

**Agenda Item 16**

**Enclosure 13**

**Health and Care Professions Council  
06 December 2018**

**The revised Indicative Sanctions Policy**

**For approval**

**From Olivia Bird, Policy Officer**

Council, 6 December 2018

The revised Indicative Sanctions Policy

Executive summary and recommendations

### **Introduction**

The Indicative Sanctions Policy sets out the principles Practice Committee Panels should consider when deciding what, if any, sanction should be applied in fitness to practise cases. It aims to ensure that decisions are fair, consistent and transparent.

A review into the policy commenced in early 2018. This included:

- a review of the policies and guidance of other regulators,
- workshops with employees to obtain their views and experience, to refine the project scope;
- a paper taken to the Tribunal Advisory Committee in September 2017 to seek their thoughts as users of the policy about the proposed review; and
- market research by GfK into public views about the principles outlined in the policy.

We then consulted between 4 June 2018 and 31 August 2018 on the revised Policy. We received 88 responses and have made some substantial changes to the Policy, including:

- changing the name of the Policy to remove 'Indicative' from the title, to reflect the fact that amendments to the Policy make it clear panels are ultimately responsible for decisions relating to sanction;
- taking a more detailed approach to proportionality and providing detail on how panels should approach any previous interim order when making decisions about sanction;
- highlighting more explicitly the need for panels to consider the wider context of a case when considering any mitigating or aggravating factors;
- including additional serious cases of failure to raise concerns, failure to work in partnership and violence; and

- providing more information on mediation, suspension orders and review hearings.

A draft of the analysis of responses to the consultation is appended (appendix B). An Executive summary is provided in section three. Section five is a draft of our response and decisions following the consultation.

Subject to approval, the revised Indicative Sanctions Policy would be implemented in early 2019. Policy and Standards will be working closely with Fitness to Practise to prepare for implementation.

### **Decision**

The Council is invited to discuss and approve the revised Indicative Sanctions Policy and recommend to the Council the following.

### **Background information**

- The current version of the document can be found on the HCPTS website: <https://www.hcpts-uk.org/assets/documents/1000536EPracticeNoteIndicativeSanctions.pdf>
- The Indicative Sanctions Policy is a Policy of the Council. The views of the Tribunal Advisory Committee are, however, being sought during this review.
- Minutes for the Council meeting dating 20 September 2017, where this review was last discussed: <http://www.hcpc-uk.org/assets/documents/100055F5Enc01-MinutesoftheCouncilmeetingof20and21September2017.pdf>

### **Resource implications**

The resource implications associated with implementing the revised policy have been taken into account in departmental work plans for 2018/2019, and will be considered as part of work plans for 2019/20 if necessary

The resource implications associated with the publication and launch of the revised guidance has also been included in departmental work plans for 2018/19.

### **Financial implications**

The financial implications, including reprinting the guidance, have been included in budget planning for 2018/19.

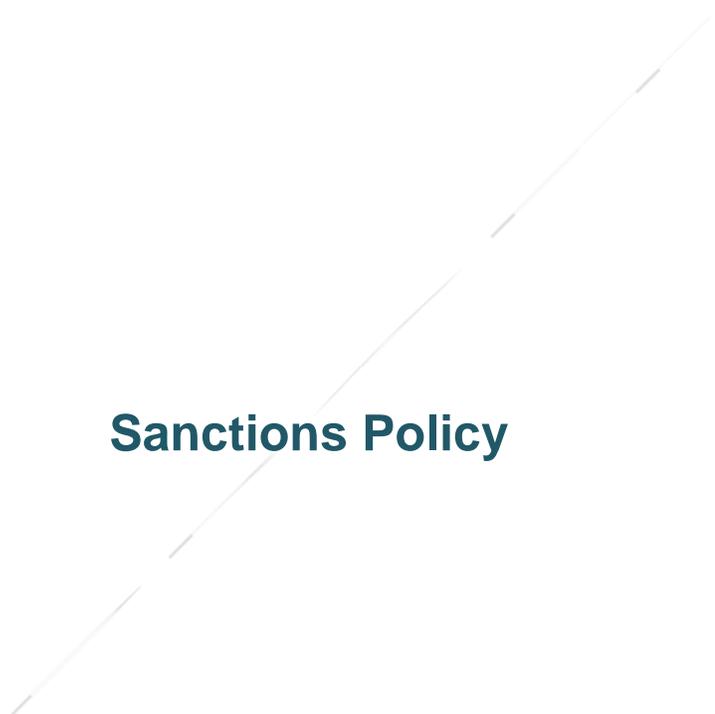
### **Appendices**

- Appendix A: Revised Sanctions Policy

- Appendix B: Consultation on the revised Indicative Sanctions Policy: Analysis of responses to the consultation on the revised Indicative Sanctions Policy and our decisions as a result

**Date of paper**

23 November 2018



**Sanctions Policy**

# Contents

<b>SANCTIONS POLICY</b>	<b>5</b>
<b>CONTENTS</b>	<b>6</b>
<b>ABOUT THE GUIDANCE</b>	<b>9</b>
<b>Purpose of the Policy</b>	<b>9</b>
<b>Purpose of sanctions</b>	<b>9</b>
<b>Options available to the panel</b>	<b>10</b>
<b>Equality and diversity</b>	<b>11</b>
<b>STANDARDS OF CONDUCT, PERFORMANCE AND ETHICS</b>	<b>12</b>
<b>PROPORTIONALITY</b>	<b>13</b>
<b>Interim orders</b>	<b>13</b>
<b>MITIGATING FACTORS</b>	<b>14</b>
<b>Insight, remorse and apology</b>	<b>14</b>
Insight	15
Remorse	15
Apology	15
<b>Remediation</b>	<b>16</b>
<b>AGGRAVATING FACTORS</b>	<b>18</b>
<b>Breach of trust</b>	<b>18</b>
<b>Repetition of concerns/pattern of unacceptable behaviour</b>	<b>18</b>
<b>Lack of insight, remorse or apology</b>	<b>19</b>
<b>Lack of remediation</b>	<b>19</b>

<b>Service user harm / potential service user harm</b>	<b>19</b>
<b>SERIOUS CASES</b>	<b>20</b>
<b>Dishonesty</b>	<b>20</b>
<b>Failure to raise concerns</b>	<b>20</b>
<b>Failure to work in partnership</b>	<b>21</b>
<b>Discrimination</b>	<b>21</b>
<b>Abuse of professional position</b>	<b>22</b>
Former service users	22
Predatory behaviour	24
Vulnerability	24
<b>Sexual misconduct</b>	<b>25</b>
<b>Criminal convictions and cautions</b>	<b>25</b>
Sex offender	26
Sexual abuse of children (including indecent images)	26
Offences related to indecent images of children	26
Community sentences	26
<b>Violence</b>	<b>27</b>
<b>SANCTIONS</b>	<b>28</b>
<b>Determining what sanction is appropriate</b>	<b>28</b>
<b>No action</b>	<b>28</b>
<b>Caution</b>	<b>29</b>
What is a caution order?	25
When is a caution order appropriate?	29
How long should a caution order be imposed for?	30

<b>Conditions of practice</b>	<b>30</b>
What is a conditions of practice order?	30
When is a conditions of practice order appropriate?	30
When might a conditions of practice order not be appropriate?	30
What considerations should be given when formulating conditions?	3127
How long should a conditions of practice order be imposed for?	32
<b>Suspension order</b>	<b>33</b>
What is a suspension order?	33
When is a suspension order appropriate?	33
How long should a suspension order be imposed for?	33
<b>Striking off order</b>	<b>34</b>
What is a striking off order?	34
When is a striking off order appropriate?	35
<b>Interim orders</b>	<b>36</b>
What is an interim order?	36
When is an interim order appropriate?	36
<b>Multiple sanctions</b>	<b>36</b>
<b>REVIEW HEARINGS</b>	<b>38</b>

# About the guidance

## Purpose of the Policy

1. The Health and Care Professions Council's (HCPC's) Sanctions Policy sets out the principles Practice Committee Panels should consider when deciding what, if any, sanction should be imposed in fitness to practise cases. It aims to ensure that decisions are fair, consistent and transparent.
2. Panels make independent decisions, and must decide each case on its merits. The Policy is intended to be a guide and not to provide fixed 'tariffs' or constrain a panel's independence in any way. However, where a panel deviates from the Policy, they must provide clear reasons for doing so.
3. This Policy covers the principles panels should consider when determining what, if any, sanction should be imposed. It provides detail on the principles of proportionality, outlines key mitigating and aggravating factors, and describes the sanctions available to the panel and the approach to be taken in review hearings.

## Purpose of sanctions

4. Professionals registered with the HCPC must adhere to the Standards of conduct, performance and ethics<sup>1</sup>, and the relevant Standards of proficiency<sup>2</sup>. Where serious concerns have been raised about a registrant's adherence to these standards, these concerns may be referred to a Practice Committee Panel of the Health and Care Professions Tribunal Service (HCPTS).
5. In advance of their consideration of sanction, the panel will hear evidence on the facts alleged as well as, where required, submissions on the statutory ground of the allegation and the issue of impairment.
6. There are five statutory grounds of impairment:
  - misconduct;
  - lack of competence;
  - a conviction or caution in the United Kingdom for a criminal offence, or a conviction elsewhere for an offence which, if committed in England and Wales, would constitute a criminal offence;
  - physical or mental health; or

---

<sup>1</sup> <http://www.hcpc-uk.org/publications/standards/index.asp?id=38>

<sup>2</sup> <http://www.hcpc-uk.org/aboutregistration/standards/standardsofproficiency/>

- a determination by another regulator.
7. It is not the role of the panel to punish for past misdoings, but the panel will take account of past acts or omissions in determining whether a registrant's fitness to practise is currently impaired. If a panel finds that a registrant's fitness to practise is impaired by reason of one of the statutory grounds, it will go on to consider whether it is appropriate to impose a sanction.
  8. Sanctions should only be imposed in relation to the facts found proved, but should address all of those facts which have led to a finding of impairment.
  9. The primary function of any sanction is to protect the public. The considerations in this regard include:
    - any risks the registrant might post to those who use or need their services;
    - the deterrent effect on other registrants;
    - public confidence in the profession concerned; and
    - public confidence in the regulatory process.
  10. Sanctions are not intended to punish registrants, but instead ensure the public is protected. Inevitably, a sanction may be punitive in effect, but should not be imposed simply for that purpose.
  11. In writing any decision on sanction, the panel must provide clear and detailed reasoning to support its decision, explaining the issues it has considered and the impact any aggravating or mitigating factors have had on the outcome.
  12. As required by the Health and Social Work Professions Order 2001, any decision on sanction is published on the HCPTS website alongside the reasons for it.

### **Options available to the panel**

13. The following sanctions are available to a panel and are set out in Article 29 of the Health and Social Work Professions Order 2001 (the Order):
  - mediation;
  - no action;
  - caution;
  - conditions of practice;

- suspension;
- striking off.

### **Equality and diversity**

14. The HCPC is committed to preventing discrimination, valuing diversity and achieving equality of opportunity in all that we do.
15. As a public authority the HCPC is subject to the requirements of the Equality Act 2010, and the equivalent Northern Irish legislation<sup>3</sup>. The Equality Act prohibits discrimination, harassment or victimisation of people with protected characteristics. These are:
  - age;
  - disability;
  - gender reassignment;
  - marriage and civil partnership;
  - pregnancy and maternity;
  - race;
  - religion or belief;
  - sex; and
  - sexual orientation.
16. Panels should be mindful of this when making their decisions. They should ensure that their decisions are fair, consistent and proportionate.
17. Panels should also be mindful that cultural differences may impact the way a registrant engages with the investigation in to their conduct, and any hearing. For example, how they frame an apology.

---

<sup>3</sup> [link to be provided when new EDI Policy is live]

## Standards of conduct, performance and ethics

18. The HCPC's Standards of conduct, performance and ethics (SCPE) are the standards we set for all the professionals on our register, stating in broad terms our expectations of their behaviour and conduct. The standards outline that registrants must:

- promote and protect the interests of service users and carers;
- communicate appropriately and effectively;
- work within the limits of their knowledge and skills;
- delegate appropriately;
- respect confidentiality;
- manage risk;
- report concerns about safety;
- be open when things go wrong;
- be honest and trustworthy; and
- keep records of their work.

## Proportionality

19. In making proportionate decisions on sanction, panels need to strike a balance between the competing interests of the registrant and HCPC's overriding objective to protect the public (see paragraph 9). Therefore, decisions should deal with the concerns raised, but be fair, just and reasonable.
20. Sanctions are not intended to be punitive. Panels should only take the minimum action necessary to ensure the public is protected. This means considering the least restrictive sanction available to them first, and only moving on to a more restrictive sanction if it is necessary to protect the public.
21. The panel's written decision should clearly explain why the sanction is necessary to protect the public having regard to the full facts of the case and associated risks. It should also make clear what process the panel followed, by considering each available sanction in turn, in the same order in which the panel has assessed their suitability. Panels should explain why they have rejected one sanction before moving on to a more severe sanction, and outline why the less restrictive sanction is insufficient to protect the public. Where appropriate, they should also explain why the next more severe sanction is not required to protect the public, having regard to the specific circumstances of the case.

### Interim orders

22. In deciding whether a substantive sanction is proportionate, panels may wish to take into account any interim order and its effect on the registrant.
23. Panels should however be mindful that the criteria panels use when considering whether to impose a substantive sanction on a registrant's practice is entirely different from the test for considering whether to impose an interim order, and that a panel making an interim order makes no findings of fact.

## Mitigating factors

24. Mitigating factors are relevant at the earlier stages of the fitness to practise process, for example in determining whether the proven facts amount to the statutory ground or, in turn, indicate that fitness to practise is impaired. This is distinct from the discussion below, which focuses on evidence that is exclusively relevant to sanction. Matters of mitigation are likely to be of considerably less significance in regulatory proceedings, where the overarching concern is the protection of the public, than to a court imposing retributive justice.
25. When considering the impact on sanction, panels should properly evaluate any mitigating factors in the round and on a case by case basis. Panels must therefore give due consideration to all the information available to them about that particular case, including any wider contextual factors. These considerations should then form part of the panel's wider balancing exercise to determine what action is necessary for public protection.
26. Whilst mitigating factors do not excuse or justify poor conduct or competence, they may be useful indicators of a reduced ongoing risk posed to service user safety. For this reason, mitigating information may reduce the severity of the sanction required or, in some cases, mean that a sanction is no longer required at all.
27. A key factor in determining what, if any, sanction is appropriate is likely to be the extent to which a registrant recognises their failings and is willing to address them. Where a registrant does recognise their failings and is willing to address them, the risk of repetition is reduced.
28. In taking account of any insight, remorse or apology offered by a registrant, panels should be mindful that there may be cultural differences in the way these might be expressed, both verbally and non-verbally. This may be more pronounced where English is not the registrant's first language.

