

Council, 7 July 2011

Practice Note: Article 30(2)

Executive summary and recommendations

**Introduction**

Article 30(2) of the Health Professions Order 200 (the 2001 Order) provides that

*‘Subject to paragraph(1), on the application of the person concerned or otherwise, at any time an order made by the Conduct and Competence Committee or the Health Committee under article 29(5)(b) to (d) is in Force, the Committee which made the order or, if the matter has been Referred to the other Committee, that Committee may review the order and may take any of the steps referred to in paragraph (4).*

On review of this provision and following feedback from those who appear at and sit on HPC tribunals, it was felt that further guidance on the applicability of the paragraph was required.

The attached practice note is intended to provide guidance on this. When such an application is made on behalf of the HPC, the decision to make such an application rests with the Director of Fitness to Practise having received the appropriate legal advice.

The Fitness to Practise Committee considered the practice note at their meeting on 26 May 2011 and recommended that the Council approve the practice note.

**Decision**

The Council is asked to approve the attached practice note.

**Background information**

None

**Resource implications**

None

**Financial implications**

None

**Appendices**

Practice Note: Article 30(2)

**Date of paper**

13 June 2011

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# PRACTICE NOTE

## Article 30(2) Reviews

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

### Introduction

Article 30(2) of the Health Professions Order 2001 (the **Order**) provides Practice Committee Panels with a discretionary power to review caution orders, conditions of practice orders and suspension orders at any time, either on the application of the registrant concerned or otherwise.

This power is in addition to the requirement in the Order for the mandatory review of conditions of practice orders and suspension orders before they expire.

### Article 30(2) power

Article 30(2) of the Order provides that (emphasis added):

“(2) Subject to paragraph (1),<sup>1</sup> on the application of the person concerned or otherwise, at any time an order made by the Conduct and Competence Committee or the Health Committee under article 29(5)(b) to (d)<sup>2</sup> is in force, the Committee which made the order or, if the matter has been referred to the other Committee, that Committee, may review the order and may take any of the steps referred to in paragraph (4).”

The “steps referred to in paragraph (4)”<sup>3</sup> are to:

- confirm the order;
- extend, or further extend, the duration of the order (but a conditions of practice order cannot be extended by more than three years at a time and a suspension order by more than one year at a time);
- reduce the duration of the order (but a caution order cannot be reduced to less than one year);
- replace the order with any other order which the Panel could have made (to run for the remaining term of the original order); or
- revoke the order or revoke or vary any condition imposed by it.

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<sup>1</sup> which provides for the mandatory review of conditions of practice orders and suspension orders before they expire

<sup>2</sup> i.e., a caution order, a conditions of practice order or a suspension order

<sup>3</sup> i.e., Article 30(4) of the Order

## **Procedure**

Article 30(9) of the Order provides that, before exercising its powers under Article 30(2), a Panel must give the registrant concerned the opportunity to appear before it and to argue his or her case in accordance with the relevant Practice Committee procedural rules.<sup>4</sup>

The procedure to be followed by Panels hearing Article 30(2) reviews will generally be the same as for other fitness to practise proceedings. However, where the application has been made by the registrant concerned, Rule 13(10) of the procedural rules provides for the registrant to present his or her case first and for the HPC to respond. This reflects the fact that the registrant has the burden of proving his or her case, not that the HPC has the burden of proving the contrary.

## **Issues to be addressed**

Article 30(2) is a discretionary power and does not specify the circumstances in which it may be exercised. Consequently, such reviews are not limited to cases in which new evidence has come to light but may encompass any case where a significant and material change in circumstances has occurred since the original order was made, including (but not limited to) breach of the order by the registrant.

Panels should exercise that discretion in a fair, transparent and proportionate manner and with public protection as their primary objective. In doing so, Panels should also recognise that Article 30(2) is a review process and not an appeal mechanism. The purpose is not to 'go behind' the original decision, but to consider whether the order which is under review remains an appropriate and proportionate means of public protection.

## **Applications by the HPC**

The scope for 'or otherwise' reviews under Article 30(2) includes review applications which are made by the HPC.

An application by the HPC will be appropriate in cases where new information becomes available or circumstances have changed such that an existing order may provide inadequate public protection. This will include situations where the registrant concerned is acting in breach of that order and where the registrant is complying with the terms of an order but where there is evidence to suggest that the order is ineffective.

It is also possible for the HPC to make an application where there is no new evidence or changed circumstances, but such an application must not be (or be seen to be) a means of appealing or challenging decisions with which the HPC simply disagrees.

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<sup>4</sup> the Health Professions Council (Conduct and Competence Committee) (Procedure) Rules 2003 and the Health Professions Council (Health Committee) (Procedure) Rules 2003.

Practice Committee Panels operate at 'arm's length' from the HPC and thus, so far as practicable, are independent and impartial tribunals. It is therefore important that the HPC does not take any steps which undermine the independence and impartiality of the adjudicative process.

Where an Article 30(2) review application is made by the HPC, the Panel should expect the HPC to explain at the outset why the application is appropriate.

In cases where new evidence has come to light or there has been a change in circumstances (including breach of an order by the registrant concerned) such an explanation should be straightforward and, in many cases, the appropriateness of the application will be self-evident.

In cases where there is no new evidence or change in circumstances, the Panel should expect to be provided with a compelling explanation as to why it is appropriate for the original order to be reviewed. That explanation must go beyond mere disagreement with the original order and should be, for example, that the order:

- is unduly lenient,<sup>5</sup> and thus may fail adequately to protect the public;
- is unduly severe, and thus is manifestly unjust to the registrant;
- is clearly impractical (e.g. seeking to require a registrant to undertake a training course which does not exist);
- is improper (e.g. imposing conditions of practice which, in effect, amount to suspension from the practise of the relevant profession); or
- exceeds the Panel's jurisdiction (e.g. seeking to impose obligations on a person other than the registrant - "your employer must...").

**July 2011**

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<sup>5</sup> a relevant consideration here would be whether the Council for Healthcare Regulatory Excellence would be likely to exercise its power under section 29 of the National Health Service Reform and Health Care Professions Act 2002 to challenge the order on grounds of undue leniency.