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Information for employers and managers

# The fitness to practise process

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# The fitness to practise process

## About this brochure

This brochure gives you information as an employer or manager of one of our registrants (professionals on our Register). It explains what you should do if you have concerns about a registrant's fitness to practise, and when you should make us aware of any concerns. We try to make our processes as open and clear as possible and we hope the information in this brochure helps you through the fitness to practise process.

## About us

We are a regulator of professionals that provide health and care services. Our objectives are:

- to protect and promote the health and safety of the public;
- to protect and uphold public confidence in the professions we regulate;
- and to set and maintain professional standards and conduct for members of those professions.

## About fitness to practise

The health and care professionals we regulate must be fit to practise. By fitness to practise we mean where a registrant has the skills, knowledge, character and health to practise safely and effectively. Fitness to practise may also involve issues outside of professional or clinical performance. The conduct of a professional outside of their working environment may involve fitness to practise. For example, where it could affect the protection of the public or undermine public confidence in their profession.

## What is the purpose of our fitness to practise process?

Our fitness to practise process is designed to protect the public from those registrants who are not fit to practise. If a registrant's fitness to practise is impaired (negatively affected), it means that there are concerns about their ability to practise safely and effectively. This may mean that they should not practise at all, or that they should be limited in what they are allowed to do. Our focus is on current impairment; that is whether a registrant may continue to present a risk.

Our fitness to practise process is not designed to punish past mistakes or provide redress for past incidents. However, we can take account of a registrant's failings in the past when assessing their current fitness to practise. Our process is also not designed to deal with disputes between registrants and service users and employers or managers.

## When will a registrant's fitness to practise be found to be impaired?

We consider every case individually. However, a registrant's fitness to practise is likely to be impaired if the evidence shows that they:

- were dishonest, committed fraud or abused someone's trust;
- exploited a vulnerable person;
- failed to act in the best interests of service users;
- have health problems which they have not dealt with, and which may affect the safety of service users;
- hid mistakes or tried to block our investigation;
- had an improper relationship with a service user;
- carried out reckless or deliberately harmful acts;
- made serious or persistent mistakes in service-user care;
- caused harm to service users or put them at risk of harm;
- have received a conviction or accepted a caution for a criminal offence;
- were involved in violence, sexual misconduct or indecent behaviour (including any involvement in child pornography); or
- carried out other, equally serious, activities which affect public confidence in their profession.

This is not a full list and we consider every case individually.

## Our standards

When considering fitness to practise cases, we will assess whether the matters complained about could amount to a breach of our standards. The two sets of standards we use are the standards of proficiency (we publish a separate set of standards for each profession we regulate) and the standards of conduct, performance and ethics (which are the same for all professions). You can find our standards and other guidance on our website at [www.hcpc-uk.org/standards](http://www.hcpc-uk.org/standards)

You may find it helpful to refer to our standards when deciding whether to raise a concern with us about whether an employee is fit to practise.

## Raising a fitness to practise concern

### Who can raise a fitness to practise concern?

Anyone can contact us and raise a concern about a registrant. This includes members of the public, employers and managers, the police and other registrants.

If we receive information in an unusual way (for example, from a newspaper article), we can still look into it if it suggests a registrant's fitness to practise may be impaired.

### What types of cases can we consider?

We can only consider cases about fitness to practise, which we have explained in more detail above. The types of cases we can consider are those that suggest that a registrant's fitness to practise may be impaired by one or more of the following factors.

<p><b>Misconduct</b> Behaviour which falls short of what can reasonably be expected of a registered professional. For example:</p> <ul style="list-style-type: none"><li>– failure to provide adequate care;</li><li>– failure to maintain professional boundaries with a service user;</li><li>– breach of patient confidentiality; or falsely claiming sick leave.</li></ul>	<p><b>Lack of competence</b> Lack of knowledge, skill or judgement (usually repeated and over a period of time). For example:</p> <ul style="list-style-type: none"><li>– poor record-keeping;</li><li>– inadequate professional knowledge;</li><li>– inadequate risk assessments; or poor clinical reasoning.</li></ul>
<p><b>Caution or conviction</b> For an offence in the UK (or somewhere else for an offence that would be a crime if committed in England and Wales). For example:</p> <ul style="list-style-type: none"><li>– theft or fraud;</li><li>– sexual offences;</li><li>– drink- or drug-related offences; or</li><li>– violent offences.</li></ul>	<p><b>Physical or mental health</b> Unmanaged or unacknowledged physical or mental health condition. For example:</p> <ul style="list-style-type: none"><li>– unmanaged serious mental illness;</li><li>– untreated alcohol or drug dependence; or</li><li>– failure to make reasonable adjustments to make sure service users are safe in light of a physical or mental-health condition.</li></ul>
<p><b>A decision made by another regulator responsible for health and social care</b> For example, a decision by a healthcare regulator in another country.</p>	