### Insight, remorse and apology

29. Where present, genuine insight and / or remorse or apology can indicate that:
  - the registrant will comply with any training requirements;
  - the registrant will comply with any restrictions imposed on their practice, either by the HCPTS or locally;
  - the risk of repetition, and therefore the risk to service users, is significantly lower than cases where insight is not present; and

- the risk of damage to public confidence in the profession is reduced.

### **Insight**

30. Insight is a registrant's genuine understanding and acceptance of the concerns, which have been raised in relation to their conduct or competence. It is likely to be demonstrated by:

- a genuine recognition of the concerns raised;
- an understanding of the impact or potential impact of their actions; and
- demonstrable empathy for the service user(s) involved (if applicable).

31. Genuine insight is likely to be demonstrated by timely remorse, apology and remediation, exhibited ahead of any hearing. Whilst insight expressed during a hearing may be taken into account, insight expressed in advance is likely to carry more weight.

### **Remorse**

32. Expressing remorse involves a registrant taking responsibility and exhibiting regret for their actions, and may be demonstrated by one or more of the following:

- acknowledging wrongdoing;
- giving an apology; and
- undertaking appropriate remediation.

### **Apology**

33. Health and social care professionals have a duty of candour; a professional responsibility to be open and honest when things go wrong with the care, treatment or service that they have provided. The Standards of conduct, performance and ethics (Standard 8.1) affirm this and outline the obligation to:

- inform service users or, where appropriate, their carers, that something has gone wrong;
- apologise;
- take action to put matters right if possible; and

- make sure that service users or, where appropriate, their carers, receive a full and prompt explanation of what has happened and any likely effects.
34. An apology does not mean the registrant is admitting legal liability. This is clearly set out in the Compensation Act 2006 (England and Wales)<sup>4</sup> and the Apologies (Scotland) Act 2016<sup>5</sup>.
35. In assessing the sincerity of an apology, the panel should take account of the timing and level of remorse and insight the registrant has shown, and the presence and nature of any remediation they have undertaken.

## Remediation

36. Remediation involves a registrant taking steps to address any concerns that have been raised about their conduct, competence or health. Successful remediation is likely to:
- indicate the registrant has insight in to the deficiencies of their conduct, competence or health;
  - reduce the risk of repetition of the concerns; and
  - reduce the risk to the public, including public confidence in the professions.
37. Whether or not remediation has been undertaken, and if any remediation can be considered successful, are important aspects of a panel's assessment of what risk the registrant might pose to the public, and therefore what sanction, if any, is required to mitigate that risk.
38. There are a wide range of remediation activities available to a registrant, and the form of that remediation will depend upon the nature of the concerns raised. The decision as to the appropriateness of the remediation is ultimately for the panel to make, however, remediation can include (but is not limited to):
- courses to address behavioural issues, such as an anger management course;
  - training to address competence deficiencies;
  - rehabilitation to support individuals with health concerns;

---

<sup>4</sup> *Compensation Act 2006* (England and Wales)  
(<https://www.legislation.gov.uk/ukpga/2006/29/contents>)

<sup>5</sup> <http://www.legislation.gov.uk/asp/2016/5/contents/enacted>

- coaching, mentoring and supervision to address competence and conduct issues; and
  - personal reflection.
39. There are some concerns which are so serious, that activities intended to remediate the concern cannot sufficiently reduce the risk to the public or public confidence in the profession. Despite the steps the registrant has taken to attempt to remediate the concerns, the panel is still likely to impose a serious sanction. These might include cases involving:
- Dishonesty (see paragraphs 55-57).
  - Failure to raise concerns (see paragraphs 58-59).
  - Failure to work in partnership (see paragraphs 60-61).
  - Discrimination (see paragraphs 62-65).
  - Abuse of professional position, including vulnerability (see paragraphs 66-74).
  - Sexual misconduct (see paragraphs 75-76).
  - Sexual abuse of children or indecent images of children<sup>6</sup> (see paragraphs 84-87).
  - Criminal convictions for serious offences (see paragraphs 77-91).
  - Violence (see paragraph 92).
40. Where the panel considers the steps taken to address the concerns are not sufficient to remediate the issues, it should clearly set out:
- the seriousness of the concerns;
  - the risk posed to the public;
  - the steps the registrant has taken to attempt to address the concerns; and
  - the reasons the steps taken are not sufficient to protect the public.

---

<sup>6</sup> For the avoidance of doubt, 'indecent images of children' refers to any indecent photographs, pseudo-photographs or prohibited images of children.

## Aggravating factors

41. Like mitigating factors, aggravating factors are relevant at the earlier stages of the fitness to practise process, for example in determining whether the proven facts amount to the statutory ground or, in turn, indicate that fitness to practise is impaired. This is distinct from the discussion below, which focuses on evidence which is exclusively relevant to sanction.
42. Aggravating factors are any features of a case which increase the seriousness of the concerns. Where present, they are likely to lead to stronger sanctions in order to protect the public.
43. As with mitigating factors, when considering the impact on sanction panels should properly evaluate these factors in the round and on a case by case basis. Panels must therefore give due consideration to all the information available to them about that particular case, including any wider contextual factors. These considerations should then form part of the panel's wider balancing exercise to determine what action is necessary for public protection.

### Breach of trust

44. Trust is a fundamental aspect of the relationship between a registrant and a service user or carer. Breaching this trust can have significant impacts on public protection. For example, a service user may not engage with a registrant because they are concerned they cannot trust them, delaying treatment or support.
45. Breaches of trust are of even greater seriousness where they involve a vulnerable service user or carer (see paragraphs 72-74).
46. Where there has been a breach of trust, panels are likely to impose more serious sanctions, and should provide clear reasons if they choose not to.

### Repetition of concerns/pattern of unacceptable behaviour

47. The Standards of conduct, performance and ethics outline HCPC registrants' obligation to 'promote and protect the interests of service users and carers' (Standard 1) and to 'work within the limits of [their] knowledge and skills' (Standard 3). Where concerns are raised regarding their conduct, competence or health, registrants are duty bound to address these concerns, and ensure they do not compromise service user safety.
48. A repetition of concerns, or a pattern of unacceptable behaviour, leads to greater potential risks to the public, for a number of reasons such as:

- the fact the conduct or behaviour has been repeated increases the likelihood it may happen again; and
  - the repetition indicates the registrant may lack insight.
49. Repeated misconduct or unacceptable behaviour, particularly where previously addressed by employer or regulatory action, is likely to require more serious sanctions to address the risks outlined above.

### **Lack of insight, remorse or apology**

50. Where a registrant lacks insight, fails to express remorse and / or refuses to apologise in a timely manner, they may pose a higher risk to service users.
51. Registrants who lack a genuine recognition of the concerns raised about their fitness to practise, and fail to understand or take responsibility for the impact or potential impact of their actions, are unlikely to take the steps necessary to safeguard service user safety to address the concerns raised. For this reason, in these cases panels are likely to take more serious action in order to protect the public.

### **Lack of remediation**

52. If a registrant chooses not to undertake remediation activities to address their deficiencies, or fails to remediate when they have promised to do so, it could indicate a lack of insight. This might significantly increase the risk of repetition and therefore risk to the public. It is therefore likely that cases involving little or no remediation might require more serious sanctions, to protect the public.

### **Service user harm / potential service user harm**

53. In cases where a service user has been harmed, or there was potential for harm to be caused, panels should be particularly mindful of any ongoing risk to service user safety, and any impact on public confidence in the profession.
54. Service user harm, or the potential for this, will be of particular importance in cases involving vulnerable service users. In these cases, the public expect that more serious action is taken to address concerns around conduct or behaviour.

# Serious cases

## Dishonesty

55. The Standards of conduct, performance and ethics require registrants to be honest and trustworthy (Standard 9). Dishonesty undermines public confidence in the profession and can, in some cases, impact on the public's safety.
56. Dishonesty, both in and outside the workplace, can have a significant impact on the trust placed in those who have been dishonest, and potentially on public safety. It is likely to lead to more serious sanctions. The following are illustrations of such dishonesty:
- putting false information in a service user's record (including in an attempt to cover up misconduct or a lack of competence);
  - providing untruthful information in job applications (perhaps misleading the prospective employer about experience, training or skills gained);
  - using medicines, devices or services meant for service users;
  - fraud, theft or other financial crime.
57. Given the seriousness of dishonesty, cases are likely to result in more serious sanctions. However, panels should bear in mind that there are different forms, and different degrees, of dishonesty, that need to be considered in an appropriately nuanced way. Factors that panels should take into account in this regard include:
- whether the relevant behaviour took the form of a single act, or occurred on multiple occasions;
  - the duration of any dishonesty
  - whether the registrant took a passive or active role in it;
  - any early admission of dishonesty on the registrant's behalf; and
  - any other relevant mitigating factors.

## Failure to raise concerns

58. The Standards of conduct, performance and ethics outline HCPC registrants' obligation to 'report concerns about safety' (Standard 7). Registrants must

report any concerns about the safety or well-being of service users promptly and appropriately and ensure that the safety and well-being of service users comes before any professional or other loyalties. In particular, the standards outline an explicit requirement to take appropriate action if the concern is about a child or vulnerable adult.

59. Where a registrant fails to raise concerns, this can place service users at particular risk and is likely to result in a more serious sanction. This will be appropriate particularly where a registrant has repeatedly failed to raise concerns, a failure to raise concerns has resulted in a serious risk to the safety or well-being of service users, or if the concern involved a child or vulnerable adult.

### **Failure to work in partnership**

60. The Standards of conduct, performance and ethics require registrants to 'work in partnership with colleagues' for the benefit of service users. As a result registrants must share their skills, knowledge and experience with colleagues, and, where appropriate, relevant information about the care, treatment or other services provided to a service user.
61. Cases where a registrant has therefore refused to cooperate with colleagues, whether that be the result of bullying, discrimination or dishonesty, are likely to result in a more serious sanction.

### **Discrimination**

62. It is unlawful to discriminate against someone because they have, or are perceived to have, a protected characteristic, or are associated with someone who has a protected characteristic. Those characteristics are:
- age;
  - disability;
  - gender reassignment;
  - marriage and civil partnership;
  - pregnancy and maternity;
  - race;
  - religion and belief;
  - sex; and

- sexual orientation.
63. Unlawful discrimination is unacceptable in modern society and standard 1.5 of the Standards of conduct, performance and ethics outlines that a registrant ‘must not discriminate against service users, carers or colleagues by allowing [their] personal views to affect [their] professional relationships or the care, treatment or other services that [they] provide.’
64. There can be serious consequences for public safety and confidence in the profession where a registrant discriminates against individuals with a protected characteristic, for example where a registrant:
- treats a service user or carer differently and worse than others because of who they are, or because of someone they are connected to;
  - refuses to provide a service user with a service or take them on as a client;
  - behaves in a way which causes the service user or carer distress, or offends or intimidates them; or
  - punishes a service user or carer for complaining about discrimination or helping someone else to complain.
65. For the reasons set out above, where a panel finds a registrant impaired and this involves unlawful discrimination, it is more likely to impose a serious sanction.

### **Abuse of professional position**

66. The relationship between a registrant and service user or carer is based upon trust, confidence and professionalism. However, it is also a relationship in which there is an unequal balance of power, in favour of the registrant. Whilst registrants should endeavour to have positive relationships with service users and carers, it is essential that they remain aware of this dynamic and take care not to abuse their position.
67. Our Standards of conduct, performance and ethics<sup>7</sup> require registrants to ensure that their conduct justifies the public’s trust in them and their profession. This means being honest and trustworthy and acting in the best interests of service users, as well as ensuring that their relationships with service users and carers remain professional. Where a registrant is found to have abused their professional status, this is highly likely to reduce the public’s trust in them and their profession. The greater the alleged abuse of

---

<sup>7</sup> <http://www.hcpc-uk.org/publications/standards/index.asp?id=38>

trust, the more serious the panel should consider the concerns.

68. A registrant may abuse their professional position in a number of ways such as:

- **Financial:** A registrant may abuse their position of trust for their own financial gain, for example by influencing service users or carers in order to sell goods or services, or by misusing a service user or carer's money or possessions.
- **Inappropriate access of confidential information:** A registrant will be considered to have abused their professional position if they use it to gain access to confidential records about service users without authority or a good reason to do so.
- **Inappropriate relationships:** Our standards require registrants to 'maintain appropriate relationships'. Where a registrant uses their professional status to pursue inappropriate relationships with service users or carers this may undermine the care or treatment provided and the public's trust in the profession. Registrants should take care to set clear boundaries, and avoid conduct which strays beyond that typically expected of a therapeutic / professional relationship.

When considering whether a relationship is inappropriate, the panel should have particular regard for:

- evidence that the registrant's professional status was a coercive factor in the relationship's instigation;
- evidence of predatory behaviour (see paragraphs 70-71);
- evidence that the service user or carer is particularly vulnerable (see paragraphs 72-74);
- evidence that the relationship is of a sexual or otherwise inappropriate emotional nature.

### **Former service users**

69. If a registrant forms a personal relationship with a former service user or carer, this may still be inappropriate. In determining whether or not the registrant has abused their professional position, the panel should consider:

- the nature of the previous professional relationship;
- the length of time since the professional relationship ended;

- if there is evidence that the registrant used their professional relationship to facilitate a personal relationship (actual or prospective) with a service user or carer and, having done so, ended the professional relationship with that person. The panel may consider a failure in any such situation to secure appropriate alternative professional treatment, care or support for the service user or carer to be an aggravating factor;
- the vulnerability of the service user or carer (see paragraphs 72-74);
- whether the registrant is involved in the care or treatment of other members of the family.

### **Predatory behaviour**

70. A registrant's behaviour should be considered predatory where they are seen to take advantage of others, motivated by a desire to establish a sexual or otherwise inappropriate relationship with a service user or carer. The panel should take predatory behaviour particularly seriously, as there will often be significant risk to the targeted service user or carer.
71. Predatory behaviour might include attempts to contact service users or carers using information accessed through confidential records (e.g. visiting a service user's home address without authority or good reason to do so), or inappropriate use of social media to pursue a service user or carer. Any evidence of predatory behaviour is likely to lead to more serious sanctions.

