

# HEALTH PROFESSIONS COUNCIL

## FITNESS TO PRACTISE CASE MANAGEMENT

### 1. INTRODUCTION

#### Practice Committees

Investigating and adjudicating allegations about a health professional's fitness to practise under Part V of the Health Professions Order 2001 ('the 2001 Order') is the responsibility of the Health Professions Council's three statutory Practice Committees:

- Investigating Committee;
- Conduct and Competence Committee;
- Health Committee.

Each of those committees appoints Panels to consider individual cases by means of a two-stage adjudication process. Initially a Panel of the Investigating Committee, acting on the documents alone, will determine whether there is a "case to answer". If it is found that there is a case to answer, a Panel of the Health Committee (if it is a health allegation) or of the Conduct and Competence Committee (for any other type of allegation) will determine whether the allegation is "well-founded", normally on the basis of a hearing at which the health professional has a right to attend and be heard.

#### Managing the preliminary phase

Determining whether there is a case to answer is a preliminary exercise which involves examination of:

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

The procedure is intended to ensure that a health professional is not required to answer an allegation unless the Council has established a *prima facie* case.

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

The test is whether the Panel is satisfied that, on the basis of evidence which has been put before it, if the health professional 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 to be well founded.

As a paper based exercise, the case to answer phase has limited case management requirements beyond the need to ensure that:

- correspondence is efficiently handled; and
- HPC Investigators gather evidence not with a view to proving that there is a case to answer, but in a fair and balanced manner which will assist the Panel to discharge its functions.

An important safeguard is that the Panel can only consider evidence which the health professional has had the opportunity to see and comment upon.

### **Managing the second phase**

Panels determine whether an allegation is well founded by means of an adversarial hearing process which is civil in nature and, consequently, to which the civil rules of evidence and the civil standard of proof (“the balance of probabilities”) apply.

However, because fitness to practise allegations relate to professional capability or standing, some facets of the process are closer to criminal proceedings. In particular:

- it is for the Council to prove its case;
- the health professional has a right against self-incrimination; and
- the health professional is presumed to be innocent of the allegation unless the contrary is proven.

In such proceedings the interests of justice are best served by a process which is simple, accessible and fair and where the issues in dispute are identified at the earliest opportunity. Those objectives can be secured by case management procedures which require:

- the Council to set out its case;
- the health professional to identify in advance those elements of the Council's case which he or she disputes; and
- the parties to provide information to assist the Panel in the management of the case.

Expecting the health professional to participate in this process is not contrary to any of the rights set out above as a health professional who wishes to deny every element of an allegation retains the right to do so.

## **2. CASE MANAGEMENT**

Case management is a process by which:

- the issues in dispute are identified at an early stage;
- arrangements are put in place to ensure that evidence, whether disputed or not, is presented clearly and effectively;
- the needs of witnesses are taken into account; and
- an effective programme and timetable is established for the conduct of the proceedings.

### **Directions**

Article 32(3) of the 2001 Order requires fitness to practise proceedings to be conducted expeditiously and, for that purpose, enables Practice Committees to give directions for the conduct of cases and for the consequences of failure to comply with such directions. The power to give Directions extends to the conduct of hearings and Panels will use their powers to ensure that, at an early stage, the parties:

- exchange documents;
- identify the written evidence they intend to introduce and the other exhibits or material they wish to present;
- identify witnesses that are expected to give oral evidence, the order in which they will do so and any special arrangements which need to be made for a witness;
- request any witness or disclosure orders which are required to compel the attendance of a witness or the production of evidence;
- draw attention to any point of law that they intend to raise which could affect the conduct of the hearing; and

- indicate the timetable they expect to follow.

### **Standard Directions**

To improve the management of cases each of the Practice Committees has issued the following Standard Directions which will apply automatically as “default” directions in every case:

Panels will actively manage cases to ensure compliance with directions and where a Panel considers that the nature or circumstances of the case require it may, of its own volition or at the request of one of the parties, give specific directions for the conduct of that case which vary or supplement the Standard Directions.

### **Standard Directions**

#### **1. Exchange of Documents**

- (1) The Council shall, no later than 42 days before the date fixed for the hearing of the case, serve on the health professional a copy of the documents which the Council intends to rely upon at that hearing.
- (2) The health professional shall, no later than 28 days before the date fixed for the hearing of the case, serve on the Council a copy of the documents which he or she intends to rely upon at the hearing.
- (3) The parties shall, at the same time as they serve documents in accordance with this Direction, provide the Panel with five copies of those documents.

#### **2. Notice to admit facts**

- (1) A party may serve notice on another party requiring that party to admit the facts, or part of the case of the serving party, specified in the notice.
- (2) A notice to admit facts must be served no later than 21 days before the date fixed for the hearing of the case.
- (3) If the other party does not, within 14 days, serve a notice on the first party disputing the fact or part of the case, the other party is taken to admit the specified fact or part of the case.

### **3. Notice to admit documents**

- (1) A party may serve notice on another party requiring him to admit the authenticity of a document or exhibit disclosed to him and specified in the notice.
- (2) A notice to admit documents (together with those documents unless they have already been provided to the other party) must be served no later than 21 days before the date fixed for the hearing of the case.
- (3) If the other party does not, within 14 days, serve a notice on the first party disputing the authenticity of the documents or exhibits, the other party is taken to accept their authenticity and the serving party shall not be required to call witnesses to prove those documents or exhibits at the hearing.

### **4. Notice to admit witness statements**

- (1) A party may serve notice on another party requiring him to admit a witness statement disclosed to him and specified in the notice.
- (2) A notice to admit a witness statement (together with that statement unless it has already been provided to the other party) must be served no later than 21 days before the date fixed for the hearing of the case.
- (3) If the other party does not, within 14 days, serve a notice on the first party requiring the witness to attend the hearing and give oral evidence (and thus be available for cross examination), the other party is taken to accept the authenticity of the statement and the serving party shall not be required to call the witnesses to give evidence at the hearing.

### **5. Withdrawal of admissions**

The Panel may allow a party, on such terms as it thinks just, to amend or withdraw any admission which that party is taken to have made in relation to any notice to admit served on that party under Standard Directions 2 to 4.



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