For fitness to practise case studies, visit our website at [www.hcpc-uk.org/concerns/resources/case-studies](http://www.hcpc-uk.org/concerns/resources/case-studies)

We can also consider allegations about whether an entry to our Register has been made fraudulently or incorrectly. For example, the person may have given us false information when they applied to be registered.

Because our function is to protect the public, we can investigate concerns relating to events which happened at any time or which took place before the registrant was registered. However, the length of time that has passed since the incidents of concern can affect the quality and availability of relevant information. As a result, we may not be able to investigate concerns that relate to incidents over five years old.

We will consider each case on its own merits and will assess the methods we can use to gather relevant information. We would also assess any public interest factors that would justify investigation, despite the length of time since the events.

### **What we cannot do**

We cannot:

- consider employment or contractual issues, such as hours of work, employment contracts, lateness or poor timekeeping (unless there has been a direct negative effect on service users), personality conflicts (unless there is evidence of bullying and harassment) or sickness absence (unless there is evidence of misconduct or the registrant has an unmanaged health condition that may affect their fitness to practise);
- consider customer service or consumer issues, including assisting with refunds;
- get involved in care or social care arrangements;
- consider cases about professionals who are not registered with us; or
- consider cases about organisations (we only deal with cases about individual registrants).

### **What concerns should I tell you about?**

Whether or not you need to tell us about a concern will depend on the circumstances and its seriousness. However, we should be told if:

- the behaviour or actions of a registrant have raised concerns about their fitness to practise;
- you have dismissed or suspended a registrant or issued them with another sanction; or

- you have taken the decision to downgrade the status of a registrant (for example, you restrict the work they can do, you place them under supervision, or you move them to a lower-skilled or lower-paid job.)

It is up to you as the employer or manager to decide whether you refer a concern to us. As a result, as well as recording your evidence and reason for making a referral, you should also record your evidence and reason for deciding not to make a referral, in case this is needed in the future. You do not need to tell us when you decide not to make a referral.

If you or anyone in your organisation is in any doubt about whether we need to be told, you should contact us. We will work with you wherever possible and we are always willing to discuss matters on a case-by-case basis. If you have any questions, you should phone us on 0800 328 4218 and speak to a case manager.

Remember that issues that cause you to take disciplinary action may not result in us placing any sanction on the registrant. In other cases, we may take more serious action than you. This may mean that the registrant cannot work in their profession or has restrictions placed on their practice. Fitness to practise and employment processes are different and can result in different outcomes.

### **When should I refer a concern to you?**

You should refer a concern to us immediately if:

- your concerns are serious, for example, they involve dishonesty, violence or harm to service users;
- you have dismissed, suspended or downgraded a registrant's status while you are investigating a fitness to practise concern about them or as a result of your investigation;
- a registrant resigns while you are investigating a fitness to practise concern about them or as a result of your investigation; or
- a registrant has been charged with, cautioned for or convicted of a criminal offence.

Otherwise, you should normally refer a concern to us when you know the outcome of your disciplinary process.

Letting us know about a matter does not necessarily mean we will begin fitness to practise

proceedings immediately, or ask you to suspend or end your own procedures. In many instances, it will be more appropriate for us to wait until you have finished your procedures.

Even if we do not immediately pursue a concern, once we have been told about it, we are better placed to protect the public. For example, once we are made aware of a concern, the registrant involved cannot avoid the consequences by removing themselves from the Register or allow their registration to end. We can also place interim restrictions on a registrant's right to practise, if that proves to be appropriate. You can find more information about interim orders below.