### **Vulnerability**

72. Registrants must not abuse a service user or carer's trust. This is especially so where they might already be particularly vulnerable to such abuse.
73. Given the unequal balance of power between registrants and service users or carers, any service user or carer accessing treatment is vulnerable to some extent. However, a service user or carer is considered particularly vulnerable if they are unable to take care of themselves, or are unable to protect themselves from significant harm or exploitation. This might include factors such as:
- mental illness (including dementia);
  - age (for example, children under 18 or the elderly);
  - disability;
  - lack of capacity;
  - history of abuse or neglect;

- bereavement.
74. Where a registrant has pursued a sexual or otherwise inappropriate emotional relationship with a particularly vulnerable service user or carer, panels should consider this an aggravating factor which is likely to lead to a more serious sanction.

### **Sexual misconduct**

75. Sexual misconduct is a very serious matter which has a significant impact on the public and public confidence in the profession. It includes sexual harassment, sexual assault, and any other conduct of a sexual nature that is without consent, or has the effect of threatening or intimidating someone. The misconduct can be directed towards:
- service users, carers and family members;
  - colleagues; and
  - members of the public.
76. Because of the gravity of these types of cases, where a panel finds a registrant impaired because of sexual misconduct, it is likely to impose a more serious sanction. Where it deviates from this approach, it should provide clear reasoning.

### **Criminal convictions and cautions**

77. A conviction or caution should only lead to further action being taken against a registrant by the HCPC if, as a consequence of that conviction or caution, the registrant's fitness to practise is found to be impaired.
78. The panel's role is not to punish the registrant, but to protect the public, which includes maintaining high standards among registrants and public confidence in the profession concerned.
79. Where a registrant has been convicted of a serious criminal offence, and is still serving a sentence at the time the matter comes before a panel, normally the panel should not allow the registrant to resume unrestricted practice until that sentence has been satisfactorily completed.
80. Likewise, if a registrant has a conviction or caution for a less serious offence which nevertheless had an impact on fitness to practise, typically panels should not permit the registrant to resume unrestricted practice.

81. Where the panel deviates from the approach outlined above, it should provide clear reasoning.

### **Sex offender**

82. Although inclusion on the sex offenders' database is not a punishment, it does serve to protect the public from those who have committed certain types of offences. A panel should normally regard it as incompatible with the HCPC's obligation to protect the public to allow a registrant to remain in or return to unrestricted practice while they are on the sex offenders' database.
83. Where the panel deviates from this approach, it should provide clear reasoning.

### **Sexual abuse of children (including indecent images)**

84. Sexual abuse of children involves forcing or persuading them to take part in sexual activities and includes both physical contact and online activity. Each of the four countries has legislation which protects children from sexual abuse, further details can be found on the NSPCC website<sup>8</sup>.
85. Under the Protection of Children Act 1978<sup>9</sup> it is illegal to take, make, distribute, show or advertise indecent images of children.
86. Sexual abuse of children, whether physical or online, is intolerable, seriously damages public safety and undermines public confidence in the profession. Any professional found to have participated in sexual abuse of children in any capacity should not be allowed to remain in unrestricted practice.

### **Offences related to indecent images of children**

87. The courts categorise offences relating to indecent images of children based on the nature of the images and the offender's degree of involvement in their production.
88. Any offence relating to indecent images of children involves some degree of exploitation of a child, and so a conviction for such an offence is a very serious matter. In particular, it undermines the public's trust in registrants and public confidence in the profession concerned and is likely to lead to a more serious sanction.

### **Community sentences**

---

<sup>8</sup> <https://www.nspcc.org.uk/preventing-abuse/child-abuse-and-neglect/child-sexual-abuse/legislation-policy-guidance/>

<sup>9</sup> <https://www.legislation.gov.uk/ukpga/1978/37>

89. Community sentences are non-custodial sentences aimed at punishing offenders' behaviour so they don't commit crime in the future, and are used to address different aspects of an individual's offending behaviour. Therefore they may not simply be an order to undertake unpaid community work but may also include other orders such as:
- compliance with a curfew;
  - exclusion from certain areas; or
  - participation in mental health, drug or alcohol treatment.
90. Panels need to give careful consideration to the specific terms of any community sentence but, generally, it will be inappropriate to allow a registrant to remain in, or return to, unrestricted practice whilst they are subject to such a sentence.
91. Should the panel wish to depart from this approach, it should provide clear reasoning.

## **Violence**

92. Registrants have a duty to ensure that their conduct justifies the public's trust and confidence in them and their profession (see standard 9.1 of the Standards of conduct, performance and ethics). Where a registrant has exhibited violent behaviour, this is highly likely to affect the public's confidence in their profession and pose a risk to the public. In these cases, a more serious sanction may be warranted.

# Sanctions

## Determining what sanction is appropriate

93. If a Panel finds a registrant's fitness to practise to be impaired, it can:
- refer a case for mediation;
  - take no action;
  - impose a caution order;
  - impose a conditions of practice order;
  - impose a suspension order; or
  - strike the registrant off the register.
94. In determining what sanction, if any, is appropriate, the panel should start by considering the least restrictive sanction first, working upwards only where necessary. The final sanction should be a proportionate approach, and will therefore be the minimum action required to protect the public.
95. Where the only alternative open to the panel is to take no further action, the Order gives the panel the power to refer a case for mediation. Mediation is intended to resolve issues between the registrant and another party, by facilitating meeting and discussion to come to a mutual understanding. However, there is no provision for a case to be returned to the panel should mediation fail. As a result, it is likely to only be appropriate in cases where the registrant's impairment is minor, is isolated in nature and unlikely to recur, and where the registrant has displayed sound insight and has undertaken significant remediation.

Mediation is unlikely to be an appropriate course of action for a panel, as the point at which mediation can be offered under the Order does not lend itself to the take up of mediation by the parties involved. This is because a case has usually been going on for a lengthy period, despite mediation being recognised as best when offered at the earliest opportunity

## No action

96. A finding of impaired fitness to practise means that the panel has concerns about a registrant's current ability to practise safely and effectively. It is therefore unlikely that the panel would take no action following a finding of impairment.

97. However, in the cases the panel considers taking no action to be the appropriate and proportionate outcome, it should provide clear reasons to explain this decision and its conclusion that there is no risk to the public, or to public confidence in the profession, in taking no action.

## **Caution**

### **What is a caution order?**

98. A caution order can be imposed for any period between one and five years. It will appear on the Register, but will not restrict a registrant's ability to practise. An order of this sort may be taken into account if a further allegation is made against the registrant although, in doing so, the panel should take into account all relevant factors including:
- the length of time since the caution order was imposed;
  - the relevance of that order to the further allegation made against the registrant; and
  - whether any promised remedial steps that led to the imposition of a caution order originally, rather than an alternative sanction, have been fulfilled.

### **When is a caution order appropriate?**

99. Where a panel finds that a registrant's fitness to practise is impaired, the least restrictive sanction that can be applied is a caution order.
100. A caution order is likely to be an appropriate sanction for cases in which:
- the issue is isolated, limited, or relatively minor in nature;
  - there is a low risk of repetition;
  - the registrant has shown good insight; and
  - the registrant has undertaken appropriate remediation.
101. A caution order should be considered in cases where the nature of the allegations mean that meaningful practice restrictions cannot be imposed, but a suspension of practice order would be disproportionate. In these cases, panels should provide a clear explanation of why it has chosen a non-restrictive sanction, even though the panel may have found there to be a risk of repetition (albeit low).

### **How long should a caution order be imposed for?**

102. The panel can impose a caution order for any period between one and five years. As discussed earlier, the panel should take the minimum action required to protect the public and public confidence in the profession, so should begin by considering whether or not a caution order of one year would be sufficient to achieve this. It should only consider imposing the caution order for a longer period where one year is insufficient.
103. Each case should be considered on an individual basis, and the panel's decision should clearly state the length of sanction it considers to be appropriate and proportionate, and the reasons for that decision.

### **Conditions of practice**

#### **What is a conditions of practice order?**

104. A conditions of practice order allows a registrant to remain in practice subject to restrictions which reflect the panel's finding as to their fitness to practise. It requires the registrant to undertake certain actions or restrict their practice in certain ways. In some cases it may be appropriate to impose a single condition for a short period, for example to undertake specific training. However, in most cases, a combination of conditions will be necessary.

#### **When is a conditions of practice order appropriate?**

105. A conditions of practice order is likely to be appropriate in cases where:
- the registrant has insight;
  - the failure or deficiency is capable of being remedied;
  - there are no persistent or general failures which would prevent the registrant from remediating;
  - appropriate, proportionate, realistic and verifiable conditions can be formulated;
  - the panel is confident the registrant will comply with the conditions;
  - a reviewing panel will be able to determine whether or not those conditions have or are being met; and
  - the registrant does not pose a risk of harm by being in restricted practice.

#### **When might a conditions of practice order not be appropriate?**

106. Conditions will only be effective in cases where the registrant is genuinely committed to resolving the concerns raised and the panel is confident they will do so. Therefore, conditions of practice are unlikely to be suitable in cases in which the registrant has failed to engage with the fitness to practise process or where there are serious or persistent failings.
107. Conditions are also less likely to be appropriate in more serious cases, for example those involving:
- Dishonesty (see paragraphs 55-57).
  - Failure to raise concerns (see paragraphs 58-59).
  - Failure to work in partnership (see paragraphs 60-61).
  - Discrimination (see paragraphs 62-65).
  - Abuse of professional position, including vulnerability (see paragraphs 66-74).
  - Sexual misconduct (see paragraphs 75-76).
  - Sexual abuse of children or indecent images of children<sup>10</sup> (see paragraphs 84-87).
  - Criminal convictions for serious offences (see paragraphs 77-91).
  - Violence (see paragraph 92).
108. There may be circumstances in which a panel considers it appropriate to impose a conditions of practice order in the above cases. However, it should only do so when it is satisfied that the registrant's conduct was minor, out of character, capable of remediation and unlikely to be repeated. The panel should take care to provide robust reasoning in these cases.

### **What considerations should be given when formulating conditions?**

109. Conditions typically cover the following areas (this list is not exhaustive):
- education and training requirements;
  - practice restrictions;

---

<sup>10</sup> For the avoidance of doubt, 'indecent images of children' refers to any indecent photographs, pseudo-photographs or prohibited images of children.

- chaperones;
  - supervision;
  - treatment;
  - substance dependency;
  - informing the HCPC and others; and
  - personal development
110. Conditions should be appropriate to remedy the concerns raised, and the panel should be assured that they mitigate any risk posed by the registrant remaining in unrestricted practice.
111. A panel must, in an appropriate case, impose a reasonable time limit for compliance with a condition, so as to avoid placing the relevant registrant in a position of uncertainty for an unnecessary length of time.
112. While conditions of practice may be imposed on a registrant who is currently not practising, before doing so, panels should consider whether there are equally effective conditions could be imposed and which are not dependent on the registrant returning to practise. For example, not all training, reflection or development requires a registrant to be in practice or have a workplace-based mentor.
113. Conditions must also be workable and reasonable, taking into account the registrant's practice setting, and not imposing a condition, or combination of conditions, which effectively suspend the registrant's practice.
114. Where a panel believes that stringent conditions are required, and it has concerns these effectively suspend the registrant's practice, it should consider whether or not conditions are an appropriate sanction. The panel's primary concern should be to protect the public and public confidence in the profession. If it is not able to draft workable conditions that achieve this, it may need to consider imposing a suspension order.

#### **How long should a conditions of practice order be imposed for?**

115. Conditions of practice orders can be imposed for a period of up to three years. In determining the appropriate length of a conditions of practice order, the panel should consider all the information available to it to come to an appropriate and proportionate decision. It should provide clear written reasons for deciding on the particular length of the order.

116. Article 29(7)(c) of the Order enables panels to specify a minimum period (of up to two years) for which a conditions of practice order is to have effect before the registrant can apply to vary, replace or revoke it. Panels should only exercise that power in cases where it is clear from the evidence that earlier review is unlikely to be of value or where the nature of the conditions imposed make an early review inappropriate.

## **Suspension order**

### **What is a suspension order?**

117. A suspension order prohibits a registrant from practising their profession.
118. However, whilst a registrant who is suspended cannot practise, Article 22(8) of the Order provides that they can be subject to further fitness to practise proceedings for events which occur whilst they are suspended.
119. Suspension orders cannot be made subject to conditions, but where the panel expects the registrant to address specific issues or take specific action before the suspension order is reviewed (for example, to undergo substance abuse treatment) clear guidance should be given setting out what is expected of the registrant and the evidence that may be helpful to any future review panel. However, panels should avoid being unduly prescriptive and must not bind or fetter the discretion of a future review panel.

### **When is a suspension order appropriate?**

120. A suspension order is likely to be appropriate where there are serious concerns which cannot be reasonably addressed by a conditions of practice order, but which do not require the registrant to be struck off the register. These types of cases will typically exhibit the following factors:
- the concerns represent a serious breach of the Standards of conduct, performance and ethics;
  - the registrant has insight;
  - the issues are unlikely to be repeated; and
  - there is evidence to suggest the registrant is likely to be able to resolve or remedy their failings.

### **How long should a suspension order be imposed for?**

121. A suspension order should be imposed for a specified period up to one year. When determining how long a suspension order should be imposed for, panels must ensure that their primary consideration is what is necessary and proportionate in order to ensure that the public is protected (see paragraphs 20-23).
122. Whilst short term suspensions can have long term consequences for a registrant (including being dismissed from their current employment), they are likely to be appropriate where a staged return to practice is required. For example, where the registrant has previously engaged in the process but is currently unable to respond to and comply with conditions of practice but may be capable of doing so in the future.
123. Short term suspensions can also be appropriate in cases where there is no ongoing risk of harm, but where further action is required in order to maintain public confidence in our professions.
124. A staged return to practice is likely to be appropriate in cases involving substance dependency, where at the time of the hearing the registrant is seeking or undergoing treatment (and the panel has received medical evidence confirming this to be the case) but has not reached the stage where they are safe to return to practice, even if that registrant is subject to conditions of practice. In these cases, the panel should clearly explain the purpose of the sanction and the expectations it has of the registrant.
125. Article 29(7)(b) of the Order enables panels to specify a minimum period (of up to 10 months) for which a suspension order is to have effect before the registrant can apply to vary, replace or revoke it. Panels should only exercise that power in cases where it is clear from the evidence that earlier review is unlikely to be of value.

## **Striking off order**

### **What is a striking off order?**

126. A striking off order removes a registrant's name from the Register and prohibits the registrant from practising their profession.
127. Striking off is a long term sanction. Article 33(2) of the Order provides that, unless new evidence comes to light, a person may not apply for restoration to the Register within five years of the date of a striking off order being made, and panels do not have the power to vary that restriction.
128. A striking off order may not be made in respect of an allegation relating to lack of competence or health unless the registrant has been continuously suspended, or subject to a conditions of practice order, for a period of two years at the date of the decision to strike off.

