

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

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## 1. Introduction

### About this consultation

- 1.1 This consultation seeks the views of stakeholders on a revised version of our Indicative Sanctions Policy.
- 1.2 The document, entitled 'Indicative Sanctions Policy'<sup>1</sup>, was first published in 2004. The Indicative Sanctions Policy has been kept up-to-date when required to for example, take account of any changes in case law. We have now taken the opportunity to undertake a thorough review of the existing Policy and are seeking the views of our stakeholders on a revised version.
- 1.3 This document explains the background to the policy as well as the approach we took in reviewing it and the changes we are proposing.
- 1.4 The consultation will be of particular interest to HCPC registrants, professional bodies, HCPTS panel members, legal representatives, and service users and carers.
- 1.5 The consultation will run from 4 June 2018 to 31 August 2018.

### About this document

- 1.6 This document is divided into five sections.
  - **Section 1** introduces the document.
  - **Section 2** provides background to the Indicative Sanctions Policy.
  - **Section 3** explains our approach in reviewing the policy.
  - **Section 4** summarises the changes we are proposing.
  - **Section 5** sets out the next steps following the consultation.

### About us

- 1.7 We are a regulator and were set up to protect the public. To do this, we keep a Register of professionals who meet our standards for their professional skills and behaviour. Individuals on our Register are called 'registrants'.
- 1.8 We currently regulate 16 professions.
  - Arts therapists
  - Biomedical scientists

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<sup>1</sup> To read the existing Indicative Sanctions Policy, please see <https://www.hcpts-uk.org/assets/documents/10005520HCPCIndicativeSanctionsPolicy.pdf>.

- Chiropodists / 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

### **Consultation questions**

1.9 We would welcome your response to this consultation. We have listed some consultation questions below to help you. These questions are not exhaustive and we would also welcome your comments on any related issue. Please provide reasons alongside your answers where possible.

- Q1. Do you think the content in the policy covering proportionality is sufficiently detailed?
- Q2. Does the policy provide adequate clarity around the difference between insight, remorse and apology?
- Q3. Does the policy provide sufficient guidance about how 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?
- Q5. Do you think the aggravating factors detailed in the policy are appropriate?
- Q6. Do you think the types of cases which are aggravating are appropriate?
- Q7. Is the detail provided against each of the sanctions available to the panel sufficient?
- Q8. Does the policy provide enough information about how a panel should approach a review hearing?

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<sup>2</sup>? 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

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

### **How to respond to the consultation**

1.10 The consultation closes on 31 August 2018. We look forward to receiving your comments.

1.11 You can respond to this consultation in one of the following ways:

- By completing our easy-to-use online survey:

<https://www.research.net/r/68YVF9H>

- By emailing us at: [consultation@hcpc-uk.org](mailto:consultation@hcpc-uk.org)

- By writing to us at:

Consultation on revised Indicative Sanctions Policy  
Policy and Standards Department  
The Health and Care Professions Council  
Park House  
184 Kennington Park Road  
London  
SE11 4BU

1.12 Please note that we do not normally accept responses by telephone or in person. We ask that consultation responses are made in writing to ensure that we can accurately record what the respondent would like to say. However, if you are unable to respond in writing please contact us on +44 (0)20 7840 9815 to discuss any reasonable adjustments which would help you to respond.

1.13 **Please contact us to request a copy of this document in an alternative format, or in Welsh.**

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<sup>2</sup> <http://www.equalityni.org/Footer-Links/Legislation>

- 1.14 If you would prefer we do not make your response public, please indicate this when you respond.

## **2. Background**

- 2.1 We first published the document 'Indicative Sanctions Policy' in 2004.
- 2.2 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. The primary function of any sanction is to address public safety from the perspective of the risk which the registrant might pose to the public, or public confidence in the profession.
- 2.3 The Indicative Sanctions Policy has been kept up-to-date when required to for example, take account of any changes in case law. We have now taken the opportunity to undertake a thorough review of the existing Policy and are seeking the views of our stakeholders on a revised version.