Under our standards of conduct, performance and ethics, registrants have a responsibility to tell us important information about their conduct and competence. This is particularly the case when a registrant has:

- accepted a caution from the police or been charged with or found guilty of a criminal offence;
- had action taken against them or a finding made against them by another organisation responsible for regulating a health or social care profession; or
- had any restriction placed on their practice, or been suspended or dismissed by an employer, because of concerns about their conduct or competence.

However, registrants do not always do this, so you should let us know about any concerns you may have about a registrant's fitness to practise.

## What are interim orders?

In certain cases, we may apply for an interim order during an investigation. An interim order is a measure to protect the public by preventing a registrant from practising, or placing limits on their practice, until their case is heard. If we get an interim order, it will apply immediately. An interim order will be required in cases where concerns about a registrant's fitness to practise are so serious that, if we allowed the registrant to continue to practice, public safety would be put at risk, or there would be a risk to the public interest or to the registrant themselves.

Examples of cases where we may apply for an interim order include sexual misconduct, serious mistakes or self-administering controlled drugs in the workplace. These are not the only examples where we may ask for an interim order. We consider each case on its own merits. In most cases we will not ask for an interim order and that means the registrant can continue to work without restriction. If we know that you are their employer or manager, we will let you know if an interim order is imposed against your employee.

You can find more information about interim orders on our website at [www.hcpc-uk.org/concerns/how-we-investigate/interim-orders](http://www.hcpc-uk.org/concerns/how-we-investigate/interim-orders) or in our interim orders practice note. You can download this practice note from [www.hcpts-uk.org/aboutus/publications/interim-orders](http://www.hcpts-uk.org/aboutus/publications/interim-orders)

## How do I raise a concern?

If you need to tell us about concerns you have, you should fill in an employer referral form. You can download a referral form by following our step-by-step process for raising a concern at [www.hcpc-uk.org/concerns/raising-concerns](http://www.hcpc-uk.org/concerns/raising-concerns) or contact us on +44 (0)800 328 4218 and we will send you a copy in the post. There are two ways to send your filled-in form to us.

### 1. By post

Securely seal the signed form in an envelope, along with copies of the supporting documents, and send it to:

#### **Fitness to Practise Department**

The Health and Care Professions Council  
184—186 Kennington Park Road  
London  
SE11 4BU

You may want to consider using recorded post.

### 2. By email

Attach a scanned copy of the signed form along with electronic copies of the supporting documents, and email them to [ftp@hcpc-uk.org](mailto:ftp@hcpc-uk.org)

If you decide not to use the employer referral form, we need the following information, as set out in the table below, from you when you raise a concern. You can send this information to the postal or email address above.

<p><b>Information about you (and our point of contact for the case, if this is not going to be you)</b></p>	<ul style="list-style-type: none"> <li>- Name</li> <li>- Role</li> <li>- Organisation</li> <li>- Correspondence address, phone number and email address</li> </ul>
<p><b>Information about the registrant</b></p>	<ul style="list-style-type: none"> <li>- Name</li> <li>- Profession</li> <li>- Registration number</li> <li>- Work address and home address (if you know it)</li> <li>- How long they have been employed by your organisation and in what roles</li> <li>- If they are registered with any other body</li> </ul>
<p><b>Information about your concern</b></p>	<ul style="list-style-type: none"> <li>- A brief summary of what happened and the circumstances leading to it</li> <li>- Where the event (or events) took place</li> <li>- The date and time period (or both) that the event (or events) took place</li> </ul>
<p><b>Information about witnesses</b></p>	<ul style="list-style-type: none"> <li>- Details of any witnesses and copies of their statements</li> </ul>
<p><b>Information about the action you have taken</b></p>	<ul style="list-style-type: none"> <li>- A brief summary of any internal investigation you have carried out</li> <li>- Details of any other organisation you have contacted about the matter (for example, another regulator or the police)</li> </ul>
<p><b>Supporting documents (this will depend on the nature of the concern but we are likely to need everything you have considered when making the referral to us)</b></p>	<ul style="list-style-type: none"> <li>- Internal investigation reports, disciplinary and appeal documents</li> <li>- Correspondence between your organisation and the registrant</li> <li>- Relevant service-user records</li> <li>- If you are reporting that a registrant has been charged, the contact details of the relevant police force</li> <li>- If you are reporting a conviction or caution, a copy of a CRB check or a certificate of conviction or caution</li> </ul>

Anything you send to us will be copied to the registrant you are referring to us so they can respond. If there is anything you would prefer we did not send to the registrant, you should tell us. However, if it is an important piece of evidence, we may have to send it to the registrant anyway. We will not share any information that might compromise a criminal investigation.