## **When is a striking off order appropriate?**

129. A striking off order is a sanction of last resort for serious, persistent, deliberate or reckless acts involving (this list is not exhaustive):

- Dishonesty (see paragraphs 55-57).
- Failure to raise concerns (see paragraphs 58-59).
- Failure to work in partnership (see paragraphs 60-61).
- Discrimination (see paragraphs 62-65).
- Abuse of professional position, including vulnerability (see paragraphs 66-74).
- Sexual misconduct (see paragraphs 75-76).
- Sexual abuse of children or indecent images of children<sup>11</sup> (see paragraphs 84-87).
- Criminal convictions for serious offences (see paragraphs 77-91).
- Violence (see paragraph 92).

130. A striking off order is likely to be appropriate where the nature and gravity of the concerns are such that any lesser sanction would be insufficient to protect the public, public confidence in the profession, and public confidence in the regulatory process. In particular where the registrant:

- lacks insight;
- continues to repeat the misconduct or, where a registrant has been suspended for two years continuously, fails to address a lack of competence; or
- is unwilling to resolve matters.

131. A striking off order has a significant impact on a registrant, and so when a panel imposes a striking off order, it should provide clear and detailed reasoning in its decision on sanction.

---

<sup>11</sup> For the avoidance of doubt, 'indecent images of children' refers to any indecent photographs, pseudo-photographs or prohibited images of children.

## Interim orders

### What is an interim order?

132. If a panel imposes a conditions of practice order, suspension order, or striking off order, Article 31 of the Order provides the panel with the discretionary power to also impose an interim conditions of practice order or an interim suspension order. This will apply from the imposition of the substantive order, until the end of the appeal period, or where an appeal is made, the end of the appeal process.

### When is an interim order appropriate?

133. The power to impose an interim order is discretionary, and so panels should not consider it to be an automatic outcome. The panel should carefully consider whether or not an interim order is necessary and should provide the parties with an opportunity to address the panel on whether an interim order is required.

134. An interim order is likely to be required in cases where:

- there is a serious and on-going risk to service users or the public from the registrant's lack of professional knowledge or skills, conduct, or unmanaged health problems; or
- the allegation is so serious that public confidence in the profession would be seriously harmed if the registrant was allowed to remain in unrestricted practice.

## Multiple sanctions

135. Article 29 of the Order provides an escalating range of sanctions and panels may only impose one sanction at any one time, so it will be rare for a registrant to be subject to more than one sanction at a time. However, if that situation does arise, panels should ensure the duration and effect of each sanction is clear.

136. A registrant is only likely to be subject to multiple sanctions in cases where a sanction has been imposed in relation to one allegation, and a second sanction needs to be imposed in respect of an entirely separate and unconnected allegation.

137. However, where the second allegation involves any of the following, then escalation to a more stringent sanction is likely to be the more appropriate course of action:

- a repetition of the conduct which gave rise to the first sanction;
- conduct or behaviour similar in nature to the previous concerns; or
- a breach of the existing sanction.

138. In these cases, the more stringent sanction may have the effect of overriding the more lenient sanction, for example, a suspension order will override a conditions of practice order because the registrant is no longer able to practise.<sup>12</sup>

---

<sup>12</sup> The panel would need to make an order to bring the existing sanction to an end.

## Review hearings

139. The review process is not a mechanism for appealing against or 'going behind' the original finding that the registrant's fitness to practise is impaired. The purpose of review is to consider:

- whether the registrant's fitness to practise remains impaired; and
- if so, whether the existing order or another order needs to be in place to protect the public.

140. When reviewing sanctions under Article 30 of the Order, a panel may vary, extend, replace or revoke an existing sanction, but cannot impose a second, additional sanction for the same allegation. Therefore, where there are multiple sanctions against a registrant, review panels must consider each sanction separately.

141. At a review hearing, the panel's primary role is to consider the information available to it with regard to the conduct of the registrant since the previous hearing. This is to establish if a sanction ought to be varied, extended or replaced in order to protect the public.

142. In making its decision the panel should take account of the wider public interest, which includes:

- the deterrent effect to other registrants;
- public confidence in the profession concerned; and
- public confidence in the regulatory process.

143. The panel should take account of the same considerations (see paragraph 1-138) it would for a new hearing, including the information available to it about the initial allegations, any further information received including about the wider circumstances of the case and the risk posed to the public.

144. No registrant should resume unrestricted practice until it is safe and appropriate for them to do so.

## **Consultation on the revised Indicative Sanctions Policy**

Analysis of responses to the consultation on the revised Indicative Sanctions Policy  
and our decisions as a result

### **Contents**

1. Introduction .....	40
2. Analysing your responses .....	42
3. Summary of responses.....	48
4. Thematic analysis of responses .....	52
5. Our comments and decisions .....	77
6. List of respondents .....	83

## 1. Introduction

### About the consultation

- 1.1 We consulted between 4 June 2018 and 31 August 2018 on proposed changes to the Indicative Sanctions Policy.
- 1.2 We informed a range of stakeholders about the consultation including professional bodies, employers, and trade unions. We also advertised the consultation on our website and on social media, and issued a press release.
- 1.3 We would like to thank all those who took the time to respond to the consultation. You can download the consultation document and a copy of this responses documents from our website: [www.hcpc-uk.org/aboutus/consultations/closed](http://www.hcpc-uk.org/aboutus/consultations/closed).

### About us

- 1.4 We are a regulator and our job is to protect the public. To do this, we keep a Register of professionals who meet our standards for their professional skills, knowledge and behaviour. Individuals on our Register are called 'registrants'.
- 1.5 We currently regulate 16 health and care professions:
  - Arts therapists
  - Biomedical scientists
  - Chiroprodists / podiatrists
  - Clinical scientists
  - Dietitians
  - Hearing aid dispensers
  - Occupational therapists
  - Operating department practitioners
  - Orthoptists
  - Paramedics
  - Physiotherapists
  - Practitioner psychologists
  - Prosthetists / orthotists
  - Radiographers
  - Social workers in England
  - Speech and language therapists

## About this document

1.6 This document summarises the responses we received to the consultation.

- Section two explains how we handled and analysed the responses we received, providing some overall statistics from the responses.
- Section three provides an executive summary of the responses we received.
- Section four adopts a thematic approach and outlines the general comments we received on the draft guidance document.
- Section five outlines our responses to the comments received, and any changes we will make as a result.
- Section six lists the organisations which responded to the consultation.

1.7 In this document, 'we', 'us', and 'our' are references to the HCPC; 'you' or 'your' are references to respondents to the consultation.

DRAFT

## 2. Analysing your responses

- 2.1 We have analysed all the written and survey responses we received to the consultation.

### Method of recording and analysis

- 2.2 The majority of respondents used our online survey tool to respond to the consultation. They self-selected whether their response was an individual or an organisation response, and, where answered, selected their response to each question (e.g. 'yes', 'no', 'partly', or 'don't know').
- 2.3 Where we received responses by email or by letter, we recorded each response in a similar format.
- 2.4 When deciding what information to include in this document, we assessed the frequency of the comments made and identified themes. This document summarises the common themes across all responses, and indicates the frequency of arguments and comments made by respondents.

### Quantitative analysis

- 2.5 We received 88 responses to the consultation. 67 responses (76%) were made by individuals and 21 (24%) were made on behalf of organisations. Of the 67 individual responses, 50 (75%) were HCPC registered professionals.
- 2.6 The tables below provide some indicative statistics for the answers to the consultation queries.

**Table 1 – Breakdown of responses by question**

	Yes	No	Don't know	No answer
Q1. Do you think the content in the Policy covering proportionality is sufficiently detailed?	63 (76%)	17 (21%)	3 (4%)	5
Q2. Does the Policy provide adequate clarity around the difference between insight, remorse and apology?	65 (79%)	14 (17%)	3 (4%)	6
Q3. Does the Policy provide sufficient guidance about how	56 (67%)	21 (25%)	6 (7%)	5

insight, remorse, and apology may impact a panel's decision on sanction?				
Q4. Is it clear from the Policy what remediation is and how a panel might take account of any remediation activities in making their decision?	62 (76%)	16 (20%)	4 (5%)	6
Q5. Do you think the aggravating factors detailed in the Policy are appropriate?	65 (79%)	12 (15%)	5 (6%)	6
Q6. Do you think the types of cases which are aggravating are appropriate?	59 (71%)	11 (13%)	13 (16%)	5
Q7. Is the detail provided against each of the sanctions available to the panel sufficient?	56 (68%)	19 (23%)	7 (9%)	6
Q8. Does the Policy provide enough information about how a panel should approach a review hearing?	57 (70%)	19 (23%)	6 (7%)	6
Q9. Do you consider there are any aspects of our proposals that could result in equality and diversity implications for groups or individuals based on one or more of the following protected characteristics, as defined by the Equality Act 2010 and equivalent Northern Irish legislation? If yes, please explain what could be done to change this. <ul style="list-style-type: none"> <li>• Age</li> <li>• Gender reassignment</li> <li>• Disability</li> <li>• Pregnancy and maternity</li> <li>• Race</li> <li>• Religion or belief</li> <li>• Sex</li> <li>• Sexual orientation</li> </ul>	19 (23%)	58 (72%)	4 (5%)	7

**Table 2 – Breakdown of responses by respondent type**

	Individuals				Organisations			
	Yes	No	Don't know	No answer	Yes	No	Don't know	No answer
Q1. Do you think the content in the Policy covering proportionality is sufficiently detailed?	49 (74%)	14 (21%)	3 (5%)	1	14 (82%)	3 (18%)	0 (0%)	4
Q2. Does the Policy provide adequate clarity around the difference between insight, remorse and apology?	54 (83%)	10 (15%)	1 (2%)	2	11 (65%)	4 (24%)	2 (12%)	4
Q3. Does the Policy provide sufficient guidance about how insight, remorse, and apology may impact a panel's decision on sanction?	46 (69%)	15 (23%)	5 (8%)	1	10 (59%)	6 (35%)	1 (6%)	4
Q4. Is it clear from the Policy what remediation is and how a panel might take account of any remediation activities in making their decision?	48 (74%)	13 (20%)	4 (6%)	2	14 (82%)	3 (18%)	0 (0%)	4
Q5. Do you think the aggravating	51 (78%)	9 (14%)	5 (8%)	2	14 (82%)	3 (18%)	0 (0%)	4

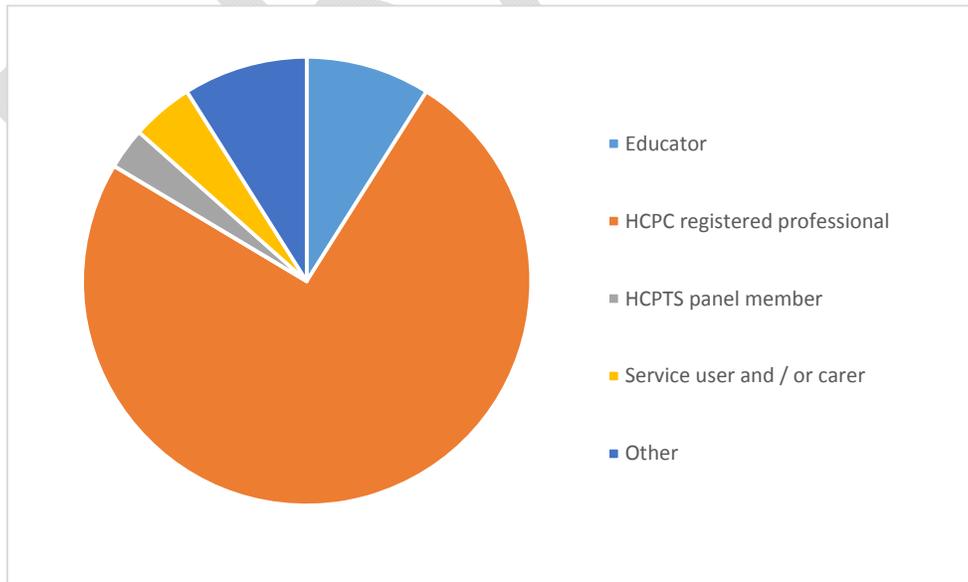
factors detailed in the Policy are appropriate?								
Q6. Do you think the types of cases which are aggravating are appropriate?	46 (70%)	8 (12%)	12 (18%)	1	13 (76%)	3 (18%)	1 (6%)	4
Q7. Is the detail provided against each of the sanctions available to the panel sufficient?	46 (71%)	13 (20%)	6 (9%)	2	10 (59%)	6 (35%)	1 (6%)	4
Q8. Does the Policy provide enough information about how a panel should approach a review hearing?	46 (71%)	14 (22%)	5 (8%)	2	11 (65%)	5 (29%)	1 (6%)	4
Q9. Do you consider there are any aspects of our proposals that could result in equality and diversity implications for groups or individuals based on one or more of the following protected characteristics, as defined by the Equality Act 2010 and equivalent Northern Irish legislation? If yes, please explain what	16 (25%)	46 (71%)	3 (5%)	2	3 (19%)	12 (75%)	1 (6%)	5

could be done to change this.								
<ul style="list-style-type: none"> <li>• Age</li> <li>• Gender reassignment</li> <li>• Disability</li> <li>• Pregnancy and maternity</li> <li>• Race</li> <li>• Religion or belief</li> <li>• Sex</li> <li>• Sexual orientation</li> </ul>								

- Percentages in the tables above have rounded to the nearest whole number and therefore may not add up to 100 per cent.

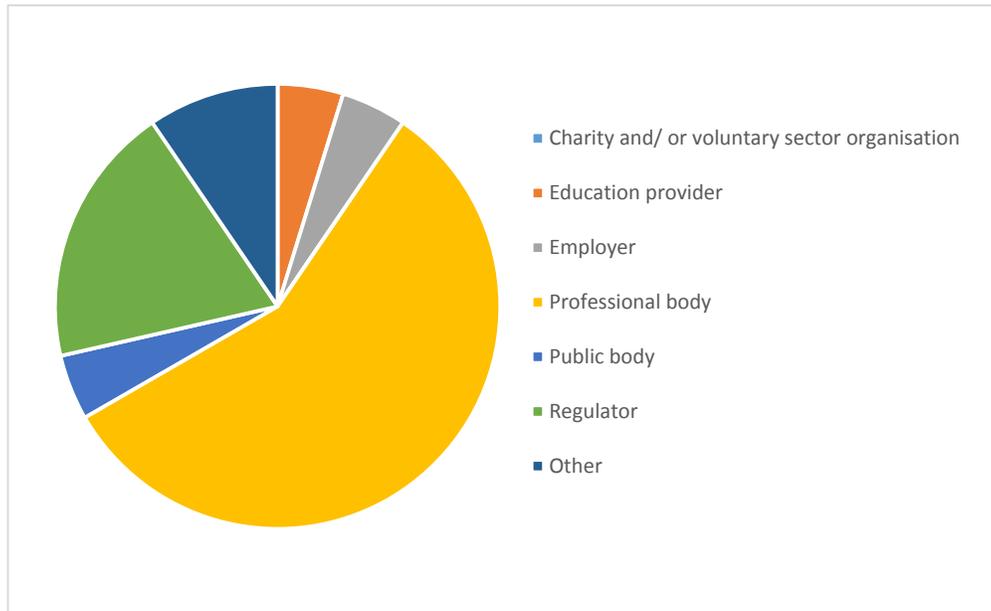
**Graph 1 – Breakdown of individual respondents**

Respondents were asked to select the category that best described them. The respondents who selected ‘other’ identified themselves as former or retired registrants, non-registered clinicians, representatives, lawyers working in regulation in another jurisdiction, and a dual educator, registrant and professional influencer.



