panel on Takeovers and Mergers ex parte Fayed*<sup>4</sup> (emphasis added):

*“It is clear that the court has power to intervene to prevent injustice where the continuation of one set of proceedings may prejudice the fairness of other proceedings. But it is a power to be exercised with great care and only where there is a real risk of serious prejudice which may lead to injustice.”*

Whether there is “a real risk of serious prejudice which may lead to injustice” may be a difficult question to answer and will be dependent upon the fact of the case.

It is open to the parties in fitness to practise proceedings to ask the courts to stay those proceedings but, in the first instance, it is more likely that an application to stay the proceedings will be made to the Panel which is due to hear the case.

If Panels are asked to stay proceedings on the basis that a party is subject to concurrent civil action, the approach which should be adopted, derived from the decisions of the courts<sup>5</sup>, is as follows:

- Panels must exercise the discretion to stay what amounts to one of two concurrent sets of civil proceedings sparingly and with great care;
- a stay must be refused unless the party seeking the stay can show that, if it is refused, there is a real risk of serious prejudice which may lead to injustice in one or both of the proceedings;
- if the Panel is satisfied that there is a real risk of such prejudice arising then it must balance that risk against the countervailing considerations, including the strong public interest in seeing that the regulatory process is not impeded;
- each case turns on its own facts and Panels can only derive limited assistance from comparing the facts of a particular case with those of other cases.

**April 2009**

---

<sup>4</sup> [1992] BCC 524

<sup>5</sup> For example, *R v Executive Counsel of the Joint Disciplinary Scheme* [2002] EWHC 2086, which follows *R v Chance, ex p Smith* [1995] BCC 1095 and *ex p Fayed*