Any information you provide will be used as evidence in proceedings against the registrant. If the case goes as far as a hearing, the details may become public as hearings are usually held in public and the press regularly attend.

### **Compromise agreements**

If you have entered a compromise agreement with the registrant you are referring, you should tell us. We do not need the details of the agreement, but just need to know that one exists. If you have a confidentiality clause in the compromise agreement, it will not prevent us from investigating the concerns about the registrant, nor does it prevent you or any witnesses from passing information about the registrant to us. When drafting the agreement, you should make clear to the registrant that any confidentiality clause does not apply to information being passed to us.

### **How much of my time do you need?**

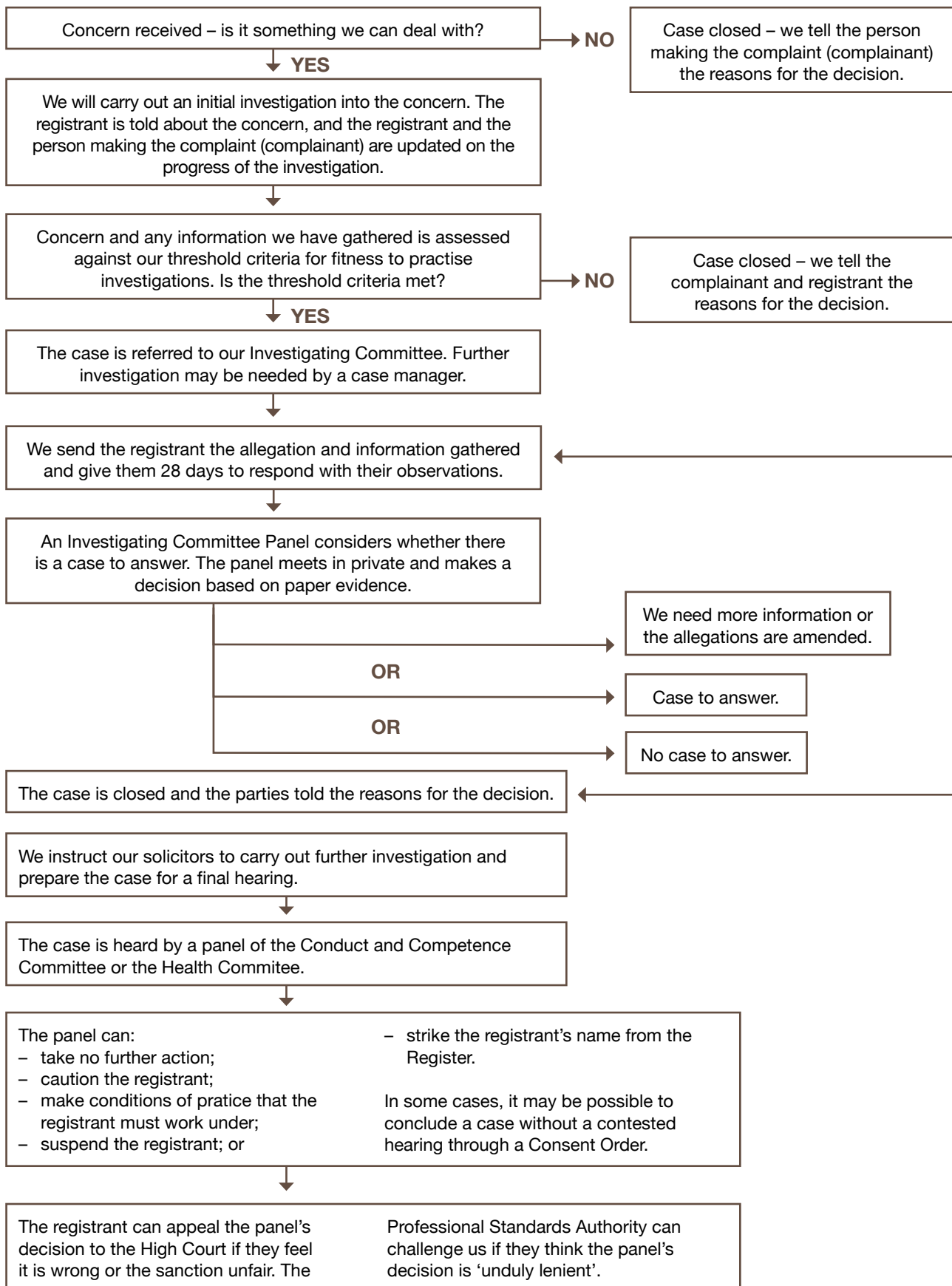
The amount of time we will need from you if you raise a concern will depend on how complicated the case is. We are likely to need to ask for more information from you during the course of our investigation.