**Graph 2 – Breakdown of organisation respondents**

Respondents were asked to select the category that best described them. The respondents who selected 'other' identified themselves as trade unions.



DRAFT

### **3. Summary of responses**

#### **Proportionality**

- 3.1 The majority of respondents (76%) agreed that the content in the Policy covering proportionality was sufficiently detailed.
- 3.2 21% of respondents felt that this section required more detail. Respondents made suggestions of which topics we should review in more detail, including:
- how the panel balances registrant and service user interests;
  - the wider context of a particular case (such as the registrant's working environment)
  - how a panel should approach sanctions (emphasising the importance of determining this in line with HCPC's overarching objectives); and
  - how proportionately applies to interim orders.

#### **The difference between insight, remorse and apology**

- 3.3 The majority of respondents (79%) agreed the Policy provided sufficient clarity around the difference between insight, remorse and apology. A small number of these caveated their response in some way, requesting more information about how these concepts interact or how the panel should approach them if they are only partially demonstrated.
- 3.4 17% felt the Policy required further clarity. It was suggested that we provide more detail on how factors such as cultural differences, the wider context of a case and the type of case would impact on insight, remorse and apology. Comments also expressed concern with how we had linked these concepts, and suggested we provide more information on how a registrant could evidence these.

#### **The impact of insight, remorse, and apology on a panel's decision on sanction**

- 3.5 The majority of respondents (67%) felt that the Policy provided sufficient guidance about how insight, remorse and apology may impact a panel's decision on sanction. Responses emphasised the importance of training panel members and making registrants aware of this section when implementing the new Policy.
- 3.6 25% of respondents felt that the Policy could provide additional guidance in this area. Some respondents advised that we take a cautious approach to the significance we place on mitigating factors when it comes to sanctions (highlighting recent case law). Others requested we clarify what evidence a registrant needs to provide to demonstrate these factors. Another highlighted that, whilst the Policy is clear on how insight can affect a sanctioning decision, remorse and apology are not mentioned within the sanction section of the

Policy. It was highlighted that a registrant's employers and the support they provide may influence any expressions of remorse, and that insight should not be measured by whether someone admits or denies an allegation.

### **Remediation**

- 3.7 The majority of respondents (76%) felt that the Policy was clear about what remediation is and how a panel might take account of any remediation activities in making their decision. Several respondents requested that we provide more information about the role of employers and what would happen if remediation fails, whilst others suggested we review how we define serious cases for the purpose of remediation.
- 3.8 20% of respondents felt that this section could be clearer. Respondents made suggestions of what form remediation evidence should take, how this would be influenced by contextual and situational factors and what cases should be considered serious for the purpose of remediation. Some requested more detail about what would happen if a registrant fully remediated, whilst others criticised our wording which it was argued limits panels' discretion or unduly restricts remediation to prior to a hearing.

### **Aggravating factors**

- 3.9 The majority of respondents (79%) felt that the aggravating factors detailed in the Policy were appropriate.
- 3.10 15% of respondents disagreed with the proposed aggravating factors. These respondents criticised terminology used, such as 'breach of trust', suggesting this was too vague. Respondents also felt phrases like 'likely to lead' and 'in a timely manner' unduly impose upon a panel's discretion, and stated that we should recognise insight, remorse and apology whenever it is eventually expressed. Some respondents requested further detail on factors such as a registrant's mental health, the duty of candour and interim orders would impact upon this section.

### **Types of cases which are aggravating**

- 3.11 The majority of respondents (71%) agreed that the types of cases which are aggravating are appropriate. Respondents provided suggestions for other cases which could be included in this section, as well as highlighting that the seriousness of a case needs to be considered on a case by case basis.
- 3.12 13% of respondents did not feel that the types of cases which are aggravating were appropriate. They argued that some of the wording used was unnecessarily specific and that the examples provided were unrealistic. It was noted that dishonesty in particular is a complex area and we need to take a

more nuanced approach. We also received suggestions for further cases which could be considered serious, such as criminal convictions.

### **Detail of sanctions**

- 3.13 The majority of respondents (68%) agreed that the detail provided against each of the sanctions available to the panel was sufficient. There was some concern from one respondent however that any increase requirement for insight would result in more strike offs. We also received requests for clarity about mediation, no action and multiple sanctions.
- 3.14 23% of respondents felt the Policy could provide more detail against each of the sanctions available to the panel. We received a wide range of comments about the different sanctions available. This included requests that mediation have its own section, that we emphasise sanctions focus on what is necessary for public protection as opposed to the impacts on registrants and that this is determined on a case by case basis, and that we clarify the section on multiple sanctions which appears contradictory.

### **Review hearings**

- 3.15 The majority of respondents (70%) felt that the revised Indicative Sanctions Policy provided enough information about how a panel should approach a review hearing.
- 3.16 23% of respondents felt we should provide more information on this topic. Respondents noted that there is no reference to how panel's consider the findings of the original panel, nor what the impact would be of a registrant who refuses to engage with the process, or who has breached a previous orders. It was also requested that we provide more detail on the panel would expect of registrants, and how panels should apply sanction at this stage (particularly when there are multiple sanctions).

### **Equality and Diversity**

- 3.17 The majority of respondents (72%) did not consider that our revised Indicative Sanctions Policy would result in equality and diversity implications for groups or individuals based on one or more of the protected characteristics defined by the Equality Act 2010 and equivalent Northern Irish legislation.
- 3.18 23% of respondents felt there were aspects of our proposals that may have equality and diversity implications. These respondents felt that any impact would be negative and could disproportionately affect the protected characteristics of disability, race, religion or belief, sex and sexual orientation. Respondents also discussed the potential impact on those at socioeconomic disadvantage or who had health problems (including mental health).

- 3.19 One respondent also felt that there could be positive equality and diversity implications of our revisions, noting the strengthened stance on equality and diversity and discrimination and predatory behaviour. This highlighted women, children and the elderly as most likely to benefit as a result.

**Other comments**

- 3.20 39% of respondents took the opportunity to add further comments to their response. These discussed a range of topics, including requests for us to include other topics (such as details of appeals, time frames and health cases) as well as amendments to general wording and structure of the Policy.

DRAFT

## 4. Thematic analysis of responses

4.1 This section provides an analysis of the responses we received, based on the common themes we identified.

### Q1. Do you think the content in the Policy covering proportionality is sufficiently detailed?

#### Yes

4.2 The majority of respondents (76%) agreed that the content in the Policy covering proportionality was sufficiently detailed, with a marginally larger proportion of organisations (82%) agreeing compared to individuals (74%).

4.3 Comments in favour of our current approach noted that:

- it is clearly structured and provides clear direction;
- it is both comprehensive and the manner in which it is presented is easy to read;
- it clearly explains how the panel will apply proportionality to sanctions;
- it is important that anyone reading fitness to practice panel decisions can fully understand the considerations that the panel took and the rationale for the decision; and
- having access to effective risk-based sanctions will help to raise standards across healthcare professions regulated by HCPC, by dealing with minor breaches swiftly whilst maintaining the credibility of the profession concerned.

#### No

4.4 A minority of respondents (21%) felt that the content on proportionality required more detail. Respondents discussed a number of areas where they felt this section could contain more information, each of which are discussed in turn:

#### Balancing registrant and public protection interests

4.5 Several respondents felt that this section should provide further detail on the panel's duty to balance registrants' interests with what is in the best interests of the public (in light of the HCPC's overarching objectives). It was noted that the GMC's Sanctions Guidance addresses this balancing exercise, 'which is central to the principle of proportionality'.

#### Consideration of wider contextual factors

4.6 To ensure decision-making is proportionate, respondents discussed the need to consider the impact of wider contextual factors, such as a registrant's working environment. One respondent provided detail of the challenges facing children's services social workers, such as excessive working hours (including

weekend working), cancelled training due to high workloads, and resulting high levels of anxiety, depression and burn out amongst staff.

### **Greater detail on sanction decision-making**

- 4.7 It was suggested that we be more explicit about how panels determine what an appropriate and proportionate sanction is. This included:
- emphasising that sanctions are not intended to be punitive;
  - clearly linking any proposed sanction to HCPC's public protection objectives, highlighting that sanctions must reflect the seriousness of the issues identified, the risks to the public and the impact on the public interest
  - defining terms such as 'the requisite level to protect the public', to ensure greater consistency of decision making;
  - reiterating that panel members should consider the full range of sanctions available to them, starting with the least restrictive, and noting that any sanction imposed must be the minimum action required to protect the public; and
  - panels should also give reasons why they have chosen a specific sanction and why a higher sanction is not required.
- 4.8 Respondents highlighted the case of *GMC v Stone* [2017] which sets out the importance of giving reasons both for the particular sanction selected and any other sanction considered and rejected. It was also suggested that we refer to the case of *Bolton v Law Society* [1993], which considers the balance between sanctions imposed and their purpose.
- 4.9 It was also argued that this section be more explicit about the panel's role in risk assessments and how this impacts on the sanctions imposed.

### **Interim orders**

- 4.10 It was noted that the section on proportionality does not consider interim orders. Respondents argued that proportionately acts as a substantial consideration at this stage, and therefore we ought to at least refer to this within the section to avoid any confusion. For example, one respondent suggested we explain when the time spent on an interim order will be a relevant factor in deciding an appropriate and proportionate sanction (in line with *Kamberova v NMC* [2016]).

### **Examples**

- 4.11 Some respondents requested that we provide examples in this section from recent cases, to greater illustrate our point.
- 4.12 When providing these examples, some respondents requested that we broaden our approach from just focusing on service users, to also consider 'ordinary members of the public' and other healthcare staff.

### **Don't know**

- 4.13 4% of respondents selected don't know in response to this question. One respondent had not been able to access the document, and therefore could not answer this question, whilst another commented that panels need to be supported in applying this section of the Policy.

### **Q2. Does the Policy provide adequate clarity around the difference between insight, remorse and apology?**

#### **Yes**

- 4.14 The majority of respondents (79%) agreed the Policy provided adequate clarity around the difference between insight, remorse and apology. Of the organisations that responded, a significantly smaller proportion (65%) agreed compared to individuals (83%).
- 4.15 The vast majority of respondents who felt this section of the Policy was clear did not provide further comment. Where comments were provided, they praised the clear examples, definitions and links to legislation throughout.
- 4.16 A small number of respondents who felt this section was sufficiently clear caveated their response in some way. It was noted that 'such clarity also makes it easier for unscrupulous people to "game play" without true remorse'. Another felt that only insight is relevant to sanction, as it shows an understanding of what happened and can be applied to future conduct, whilst remorse and apology are harder to judge.
- 4.17 One respondent suggested that, in addition to sanctions, there be follow up training in the form of mediators or coaching to ensure that registrants learn from their wrong-doing, and that there be a way of assessing the impact of unprofessional behaviour on colleagues.
- 4.18 Several respondents requested further information, such as how insight, remorse and apology interact and how the panel should consider this if, for example, there has been an apology but no evidence of remorse or a registrant only displays partial insight.

#### **No**

- 4.19 The minority of respondents (17%) felt the Policy required further clarity. Respondents suggested a range of amendments to the structure and wording of this section of the Policy. They also provided broader comments on the content, the key themes of which are discussed in turn below:

### **Cultural differences**

- 4.20 Whilst the Policy states that 'in taking account of any insight, remorse or apology offered by a registrant, panels should be mindful that there may be

cultural differences in the way these might be expressed, both verbally and non-verbally', it was advised that we provide additional information about this.

- 4.21 One respondent provided examples which demonstrate how cultural differences may influence expressions of insight, remorse and apology. These were:
- use of linguistic constructs of their first language as opposed to English, which can result in the loss of subtlety and nuance; and
  - non-verbal cues, eye contact, facial expressions and touch which may be used differently by non-native English speakers.

### **The wider context**

- 4.22 As above, it was suggested that we reference the wider context of a particular case, and how this may influence insight, remorse and apology. One respondent noted that registrants may be under duress to not offer an apology. Another note that compliance with duty of candour may vary dependent on the different sector or circumstances.

### **Linking the concepts**

- 4.23 Some respondents argued that there is not enough distinction between insight, remorse and apology. One respondent therefore suggested perhaps including these all within the overarching category of insight, noting that the GMC guidance does not refer to remorse.
- 4.24 Another respondent suggested that we take a more cautious approach to how we express the links between these three concepts. This response argued that the interplay between the concepts is difficult to define with any clarity and therefore it might be more useful to remind panels that the links are not straightforward and that the interplay and relevance of each concept has to be case-specific and take into account contextual factors.

### **How insight, remorse and apology are evidenced**

- 4.25 Several respondents provided comments on how insight, remorse and apology should be evidenced.
- 4.26 It was noted that this is a subjective concept, which will vary from person to person, and so the Policy should not be overly prescriptive. Respondents requested recognition that insight may be demonstrated during a hearing, or not offered (as some registrants may misinterpret an apology as an admission of guilt or be contesting the facts of a case). It was argued that this in itself should not result in more serious sanctions.
- 4.27 Some respondents were critical of the language and examples we had used, noting that these needed to be less stringent so that the panel has the ability to consider this on a case by case basis.

### **Additional factors to be addressed**

- 4.28 Several respondents suggested that this section discuss or emphasise other factors, such as the importance of mitigation, remediation or the duty of candour. For example, one respondent questioned whether compliance with the duty of candour should be a mitigating factor.
- 4.29 Respondents also requested more detail about how insight, remorse and apology should be considered, depending on the type of case (such as misconduct vs performance cases). It was noted that the current approach appears to be broad brush, whereas instead mitigation needs to be considered on a case by case basis.