## **3. Reviewing the policy**

- 3.1 We undertook a review of the Indicative Sanctions Policy in 2017, in order to make sure that it remains up to date and continues to assist Practice Committee Panels in making fair, proportionate and transparent decisions to protect the public. As part of this we undertook a number of engagement activities. These included:

- a paper to the Tribunal Advisory Committee in September to seek their thoughts, as users of the policy, about the proposed areas of review;
- market research - we commissioned GfK research to research public views about the principles outlined in the Indicative Sanctions Policy;
- an article in the FTP bulletin outlining the areas of focus and seeking views from professional bodies and unions; and
- a review of similar documents produced by other health and social care regulators.

- 3.2 The changes we are proposing to make are summarised in the next section.

## **4. Proposed changes to the policy**

- 4.1 The changes we are proposing are primarily aimed at providing greater clarity to panels to ensure it continues to support consistent, fair and proportionate decision making. A summary of these is set out below:

### **Proportionality**

- 4.2 The revised policy seeks to provide further guidance to panels in how to make a proportionate decision and what to take into account. It also places greater emphasis on the requirement that the panel provide detail in its decision so anyone reading the decision can understand fully the considerations it took.

### **Mitigating factors**

- 4.3 In the revised policy, we have provided clarity on what mitigation means, and have covered each mitigating factor in further detail.
- 4.4 Following feedback from the independent market research we commissioned, we have outlined the differences between insight, remorse and apology, the relationship between these factors, and how their presence is likely to reduce the risk of harm to public and public confidence in the profession.
- 4.5 The revised policy also covers remediation in more detail, outlining what sort of activities a registrant might undertake and how those steps might mitigate any risk to the public and public confidence in the profession. However, the policy also outlines that some cases are so serious, that remediation isn't capable of mitigating the risk to the public or public confidence in the profession and, notwithstanding any steps the registrant has taken to address the concerns, the panel is likely to need to take action. The policy goes on to cover what detail is required in a panel's decision in these cases.
- 4.6 We have also covered the stage of a registrant's career in the revised policy, guiding the panel that, in all but the most serious of cases, where a registrant is newly qualified, their lack of experience may be a mitigating factor where they have subsequently shown insight.

### **Aggravating factors**

- 4.7 The new policy seeks to provide further clarity and detail to panels in relation to aggravating factors. We have been clearer about what aggravating factors are, providing detail on the key types and the reasons why they increase the risk to the public and public confidence in the profession.

### **Aggravating case types**

- 4.8 The revised policy outlines the types of cases which are particularly serious, and are therefore likely to result in more serious sanctions.
- 4.9 The policy guides panels as to the reasons these cases are particularly serious, and the factors that they should consider when determining sanction in these types of cases.

### **Determining sanction**

- 4.10 The revised policy seeks to provide clarity on the differences between the sanctions available to the panel. It covers the considerations panels should

take in determining sanction, and seeks to address the following areas for each:

- what the effect if the sanction is;
- when that sanction is appropriate;
- what considerations should be taken when imposed the sanction; and
- how long the sanction should be imposed.

### **Reviewing hearings**

4.11 The revised policy introduces guidance on the approach panels should take at review hearings; including the purpose of those review hearings, and the factors the panel should take into account when deciding the outcome.

### **Other changes**

4.12 In addition to the substantive changes above, we have made a number of minor editing amendments for clarity.

## **5. Next steps**

- 5.1 Once the consultation period has finished, we will analyse the responses we have received. We will then publish a document detailing the comments received and explaining the decisions we have taken as a result, including any further amendments needed. This will be available on our website.
- 5.2 The updated policy will be published and communicated to our stakeholders.
- 5.3 Once published, we will continue to make prompt changes to the Policy where necessary, for example, to reflect changes in case law. However, we anticipate conducting a thorough review and seeking the views of stakeholders on any proposed changes at least once every five years. This is consistent with our approach to the periodic review of our standards.