If the case goes forward to a final hearing, you or members of staff may need to meet with our solicitors to provide a witness statement. You may also have to come to the hearing and give evidence. This can sometimes involve an overnight stay if the hearing takes place away from your home town. You can find more information about this in our brochure called Information for witnesses. You can download this brochure from [www.hcpts-uk.org/aboutus/publications/hcpts---information-for-witnesses](http://www.hcpts-uk.org/aboutus/publications/hcpts---information-for-witnesses)



## The investigation process at a glance

At all stages of the process we can apply for an interim order to prevent the registrant from practising, or to place conditions on their practice, until the case has been closed by a panel.



## What happens when we receive a concern?

We will first consider whether a concern is something that we can deal with. This assessment takes place during our triage stage. If a concern is not a matter for us, we will take no further action. We will then write to the person making the complaint (complainant) to explain why.

If we have made a decision at the triage stage that a matter is something we can deal with, we will carry out an initial investigation to get the relevant information about the concern. This may involve gathering information from a number of sources.

We will contact the registrant if we have begun an initial investigation into concerns about their fitness to practise. We will also notify their employer if they are not the complainant.

Once we have completed our initial investigation we will assess the concern, and the information we have gathered about it, against our threshold criteria for fitness to practise investigations. This is to decide whether the concern, and the information we have gathered, amounts to an allegation that a registrant's fitness to practise may be impaired. We will take into account whether the matter could amount to a breach of our standards.

If we consider that the threshold has not been met, we will close the case and take no further action.

If we find that the concern does meet the threshold, the matter will be referred to our Investigating Committee.

You can find a copy of our Threshold policy for fitness to practise investigations on our website [www.hcpc-uk.org/resources/policy/threshold-policy-for-fitness-to-practise-investigations](http://www.hcpc-uk.org/resources/policy/threshold-policy-for-fitness-to-practise-investigations)

## What can I expect from you?

If you raise a concern with us about a registrant, you can expect us to treat everyone involved fairly and explain what will happen at each stage. We will give you the details of a case manager who you can contact if you have any questions and who will keep you up to date with the progress of our investigation.

## Role of the case manager

We allocate a case manager to each case. The allocated case manager may change during the course of the investigation, depending on what stage the case is at. If this happens, we will tell you and you will always have a named contact. Case managers are neutral and do not take the side of either the registrant or the person or organisation who makes us aware of the concerns. Their role is to manage the progress of the case through the process and to gather relevant information. They act as a contact for everyone involved in the case.

Case managers cannot give legal advice but they can explain how the process works and what panels consider when making their decision.

## How long will it take?

We understand that the investigation process can be stressful for the employer or manager who has raised the concern and the registrant involved, so we try to consider cases as quickly as we can.

We aim to:

- have a case considered by the Investigating Committee within eight months of receipt of a concern (if the concern meets our threshold); and
- hold a final hearing within nine months of the Investigating Committee Panel's decision that there is a case to answer.

While these are our aims, the time a case takes to reach the end of the process can vary depending on the nature of the investigation we need to carry out and how complicated the issues are. As a result of this, each stage of the process may take either a shorter or longer period of time.