#### **Don't know**

- 4.30 4% of respondents selected don't know in response to this question. One respondent commented that findings have repeatedly displayed a lack of compassion, logical thinking and consideration of the vulnerabilities of professionals by HCPC.
- 4.31 Another requested that we define 'timely' in paragraph 26 of the Policy, noting that a registrant could not initially understand what they have done wrong and only on reading the legal papers relating to a case come to realise and accept, and thus offer remorse, even though this may be a period of time after the initial event.

### **Q3. Does the Policy provide sufficient guidance about how insight, remorse, and apology may impact a panel's decision on sanction?**

#### **Yes**

- 4.32 The majority of respondents (67%) felt that the Policy provided sufficient guidance about how insight, remorse and apology may impact a panel's decision on sanction. Of the organisations that responded, a smaller proportion (59%) agreed that the level of guidance was sufficient compared to individuals (69%).
- 4.33 Respondents who felt we had included sufficient detail noted it is 'well-written and clear' and 'gives reasonable examples'.
- 4.34 Some respondents, whilst in support of the level of guidance, commented on implementation. It was noted that how this is applied in practice would depend on the panel members chosen, and that panel members would need to be trained to ensure that they are not unduly swayed by an articulate registrant. One respondent stated that, based on previous cases, insight, remorse and apology does not appear to be respected, whilst another wanted assurances that panel members would be given training to ensure they can take into account cultural differences as specified in the Policy.

- 4.35 It was suggested that, as part of implementation, we ensure that registrants are also made aware of this part of the Policy. Respondents highlighted a commonly held beliefs that an apology means admitting liability, and as such more detail and explanation would be helpful.

#### **No**

- 4.36 A minority of respondents (25%) felt that the Policy could provide additional guidance on how insight, remorse and apology may impact a panel's decision on sanction.

#### **Significance**

- 4.37 Some respondents suggested that we consider recent case law (such as *Judge v NMC* [2016]) which confirms that matters of mitigation are likely to be of considerably less significant in regulatory proceedings, because the overarching concern of the regulator is protection of the public. Therefore panels should be more cautious about identifying mitigating factors, and ensure panels properly evaluate these as opposed to simply create a list of competing factors.
- 4.38 It was highlighted to us that, whilst remorse and insight are relevant to the issue of risk, they do not necessarily mean that risk of repetition is reduced to the point that a sanction is no longer required. Instead, the panel should take account of this information and then add this into the balancing exercise of wider public interest considerations.

#### **Remorse and apology**

- 4.39 Some respondents felt that particular elements of the section (such as on insight) were clear, however other parts were not and required more detail. It was noted that remorse and apology are not mentioned in the sanction section of the Policy, which could result in inconsistent decision-making. Therefore respondents requested that we therefore include remorse and apology within each stage of the sanction section of the Policy to mitigate this risk.

#### **Contextual and situational mitigating factors**

- 4.40 One respondent noted that there are additional contextual and situational mitigating factors that may influence how insight, remorse and apology impact on sanction. This includes challenging systems in a registrant's place of work (which prevent them from raising concerns or from apologising to a patient who has been harmed), environmental issues (as registrants often work as junior members of multidisciplinary teams where challenging team hierarchies and structures could exist), ill health, and the stage of the registrant's career.

#### **Level of detail**

- 4.41 Some respondents suggested that this section does not go far enough. It was argued that this 'essentially just says they might be considered'. Another

noted concern 'that the relationships between remorse, insight and apology and the underpinning principals of public protection, the personal component of unfitness to practice, and the wider aims of protecting the profession are not drawn out in the guidance'.

- 4.42 It was highlighted that, while the definitions of insight, remorse and apology are clear, their interpretation by a panel or individuals appears to be very subjective. A panel is asked to 'assess the sincerity of an apology and to take in to account the level of remorse and insight the registrant has shown', but the respondent questioned how the level of remorse would be measured and what evidence a panel would expect to see.

### **Evidence of insight, remorse and apology**

- 4.43 Several respondents requested more detail regarding what is required of registrants to evidence insight, remorse and apology. It was noted that in the past registrants have undertaken a reflective piece but this is still not considered sufficient, leaving a registrant not knowing what is required of them.
- 4.44 One response was concerned that insight, remorse and apology may not be genuine. It was noted that a registrant may express remorse, but this is only for the impact it will have on their career as opposed to the public or their profession. They suggested we include further guidance on this issue as, at present, this remorse is considered inconsistently with some panels disregarding the apparent remorse, some panels seeing it as an aggravating factor and some appearing to allow limited mitigation.
- 4.45 It was suggested that any insight should be demonstrable – a registrant can say they have insight but this needs to be supported by tangible evidence of how they would do things differently for the panel to rely on. This respondent suggested mentioning that registrants are likely to be helped if they attend a hearing, so that the panel can form a view about the genuineness.
- 4.46 When considering insight, one respondent highlighted that the fact that a registrant has an unblemished record should not assist the panel. Instead, they must consider the evidence before it as to whether or not the registrant has developed insight or might develop it with more time.

### **Don't know**

- 4.47 7% of respondents selected don't know in response to this question. These respondents commented:
- unless these factors can be measured they are of little use;
  - people can use these as a tool to get a lesser sanction;

- our current approach is 'oppressive and short sighted', and capacity to say the right thing should not form the basis of a panel decision (as it will depend upon employer support, vulnerability and stress).;
- insight is not measured by whether or not a registrant admits or denies an allegation;
- this should make clear these are considered at the impairment stage and consideration has been given to all circumstances around which the facts have been proven, including the registrant's apparent motivation and premeditation; and
- registrants are reluctant (on occasions) to apologise as they wrongly equate that to admitting some aspect of legal liability and are on occasions wrongly advised by "friends" to say nothing or refrain from admitting anything. This can have significant impact on the result and it was suggested this should be discussed with registrants when the case is in its infancy by both the HCPC and their own representatives. Furthermore than more detailed guidance should be given to panels relating to this.

**Q4. Is it clear from the Policy what remediation is and how a panel might take account of any remediation activities in making their decision?**

**Yes**

- 4.48 The majority of respondents (76%) felt that the Policy was clear about what remediation is and how a panel might take account of any remediation activities in making their decision. Of the organisations that responded, a marginally larger proportion (82%) agreed that this content was sufficiently clear compared to individuals (74%).
- 4.49 Respondents who felt the Policy was sufficiently clear on remediation praised the level of detail outlining what sort of activities the registrant might undertake and that remediation should always be considered. Responses also felt it was useful to have examples where the panel are still likely to impose serious sanctions, despite registrant attempts to remediate concerns.

**More information**

- 4.50 Several comments requested further information about remediation. For example, one respondent questioned what would happen if remediation fails. Others reiterated that remediation needs to be considered on a case by case basis, as it is not possible to list all possible remediation activities and judgement will be required as to their relevance to a particular case.

**Role of employers**

- 4.51 Several respondents discussed the role of employers in remediation. A respondent noted that it is often down to the registrant's employer to support this, whilst another suggested that remediation should involve colleagues,

thereby encouraging a Policy of openness and honesty. With this in mind, one response suggested that an additional mitigating factor be included, where an element of corporate responsibility has previously been identified as a contributory factor.

### **Serious cases**

- 4.52 There was some concern about dishonesty being categorised as a serious case where remediation would not reduce the risk to the public or public confidence. This response noted that dishonesty is often implied and added to a charge when a registrant appears to have changed their version of events during the course of an investigation. However, memories often change each time they are recalled and therefore it was argued that a registrant may not be being deliberately dishonest in these circumstances.
- 4.53 Another respondent suggested that we review the serious cases outlined in the document further to ensure it is fully comprehensive following recent fitness to practice cases which have been undertaken by other regulators including the GMC and NMC.

### **No**

- 4.54 A minority of respondents (20%) felt that the Policy could be clearer on remediation.

### **General approach**

- 4.55 Respondents criticised our approach, arguing that not undertaking remediation does not necessarily indicate a lack of insight. It was suggested that non-participation could instead be the result of health or capability issues, and therefore a blanket rule should not apply.
- 4.56 Another respondent suggested that panels need more information about the working environment of registrants to aid in their decision making. This would ensure that they have a greater understanding of the lack of support that many professionals receive and the intense pressures that some professions are under.

### **Wording changes**

- 4.57 Several suggested amendments to wording we have used or proposed additional content. One respondent felt that terminology such as 'likely to' will confuse or result in misunderstanding. They also criticised our statement that particularly serious incidents are still more likely to result in a serious sanction, despite remediation. It was argued that this must be determined by the panel, who must consider the full case in the round.

### **Evidence**

- 4.58 Some registrants commented on the evidence that would be required to demonstrate remediation. It was suggested that we emphasise the following:

- remediation activities must be genuine and address the specific concerns that have been raised;
- decision-makers will need to take a qualitative approach in determining what evidence is required of remediation, but this might include details of any courses, the registrant's attendance and the relevance and impact of that learning on the case;
- panels should not be expected to infer this the value or impact of remediation; and
- personal reflection should be in writing and acknowledge what went wrong and why this would not be repeated.

4.59 It was suggested that we make it clear that the list of remediation activities provided is not exhaustive. One respondent suggested we also include professional development plans and support groups (in response to any medical conditions), testimonials and professional and personal references in this list.

### **Significance**

4.60 As above, it was noted that matters of mitigation are likely to be of considerably less significant in regulatory proceedings. It was also noted that courts have found that remediation is not capable of mitigating the risk to the public or public confidence in cases relating to conduct that can be described as attitudinal or behavioural.

4.61 One registrant suggested that this section emphasis the need to protect public confidence in our registered professions. It was noted that it is difficult for remediation to address this particular overarching objective, particular where the wrongdoing is criminal, and panels should be made aware of this.

4.62 It was also noted that personal mitigation, such as how long a registrant has practised without a previous complaint, does not reduce the seriousness of previous conduct.

### **Other considerations**

4.63 One registrant suggested that remediation would be better placed within the section on insight.

4.64 Another questioned what would happen if a registrant fully remediated any fitness to practise concerns. They considered that in these cases their fitness to practise would no longer be impaired, but were unsure.

4.65 Some respondents suggested criminal convictions be included within the list of serious sanctions where remediation would not reduce the risk to the public or public confidence.

- 4.66 One registrant felt that this section should not just focus on remediation before a hearing, but also future remediation. It was noted that remediation is an ongoing process and may not necessarily be complete before the hearing. In these cases, the panel should ensure they attach appropriate weight to future remediation activities as well as those already completed.

### **Don't know**

- 4.67 5% of respondents selected don't know in response to this question. These respondents commented:
- it is challenging to prove or measure remediation;
  - there needs to be more clarity on the types of cases where remediation will not help; and
  - this could be used as a tool by registrants to get a lesser sanction.
  -

### **Q5. Do you think the aggravating factors detailed in the Policy are appropriate?**

#### **Yes**

- 4.68 The majority of respondents (79%) felt that the aggravating factors detailed in the Policy were appropriate. Of the organisations that responded, a marginally larger proportion (82%) agreed that these factors were appropriate compared to individuals (78%).
- 4.69 Some respondents left positive comments, noting it is 'a clear and helpful expansion of the previous 2004 text' and 'there are clear indications relating to fitness to practise and how these can be impaired'. Another responded positively to the fact that each factor links to how it may impact service users.
- 4.70 Many respondents, whilst felt the factors were appropriate, provided additional feedback.

### **Terminology**

- 4.71 Several respondents requested clarification over particular terminology used, such as 'personal mitigation', 'breach of trust' and 'service user harm'. Others highlighted inconsistencies in the examples of serious cases provided across the document.

### **The wider context**

- 4.72 It was noted that 'having an understanding of the surrounding circumstances is important to ensure that decision-makers are fully informed about all relevant facts in a case, which they can then categorise as aggravating or mitigating, before forming a view on sanction.' One respondent suggested we

therefore consider the role of employers in managing risk when considering sanction.

- 4.73 One respondent argued that there should be some allowance for the individual's profession in determining aggravating factors. For example, it would be more concerning if a paramedic working in isolation in people's homes were to be convicted of theft or fraud than a radiographer. Another suggested that the Policy differentiate between some crimes committed in a work setting and a personal setting, and acknowledge that students should be considered vulnerable service users due to a power imbalance.
- 4.74 Respondents also suggested additional aggravating factors of:
- Ignoring advice or interventions to prevent misconduct or remedy a lack of competence.
  - A registrant's failure to tell the truth during a hearing.
  - A failure to remediate when promised to do so.
  - The circumstances around an event, such as failing to work collaboratively or failing to raise concerns.

#### **No**

- 4.75 A minority of respondents (15%) disagreed with the proposed aggravating factors.

#### **Terminology**

- 4.76 As above, some respondents requested further clarity over terminology such as 'breach of trust'. It was suggested that we use further examples, as 'the present wording is vague and insufficiently clear' and could lead to complaints being 'inappropriately upheld'.
- 4.77 As above, another respondent disagreed with some of the terminology we had used, such as 'likely to lead', arguing that this imposes on the panel's independence. They argued that the mere presence of aggravating factors should not lead directly to serious sanctions, as panels are still required to make a decision based upon the individual circumstances of that case.
- 4.78 Several respondents criticised our statement about registrant's refusing to apologise in a timely manner. It was noted that insight and remorse can develop over time and a longer amount of time should not detract from the intrinsic value of that insight or remorse when it is eventually expressed. Others highlighted that a registrant may have a genuine reason to formally challenge the fitness to practise process or a panel, and therefore ought not to be at risk of a more serious sanction because they decline to apologise.

#### **Wider context**

- 4.79 Once again, it was suggested that we include greater consideration for the context in which allegations are made. It was suggested that the role of the

employer and their ability to effectively manage risk be considered when determining sanction. Along this line, respondents suggested additional aggravating factors, including poor management, poor supervision, lack of sufficient support, pressure from service users and poor leadership. They noted that these all contribute to professional stress and pressure. In particular, respondents felt that the panel should demonstrate empathy for registrants and the impact of stress, with one response noting the current drafting 'fails to treat professionals as human'.

- 4.80 It was also noted that whether or not a registrant has repeated misconduct should take into account whether that registrant was unemployed or the subject of an interim order (in which case absence of repetition cannot be seen as a positive factor).

#### **Additional considerations**

- 4.81 One respondent questioned how breaching of the duty of candour would be applied to this section.
- 4.82 It was also suggested we make it clear what approach panels should take to an interim order when considering aggravating factors. For example, panels should not give undue weight to whether a registrant has an interim order and how long the order was in place (as the GMC do).