Your case manager will keep you informed of the progress of the case, but if you have any questions about what is happening, or why it may be taking longer than our aims, you can contact them for an update.

## What happens if someone else raises a concern about one of my employees?

We may receive information from members of the public or another source about one of your employees which may mean we need to ask you for information as their employer or manager. This may include the service-user records of the person who has complained or more information about a particular incident.

Article 25(1) of the Health and Social Work Professions Order 2001 gives us the power to require an organisation to provide us with information relevant to fitness to practise allegations. There are some exceptions to this power, listed in the Article from paragraph (3) – (5). You can find a copy of the order at [www.hcpc-uk.org/about-us/corporate-governance/legislation](http://www.hcpc-uk.org/about-us/corporate-governance/legislation)

This power overrides the General Data Protection Regulation 2018 and other data-protection safeguards, such as Caldicott Guardian arrangements.

If you have any concerns about providing information to us, you should speak to your case manager. They cannot give you legal advice but they will be able to explain why we are making the request. Or, you can arrange your own legal advice.

## What can you tell me?

Fitness to practise investigations are private and we do not publicise the fact that we are investigating a registrant. If we are investigating one of your employees, we will let you know. We will update you on the progress of the case and tell you the outcome.

We issue an alerts list every month giving details of case outcomes and registrants who have had interim orders made against them. To receive these alerts, please email us at [ftp@hcpc-uk.org](mailto:ftp@hcpc-uk.org)

We also publish details of forthcoming hearings, four weeks before the date of the hearing, at [www.hcpts-uk.org/hearings/calendar](http://www.hcpts-uk.org/hearings/calendar)

## What can an employee do during an investigation?

Registrants can continue to practise while we investigate a case unless we have imposed an interim order preventing them from practising or

placing restrictions on their practice. Registrants cannot remove themselves from our Register while there are fitness to practise proceedings outstanding against them.

## Supporting your employee

We understand that employers and managers often want to provide guidance and support to employees when they are the subject of a fitness to practise investigation. It may be helpful to suggest that the registrant gets advice from their union or professional body (if they are a member of either) or Citizens Advice, or to get independent legal advice.

## Employing a registrant who is the subject of a current fitness to practise investigation

Being the subject of a fitness to practise investigation does not automatically make a registrant unsuitable for employment as registrants can continue to practise unless we have imposed an interim order preventing them from practising or placing restrictions on their practice. You can find out if a registrant has an interim order made against them by searching our online register at [www.hcpc-uk.org/check-the-register](http://www.hcpc-uk.org/check-the-register)

If a registrant has been suspended, they cannot work until that suspension order has been removed. If we have placed conditions on a registrant's registration, they can work but under restriction. In these cases, as their employer or manager, a registrant may ask for your help with their conditions. For example, they may only be able to work under supervision or with a chaperone, or they may need to provide a review hearing with references from senior colleagues.

## What happens if previous concerns have been raised about an employee?

When considering whether there is a case to answer in relation to a concern about a registrant, the Investigating Committee Panel has the legal power to take into account any other similar concerns made against the registrant within the previous three years.

The purpose of this power is to make sure that a concern which has been dismissed, because a case to answer could not be established, can still be taken into account if another similar concern is

made against a registrant, and it is relevant to do so. The previous concern will be taken into account as similar-fact evidence and will not be re-opened as a new investigation.

## **Useful information**

You can find more information on our website or through the following methods.

### **Practice notes**

We have published a number of practice notes which explain various parts of our fitness to practise process. You may find it useful to look at these documents. You can download our practice notes from

[www.hcpts-uk.org/aboutus/publications](http://www.hcpts-uk.org/aboutus/publications) or phone us on +44 (0)800 328 4218 and we will send you copies in the post.

### **Other documents**

We publish a brochure for registrants who have a fitness to practise concern raised against them, called What happens if a concern is raised about me? You can download this brochure from [www.hcpc-uk.org/resources/guidance/what-happens-if-a-concern-is-raised-about-me](http://www.hcpc-uk.org/resources/guidance/what-happens-if-a-concern-is-raised-about-me)

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