#### **Don't know**

- 4.83 6% of respondents selected don't know in response to this question. Very few respondents commented, but where they did they asked what the process was the aggravating factors are from an outside source, and that proven facts is the incorrect term to use if a case has not been to a court of law.

#### **Q6. Do you think the types of cases which are aggravating are appropriate?**

##### **Yes**

- 4.84 The majority of respondents (71%) agreed that the types of cases which are aggravating are appropriate. Of the organisations that responded, a marginally larger proportion (76%) agreed that the cases were appropriate compared to individuals (70%).
- 4.85 The majority of respondents who agreed with the proposed types of cases did not leave further comments. Where comments were provided, they noted:
- the cases appear realistic;
  - whilst they may not cover everything, they do give a broad spectrum from which a panel could work; and
  - the change to include a broader 'serious cases' section provides greater clarity and improves the structure of the Policy.

4.86 It was also noted that the seriousness of behaviour will vary from case to case and therefore, to ensure any sanction is appropriate, panels must recognise that there can be a range of seriousness when considering cases which fall into one of these categories.

### **No**

4.87 A small minority of respondents (13%) disagreed with the types of cases proposed.

### **Wording**

4.88 Some respondents were critical of the wording we had used, which they felt was unnecessarily specific. Some argued that this section infringes on the panel's independent judgement, as it is a matter for the panel to assess whether the circumstances of a particular case justify a more serious sanction based on all the evidence they have heard.

### **Dishonesty**

4.89 One respondent criticised paragraph 51 of the Policy which states that cases with an element of dishonesty 'are likely to result in more serious sanctions'. It was noted that dishonesty is a complex area of law that is constantly evolving and therefore this could result in the Policy needing to be revised on a regular basis.

4.90 Another suggested that, as dishonesty is 'on a spectrum', we should provide more detail on how panels approach different types of dishonesty and its impact. It was noted that we need to take a more nuanced approach in light of the case of *Lusinga v NMC* [2017], to ensure our guidance does not 'lump the thief and the fraudster together with the mere contract-breaker'.

4.91 Another respondent detailed the different levels of dishonesty we should explore, as well as premeditation, motivation, and the impact on service users.

### **Additional considerations**

4.92 Some respondents criticised the examples we had provided, noting they were unrealistic.

4.93 One respondent questioned how panels should approach breaches of duty of candour. Another felt we should include appearance within discrimination.

4.94 It was also noted that, when considering criminal convictions and cautions, the panel should be careful not to 'effectively increase the severity of a criminal sanction'. Therefore a registrant with a caution or a suspended sentence ought not to be prohibited from practise, as this would in effect increase that sentence.

- 4.95 Another response suggested that we do not state that a striking off order is more likely in cases where a registrant denies an allegation. It was suggested that this would be construed as coercion by registrants, who would feel they have to change denials into admissions and thus compromise any potential appeal.

#### **Don't know**

- 4.96 16% of respondents selected don't know in response to this question. Some respondents noted that the question does not match the terminology used in the document, due to a discrepancy between use of the words serious and aggravating. Another respondent stated that, as each case is individual, blanket and somewhat blunt examples such as those listed must include a degree of flexibility.

#### **Q7. Is the detail provided against each of the sanctions available to the panel sufficient?**

##### **Yes**

- 4.97 The majority of respondents (68%) agreed that the detail provided against each of the sanctions available to the panel was sufficient. Of the organisations that responded, a smaller proportion (59%) agreed that this content was sufficiently detailed compared to individuals (71%).
- 4.98 The majority of respondents who felt we had included sufficient detail did not leave further comments. Positive comments noted that this 'identifies how we need to safeguard service users, be mindful of public confidence [and] protect vulnerable service users'.
- 4.99 One respondent felt the detail provided was sufficient, but expressed concern that always requiring insight in order to give a suspension will result in more strike offs than is necessary. They explained that sometimes a suspension is appropriate, despite the fact that the registrant not demonstrating insight. This might be because the registrant is absent, the conduct doesn't merit it, or the registrant might develop insight in the future. They argued the new guidance doesn't allow for this which will mean strike off is inevitable where no insight is shown e.g. the Registrant hasn't (yet) engaged.
- 4.100 Respondents also requested that we provide greater clarity on the relationship between mediation and no action, such as what happens when mediation is unsuccessful, questioned whether it was appropriate to refer to impairment as minor, and requested clarity on multiple sanctions, noting currently it is not clear what would happen to the initial allegation if an existing sanction was overridden by a more stringent sanction. It was suggested that we use practical examples to illustrate this.

## **No**

- 4.101 A minority of respondents (23%) felt the Policy could provide more detail against each of the sanctions available to the panel. Various comments were raised about the structure, wording and content of this section. For clarity, comments relating to each sanction are discussed in turn:

### **No action**

- 4.102 In the current wording of the Policy, we state that it is unlikely that the panel would take no action following a finding of impairment. One respondent criticised this approach, stating that it is not for the Policy to restrict outcomes available to a panel.

### **Mediation**

- 4.103 Respondents noted that mediation is not listed as a sanction. It was suggested that mediation have its own section like the other sanctions.

### **Caution order**

- 4.104 One respondent criticised our choice of wording in paragraph 91 of the Policy, that a caution order should be considered in cases where meaningful practice restrictions cannot be imposed 'but a suspension of practice order would be disproportionate'. This response argued that this was 'procedurally incorrect as it suggests panels need to consider the next available sanction as opposed to considering each sanction exclusively and in ascending order (stopping when they reach their decision).
- 4.105 Another respondent noted that it is not clear how long the caution can be taken into account if there are further matters raised against a registrant, i.e. if it is just for the term of the order or another period of time.
- 4.106 A respondent noted that our explanation of a caution order contradicts earlier information, as if the issue is minor, isolated and there is good insight and remediation, then, by definition, current fitness to practise is not impaired. Conversely, if impairment has been found the respondent did not feel that no action would be appropriate. It was requested that we clarify this point, and whether the focus is on impairment at the point of wrong-doing, or at the time of the hearing. It was also suggested that caution orders have a specific aim, such as training or remediation which once completed can be removed.
- 4.107 Another respondent suggested that we highlight that panel members should provide a clear explanation of why they have chosen a non-restrictive sanction, even though they may have found that there is a risk of repetition usually at the impairment stage.
- 4.108 One respondent questioned why we could issue cautions for up to five years. Another noted if a caution order is likely to be an appropriate sanction for cases in which the issue is isolated, limited or relatively minor in nature, the

suggestion of an imposed term of up to 5 years appears excessive and should be reduced to a maximum of 3 years duration.

### **Conditions of practice order**

4.109 A respondent felt we should suggest time scales for when a registrant should be expected to complete conditions, in light of *Annon v NMC* [2017] where a registrant was in 'professional limbo' and it was recommended there be a time limit on completion of conditions.

4.110 One respondent suggested we include the following cases within our list of examples of when a conditions of practice order would be appropriate:

- Health cases;
- Cases where performance issues have been raised; and
- Retraining, as an opportunity to demonstrate remediation.

4.111 A respondent criticised the statement that 'conditions of practice are unlikely to be suitable in cases in which the registrant has failed to engage with the fitness to practise process or where there are serious or persistent failings'. It was noted that there may be a good reason why a registrant is not engaging with the process or there might be an entirely plausible explanation for the abovementioned failings. It was argued that this will 'encroach upon the panel's discretion to exercise its independent judgement based on the particular circumstances of that case'.

4.112 It was also suggested that we reference the conditions bank that panel member's use, and make it clear that a conditions of practice order falls on the registrant and not their current or future employer.

### **Suspension order**

4.113 It was noted that any suspension order (of any length) is likely to have significant professional and financial consequences to a registrant and so needs to be properly considered. The respondent was concerned with the suggestion that short term suspension orders are likely to be appropriate where a staged return to practise is required. They highlighted that the panel can impose extremely restrictive conditions which protect the public and allow the registrant to continue practising and attempt to remediate, which a suspension order would otherwise prevent.

4.114 By comparison, another respondent suggested that our section 'how long should a suspension order be imposed for?' overly focuses on the impact on registrants, and that this could be misinterpreted by a panel. They noted that even if it may cause a long term impact on a registrant, the sanction should focus on what is necessary to protect the public.

4.115 In paragraph 112 of the Policy we discuss cases which involve substance dependency. One respondent suggested that the panel seek medical advice

in these cases (or indeed any health condition) before they set any expectations for registrants.

- 4.116 One respondent questioned why suspensions are only one year, noting that if someone has a medical condition it may take longer than a year to suitably rehabilitate.

### **Striking off order**

- 4.117 It was requested that we provide further clarity about when a person will be struck off in health cases.

### **Multiple sanctions**

- 4.118 It was suggested that repetition of conduct which gave rise to the first sanction be grounds for a more stringent sanction, as it is not for the Policy to encroach on the panel's independent judgement which is to be made in light of the specific facts of the case.
- 4.119 It was also suggested that we remove paragraph 126 of the Policy, which states more stringent sanctions might override more lenient sanctions, as each case should be judged on its own merits.

### **General comments**

- 4.120 Respondents suggested that we greater emphasise the need for cases to be considered on an individual basis throughout the Policy.
- 4.121 It was also suggested that the relationship between these sanctions and insight, remorse and apology be made clearer, and in what circumstances the presence or absence of these factors would make it appropriate for the level of sanction to be decreased or increased.
- 4.122 Another respondent suggested we make clear where the lack of a duty of candour would fall within the sanction spectrum, and make better references to risk throughout the section (such as where ongoing risks can lead to a more serious sanction).
- 4.123 One respondent commented on how the Policy would ensure consistency of decision-making, and suggested guidance being incorporated to reduce the appearance of subjectivity.
- 4.124 Some respondents requested case studies or a flow chart be used to illustrate how this section should be applied. Others requested more clarity on particular terms, such as 'minor impairment'.

### **Don't know**

- 4.125 9% of registrants stated they did not know whether the Policy contained sufficient detail on each of the sanctions. Comments criticised the point of a

caution order, highlighted confusion with the no action section, and highlighted the need for panel members to receive evidence about professionals' frontline practice so they can make an informed decision of what is or is not good practice.

**Q8. Does the Policy provide enough information about how a panel should approach a review hearing?**

**Yes**

- 4.126 The majority of respondents (70%) felt that the revised Indicative Sanctions Policy provided enough information about how a panel should approach a review hearing. Broadly, organisations and individuals did not differ in their response to this question.
- 4.127 Of the respondents who felt the Policy provided sufficient information in this area, some commented that it provides:
- clarity but allowing for an individualised approach and understanding;
  - clear signposting throughout, which relates to the standards of conduct throughout, focuses on conduct inside and outside the workplace, and focuses on protecting the public and the registrants conduct since prior hearing was undertaken; and
  - clear definitions.

**No**

- 4.128 A minority of respondents (23%) felt the Policy could provide more information on how a panel should approach review hearings. These respondents provided suggestions of where this section could provide additional detail. These are set out in turn below:

**Consideration of the original panel's findings**

- 4.129 It was requested that we include more information about the interplay between the approach panels should take considering impairment and sanction at a review hearing and the relevance of the original panel's findings to ensure that the panel does not inadvertently go behind them.

**Consideration of registrant conduct**

- 4.130 Respondents suggested that we explain how panels should consider breaches of previous orders or panel recommendations, as well as registrants who are not engaging with the review hearing.
- 4.131 In addition, it was suggested that this section include some general information for registrants on what the panel would expect them to demonstrate. A respondent suggested including references to particular

paragraphs in the Policy to direct registrants to the criteria in which a panel would consider to maintain, revoke or replace an existing sanction.

### **Sanctions**

- 4.132 There was a general request for more information about applying sanctions at this stage.
- 4.133 It was noted that there is no specific guidance on how to approach sanctions and when to step down, e.g. from a suspension to conditions. Similarly it was advised that there be more information about the options a panel has if a registrant has been subject to a suspension order for more than two years. It was suggested that the Policy make it clearer that in these circumstances strike off becomes more likely.
- 4.134 There was also some confusion around multiple sanctions. One respondent asked for clarity on how a review panel would undertake a review of multiple sanctions, given that it is not possible for a review panel to implement an additional sanction. Another noted 'it says a panel cannot impose a second sanction, but then says they need to establish if any further sanction is required', which appeared contradictory.

### **Wider context**

- 4.135 As in previous questions, we received comments requesting that we take into consideration the wider context of a case. This included:
- how long a registrant has been waiting for their case to be reviewed;
  - any character references (especially from professionals);
  - reflective pieces submitted by the registrant; and
  - if a registrant has been unable to secure employment as a result of the HCPC investigation.

### **Don't know**

- 4.136 A small number of respondents (7%) did not know whether the Policy provided enough information. One respondent noted that they did not participate in their review hearing and so could not comment. Another commented that, whilst there is currently sufficient information in this section, we ought to review this more frequently than the stated five years due to the current changes in health and social care provision and recent cases from other regulators.

**Q9. Do you consider there are any aspects of our proposals that could result in equality and diversity implications for groups or individuals based on one or more of the following protected characteristics, as defined by the Equality Act 2010 and equivalent Northern Irish legislation? If yes, please explain what could be done to change this.**

- **Age**

- **Gender reassignment**
- **Disability**
- **Pregnancy and maternity**
- **Race**
- **Religion or belief**
- **Sex**
- **Sexual orientation**

4.137 The majority of respondents (72%) felt that our revised Indicative Sanctions Policy would not result in equality and diversity implications for groups or individuals based on one or more of the Equality Act 2010's protected characteristics (or that of the equivalent Northern Irish legislation).

4.138 Broadly, organisations and individuals did not differ in their response to this question, with a marginally larger number of organisations considering that there would be no equality and diversity implications compared to individuals.

#### **No equality and diversity implications**

4.139 Most respondents who considered that our revised Indicative Sanctions Policy would cause no equality and diversity implications did not comment further.

4.140 Where these respondents provided comments, these included the following points:

- all equality and diversity implications appear to have been considered;
- protected characteristics should not influence HCPC's expectations of a health or care professional;
- panels should be mindful of conscious and unconscious bias when conducting their hearings; and
- request for clarity over how competing equality and diversity implications for registrants and service users are to be managed.

#### **Negative equality and diversity implications**

4.141 23% of respondents felt that our revised Indicative Sanctions Policy could result in equality and diversity implications. All of these respondents felt that any impact would be negative and could disproportionately affect the protected characteristics of disability, race, religion or belief, sex and sexual orientation. Those at socioeconomic disadvantage, or suffering from a health condition (including mental health) were also discussed as being negatively affected.

4.142 A respondent noted that by applying the same rules to everybody, this unavoidably results in implications for people with protected characteristics. Another highlighted that men are typically more often the subject of Fitness to Practise proceedings, and that this may also be the case for other characteristics. It was suggested that research be undertaken, and this acknowledged within the Policy.

- 4.143 There were also concerns that registrants with particular protected characteristics, such as learning difficulties (including Asperger's, Dyspraxia and Dyslexia) and mental health conditions, could be discriminated against due to an assumption that they are unfit to practise as a result.
- 4.144 It was highlighted that many registrants are not present at hearings, and steps must be taken to ensure that they are not held back from participating in the process due to their protected characteristics or other factors (such as their socioeconomic status or mental health).
- 4.145 Several respondents felt that the Policy could make clearer how equality and diversity considerations are to be balanced against the interests of service users, and whose interests ought to be prioritised. It was noted that there may be times when registrant's and service users' rights are incompatible, such as due to religious beliefs.
- 4.146 One comment suggested we consider where particular characteristics are in the minority of a particular practice environment, and the impact this may have on those registrants.
- 4.147 A couple of respondents discussed broader health concerns. One respondent noted that the fact that the Policy does not make it clear that a strike off is not an option in health cases means that there is a risk that someone could be unfairly discriminated against as a result. Another suggested that not being able to issue a suspension for longer than a year could discriminate against long term health conditions and therefore it should be possible for panels to suspend someone for longer than a year to reflect the prognosis and management of their condition.

#### **Positive equality and diversity implications**

- 4.148 It was suggested by one respondent that, in addition to negative implications, the revised Indicative Sanctions Policy would have positive equality and diversity implications for certain groups due to its more expansive Equality and Diversity section, and its strengthened guidance on discrimination and predatory behaviour, vulnerability and sexual misconduct.
- 4.149 In particular, women, elderly people and children were seen to benefit due to being overrepresented in the categories of victims for the abovementioned concerns. More broadly, legally protected characteristics were seen to benefit as a result of the Policy highlighting the seriousness of discrimination.

#### **Other comments**

- 4.150 One respondent noted that it was difficult to assess the equality and diversity implications of the revised Indicative Sanctions Policy without an equality and

diversity impact assessment and data analysis.

- 4.151 Another respondent acknowledged the need for regulators to support panels in incorporating equality, diversity and inclusion principles and that there should be an individual approach to these issues on a case by case basis to ensure all protected characteristics are taken into account.

**Q10. Do you have any other comments about the revised Policy?**

- 4.152 39% of respondents took the opportunity to add further comments to their response. Some comments contained duplicate arguments to those discussed under earlier sections of this analysis. These arguments have not been repeated here.

**Positive comments**

- 4.153 Some respondents used this question to reiterate positive comments they had about the Policy. This included comments about the overall layout and more detailed content, which means it is 'more comprehensive and user-friendly'.

**Purpose of the Policy**

- 4.154 It was suggested that we set out an intention that the Policy also be for complainants and registrants appearing before panels, as well as members of the public, to help them understand the approach panels will take.
- 4.155 On this basis, it was also suggested that we reference registrant's right to appeal and who panel members are.

**Wording**

- 4.156 Several respondents provided us with detailed comments regarding particular wording or terminology which we had used throughout the document. This included highlighting minor grammatical errors and typos and inconsistencies in how we had described particular terms.
- 4.157 There were also some broader concerns about specific wording we had used. This included use of the following terms:
- Serious - Some respondents were critical of our use of the word serious in describing the most restrictive or severe sanctions or cases. They noted all cases which require sanctions are serious, and therefore we should use alternative wording.
  - Vulnerable – A respondent noted this is often defined in safeguarding guidance and therefore may be confusing.
  - Service users or carers – One respondent suggested that this be expanded to make it clear that we will consider wrong doing against members of the public on the whole as opposed to just to these groups.

- Likely to – It was noted that whenever this is used, it is constraining the panel's independence and discretion.

4.158 It was also highlighted that paragraph 9 of the Policy does not match our legislative objectives and therefore should be revised for consistency. In particular, this response raised the fact that we have no legislative objective to promote public confidence in the regulatory process.

4.159 In addition to the above, we were requested to define numerous terms throughout the document, or alternatively include a glossary of terms.

### **Reference to existing guidance**

4.160 Several respondents suggested that we make explicit references to other HCPC documentation, such as practice notes or policies and procedures, to ensure that registrants are made aware of their rights of appeal and indicative timescales.

4.161 One respondent suggested that this could be in the form of an appendix, whilst another suggested footnotes.

### **Additional topics**

4.162 A number of respondents suggested additional topics or sections which we could address in the Policy. This included:

- social media
- conflicts of interest (particularly in relation to roles where they are acting in a professional / commercial capacity);
- deep-seated altitudinal issues or behaviours;
- protection of the function of podiatrists / chiropractors;
- how to approach health cases;
- the appeals process and grounds for appeal;
- expected timescales for indicative sanctions and review hearings;
- more detail on sanctions for lack of competence; and
- how to handle malicious complaints.

4.163 It was also suggested that the Policy reference case law throughout.

4.164 In addition to the above, a couple of respondents highlighted that the consultation document had stated that the revised Policy would include a section on the relevance of the stage of the registrant's career. It was noted that this is not in the Policy, but ought to be taken into consideration 'in order for decision-makers to take a rounded approach to deciding on the appropriate sanction'.

### **Flexibility**

4.165 There were some concerns that there is too much flexibility in interpretation in some areas, and therefore might result in professionals losing confidence in

the regulatory process with sanctions being perceived as 'weak, ineffective, inconsistent in their application, or indeed open to abuse'. It was suggested that we review these areas to ensure that the Policy is not vulnerable to manipulation by less scrupulous professionals.

### **Implementation**

- 4.166 Several respondents commented on how this Policy ought to be implemented. Many emphasised the need for panel member training and guidance, with one arguing panel training needs to ensure they respond 'with compassion'.
- 4.167 Others suggested we issue more detailed guidance for panel members. One respondent suggested this include detail on how panels consider 'organisational and systemic factors when looking at each case'.

DRAFT

## 5. Our comments and decisions

5.1 We have carefully considered all the comments we received to the consultation and have used them to amend the revised Sanctions Policy. The following section explains our decisions in some key areas.

### **Name change**

5.2 We have removed the word 'Indicative' from the title of this Policy. The amendments we have made to the Policy make it clear that panels are ultimately responsible for decisions relating to sanction, and that this Policy is only guidance. It is therefore no longer necessary to state this explicitly within the title of the document.

### **Proportionality**

5.3 The majority of respondents supported the content on proportionality, however, in response to some suggestions for further detail, we have:

- clarified that a sanction will be proportionate if it strikes a proper balance between the need to protect the public and the rights of registrants;
- clarified that sanctions should not be punitive and should be the minimum action necessary to protect the public, having regard to the concerns and risks identified and the full facts of a case; and
- addressed how panels should approach any previous interim order when making decisions about sanction.

5.4 Whilst we don't think it is appropriate to use case studies in the Policy, we will consider using case studies as part of training.

### **Insight, remorse and apology**

5.5 The majority of respondents agreed the Policy provided sufficient clarity on insight, remorse and apology, and how these factors may impact a panel's decision on sanction. However in response to requests for further detail, we have:

- set out the importance of panels properly evaluating these factors in the round, with regards to the full facts of a case and any wider contextual factors;
- addressed the fact that insight may be expressed during a hearing, but that it is likely to carry more weight if expressed in advance;

- included failure to raise concerns within our serious cases section; and
- made it clear in the introduction that this Policy does not ultimately constrain a panel's independence, but is intended to support fair, consistent, and proportionate decisions.

5.6 We have refrained from including any specific examples within this section. This includes how cultural differences may influence expressions of insight, remorse and apology. Panels should assess the relevance of these on a case by case basis and should apply the training they receive on equality, diversity and inclusion when making these decisions. We will however take forward respondents' comments regarding the practical issues around the application of insight remorse and apology as part of future reviews of our practice notes and supporting guidance.

### **Remediation**

5.7 The majority of respondents felt that the Policy was sufficiently clear on remediation, and therefore we have not made significant changes to this section of the Policy.

5.8 Whilst some respondents requested it, we have decided not to include a section on the role of employers. This is because, from a regulatory perspective, the fitness to practise process and compliance with it is solely the responsibility of registrants. We have included a paragraph at the beginning of the mitigating factors section which emphasises the need for panels to consider these factors in the round, considering the full context of a particular case, and therefore we believe this sufficiently covers the point around ensuring panel members consider the influence of a registrant's employer.

5.9 Whilst we don't think it is appropriate to address what is required to evidence remediation the Policy, we will take consider these suggestions as part of future reviews of our practice notes and supporting guidance.

### **Aggravating factors**

5.10 The majority of respondents felt that the aggravating factors detailed in the Policy were appropriate. However we received some comments suggesting we provide some additional detail. We have therefore:

- set out the importance of panels properly evaluating these factors in the round, with regard to the full facts of a case and any wider contextual factors;
- included failure to raise concerns and failure to work in partnership in our serious cases section of the Policy; and
- clarified some of the wording we have used throughout the section.

## **Types of cases which are aggravating**

5.11 The majority of respondents agreed that the types of cases set out in the draft Policy as aggravating are appropriate. However we also received some suggestions for additional serious cases, or amendments to the wording that we have used. In light of these, we have:

- added failure to raise concerns, failure to work in partnership and violence to the list of serious cases;
- revised our examples of dishonesty;
- taken a more nuanced approach to dishonesty to reflect the fact that some dishonesty is more serious than others;
- aligned the bullet point lists of serious cases throughout the Policy with the serious cases set out in this section; and
- made some minor amendments to the overall structure and order of the section, to reflect the above changes.

5.12 One respondent had concerns about the potential for regulatory sanctions to increase the severity of criminal sanctions. The primary purpose of the fitness to practise process is to ensure that the public is protected. However, changes we have made to earlier sections make it clear that panels should ensure any sanction is proportionate, having regard to any wider circumstances. Therefore panels will need to weigh up any increase in the severity of a criminal sanction against the need to protect the public, and ensure that they impose the least restrictive sanction necessary for the purposes of public protection.

5.13 Some respondents felt the use of the term 'likely' in the Policy may fetter the panels' discretion in decision making. We have taken legal advice on this matter and do not believe this to be the case.

5.14 We have decided not to provide any detail on the type of evidence to be expected as we believe this is more appropriate within more operational guidance, such as practice notes. We will however take forward these concerns as part of future reviews of our practice notes and supporting guidance.

## **Detail of sanctions**

5.15 Whilst the majority of respondents agreed that the detail provided against each of the sanctions available to the panel was sufficient, some respondents requested further information or clarity to which we have:

- included mediation in our list of available sanctions, and set out in greater detail what mediation is and why it is unlikely to be an appropriate action in the majority of cases;
  - clarified how caution orders may be taken into account if a further allegation is made against a registrant, and highlighted that panels should, in appropriate cases, provide a clear explanation of their reasons for imposing such an order;
  - provided more detail on the length of time for which a suspension order should be imposed, retaining some additional detail from the old Indicative Sanctions Policy;
  - expressly stated our expectation that medical evidence will be provided in substance dependency cases ; and
  - clarified when someone can be struck off for a lack of competence issue.
- 5.16 We note one registrant’s concerns around the need typically for insight when making a suspension order. We have however decided not to amend this, as we believe the current wording makes clear that this is not in every case (‘will typically exhibit’) and therefore will need to be determined considering the full facts in the round.

### **Review hearings**

- 5.17 The majority of respondents felt that the revised Policy provided enough information about how a panel should approach a review hearing.
- 5.18 We did however receive a number of comments requesting we provide some more information on matters such as the relevance of an original panel’s findings or how panels approach decisions about sanction at this stage. We have decided to amend this section to:
- clarify that the review process is not a mechanism for appealing against or ‘going behind’ the original finding that a registrant’s fitness to practise is impaired;
  - explain what we mean by a review panel being unable to impose a second, additional sanction, and what effect this has on cases where there are multiple sanctions against a registrant; and
  - explicitly mention the need for panels to consider the wider circumstances of a particular case in making their decision.

5.19 We have decided not to include any more detailed information about how the panel approaches review, as this is already contained within practice notes and the intention is not to duplicate such content within this Policy.

### **Equality and Diversity**

5.20 The majority of respondents did not consider that there were equality and diversity implications associated with the revised Policy.

5.21 It is important to the HCPC to be a fair and inclusive regulator. We are conscious that our decisions should not discriminate against groups or individuals with protected characteristics. However, our over-arching objective is to protect the public.

5.22 We believe that our amendments to the proportionality section of the guidance will, to some extent, address some of the concerns regarding how equality and diversity implications will be balanced against the interests of service users. We have also clarified that a strike off cannot be considered in health cases until a registrant has been suspended for two years or more.

5.23 We are currently in the process of reviewing our policy to assess any equality and diversity impacts. This will provide us with another opportunity to assess whether or not there are any implications and how these can be addressed.

### **Other comments**

5.24 We received some requests to amend the introduction of the Policy so that it expressly stated it was also targeted at complainants and registrants, and provided some more details on the wider hearings process. It is not appropriate to include this information in the Policy, but we will review our existing guidance and website resources to see if there is a need for additional resources in this area.

5.25 We have reviewed comments about terminology and content throughout the Policy, and have taken legal advice. We have updated terminology where appropriate.

5.26 It was suggested that we amend the section in our introduction, which explains the functions of sanctions, and instead reference our statutory objectives. We have sought legal advice relating to this paragraph, which intended to provide panels with more targeted advice about the factors they should consider against the backdrop of those objectives. This confirmed that there was no legal issues with this section of the Policy, and therefore we have decided to proceed as originally drafted.

5.27 We have decided not to include references to other HCPC guidance or practice notes. This is because the Policy is a standalone document. Likewise we feel it is not appropriate to cite case law in the Policy as this changes

frequently and would result in the Policy quickly becoming out of date.

- 5.28 Finally, we note the suggestions regarding training and implementation and will take these on board as part of our internal implementation plan.

DRAFT

## 6. List of respondents

Below is a list of all the organisations that responded to the consultation.

Abertawe Bro Morgannwg University Health Board

Academy for Healthcare Science One Voice

Association for Perioperative Practice

Association of Educational Psychologists

BLM and the Royal College of Speech and Language Therapists

British Society of Hearing Aid Audiologists

Care Quality Commission

General Medical Council

HCPTS Tribunals Advisory Committee

Health Education England

Institute of Biomedical Science

National Community Hearing Association

Professional Standards Authority

Royal College of Occupational Therapists

Royal College of Radiologists

The British and Irish Orthoptic Society

The College of Paramedics

The College of Podiatry

The Society of Sports Therapists

UNISON

Unite the Union