

**Agenda Item 10(i)**

**Enclosure 6**

**Health and Care Professions Council  
24 May 2018**

**Consultation on Indicative Sanctions Policy**

**For discussion and approval**

**From Katherine Timms, Acting Director of  
Policy**

Council, 24 May 2018

Consultation on 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 2017. 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.

An update of the review was taken to Council in September 2017, whereby the scope of review and timescales were discussed. It was agreed that we would consult on the revised Policy in 2018.

Following this meeting, extensive revisions to the policy have been made. Many of these revisions have stemmed from the findings of market research by GfK, which concluded in November 2017. This has provided insights into the types of cases which participants considered to be particularly serious, as well as their views on what should be considered mitigating and aggravating factors and how to demonstrate proportionate panel decision making. In light of this, the revised Policy provides a much more expansive overview of these subjects, breaking down types of aggravating and mitigating factors for the Panel to consider as well as outlining the types of matters which should be considered particularly serious.

The revised Policy is subject to legal review and minor editing amendments. We have received initial legal advice on the revised policy, but in responding to this advice have sought a further review. Verbal updates will be provided where any changes are made in light of this additional review.

We had hoped to consult on these changes in the Spring, but due to changes in the team, we have been delayed and now plan to consult on these revisions over the summer. The draft consultation document is attached at Annex B. The consultation is expected to run from 4 June 2018 to 31 August 2018. The results of the consultation will be presented to Council at their meeting in December 2018.

## **Decision**

- The Council is invited to discuss and approve the revised Indicative Sanctions Policy at appendix A, the draft consultation paper at appendix B.

## **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 undertaking a public consultation have been taken into account in departmental work plans for 2018/2019.

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, will be included in budget planning for 2018/19.

## **Appendices**

- Appendix A: Revised Indicative Sanctions Policy
- Appendix B: Consultation on the revised Indicative Sanctions Policy

## **Date of paper**

11 May 2018

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## About the guidance

### Purpose of the policy

1. The Health and Care Professions Council's (HCPC's) Indicative 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', however where a panel deviates from the policy, they must provide clear reasons for departing from the principles outlined in the document.
3. This document 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 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

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<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. If a panel find that a registrant's fitness to practice 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, or admitted by the registrant, 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 pose 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. 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.

### **Sanctions available to the panel**

12. Article 29 of the Health and Social Work Professions Order 2001 (the Order) provides outlines the sanctions available to the panel. These include:
  - no action;
  - mediation;
  - caution;
  - conditions of practice;
  - suspension;
  - striking off.

## Equality and diversity

13. The HCPC is committed to preventing discrimination, valuing diversity and achieving equality of opportunity in all that we do.
14. 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 or 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.
15. Panels should be mindful of this when making decisions, and ensure they are fair, consistent and appropriate.
16. 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.

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

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## Standards of conduct, performance and ethics

17. 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

18. In making proportionate decisions on sanction, panels should begin by considering the least restrictive sanction available to them, and should ultimately take the minimum action necessary to provide the requisite level of public protection.
19. Proportionate decisions should deal with the concerns raised, but be fair, just and reasonable. The panel's written decision should clearly explain why the sanction is required to protect the public. It should be clear as to the process that the Panel followed, considering each available sanction in turn, in the same order in which their suitability was assessed, and outlining why less restrictive sanctions were considered insufficient to protect the public.

## Mitigating factors

20. Mitigating factors are relevant at the earlier stages of the fitness to practice process, for example in determining whether the proven facts amount to the statutory ground or, in turn, indicate that FTP is impaired. This is distinct from the discussion below, which focuses on evidence which is exclusively relevant to personal mitigation and thus sanction.
21. 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.
22. 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,
23. 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

24. Where present, genuine insight, remorse and 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

25. Insight is a registrant's accurate understanding and acceptance of the concerns which have been raised in relation to their conduct or competence, and 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).
26. Genuine insight is likely to be demonstrated by timely remorse, apology and remediation, exhibited ahead of any HCPTS hearing.

### **Remorse**

27. Expressing remorse involves a registrant taking responsibility and exhibiting regret for their actions, and may be demonstrated by one or more of the following:
- admitting their wrongdoing
  - giving an apology; and
  - undertaking appropriate remediation.

### **Apology**

28. Healthcare 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.
29. 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>.
30. In assessing the sincerity of an apology, the panel should take account of the level of remorse and insight the registrant has shown, and the presence and nature of any remediation they have undertaken.

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<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>

## Remediation

31. 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.
32. 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.
33. 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;
  - coaching, mentoring and supervision to address competence and conduct issues; and
  - personal reflection.
34. 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:
  - Sexual abuse of children.
  - Indecent images of children<sup>6</sup>.

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

- Sexual misconduct.
  - Violence or abuse.
  - Dishonesty.
  - Vulnerable service users or carers (see paragraphs 67-69).
35. 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.

## Aggravating factors

36. Like mitigating factors, aggravating factors are relevant at the earlier stages of the fitness to practice process, for example in determining whether the proven facts amount to the statutory ground or, in turn, indicate that FTP is impaired. This is distinct from the discussion below, which focuses on evidence which is exclusively relevant to personal mitigation and thus sanction.
37. 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.

### Breach of trust

38. 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.
39. Breaches of trust are of even greater seriousness where they involve a vulnerable service user or carer (see paragraphs 67-69).
40. 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

41. 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.
42. A repetition of concerns, or a pattern of unacceptable behaviour, leads to greater potential risks to the public, for a number of reasons:
  - the fact the conduct or behaviour has been repeated increases the likelihood it may happen again;
  - the repetition indicates the registrant may lack insight.
43. Repeat 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**

44. Where a registrant lacks insight, fails to express remorse and refuses to apologise in a timely manner, they may pose a higher risk to service users.
45. 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**

46. If a registrant chooses not to undertake remediation activities to address their deficiencies, it indicates a lack of insight. This significantly increases the risk of repetition and therefore risk to the public. It is therefore likely that cases involving little or no remediation will require more serious sanctions, to protect the public.

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

47. 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.
48. 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

49. 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.
50. 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 training or skills gained);
  - using drugs, devices or systems meant for service users;
  - embezzling money from a trust fund.
51. Given the seriousness of dishonesty cases are likely to result in more serious sanctions.

### Discrimination

52. 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.
  - Sexual orientation.
53. Unlawful discrimination is unacceptable in modern society and standard 1.5 of the Standards of conduct, performance and ethics outline 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.'
54. There can be serious consequences for public safety and confidence in the profession where a registrant discriminates, for example where a registrant, because of a protected characteristic:
- 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.
55. 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**

56. 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.
57. 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 trust, the more serious the panel should consider the concerns.

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

58. A registrant may abuse their professional position in a number of ways:

- **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 65-66);
- evidence that the service user or carer is particularly vulnerable (see paragraphs 67-69);
- evidence that the relationship is of a sexual or otherwise improper emotional nature.

### **Former service users**

59. 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 it ended;
- if there is evidence that the registrant ended their professional relationship with a service user or carer solely to pursue a personal relationship;
- the vulnerability of the service user or carer (see paragraphs 67-69);

- whether the registrant is involved in the care or treatment of other members of the family.

### **Predatory behaviour**

60. 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.
61. 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**

62. 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.
63. 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.
64. 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**

65. 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.
66. 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.

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

67. 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 protect children from sexual abuse, further details can be found on the NSPCC website<sup>8</sup>.
68. Under the Protection of Children Act 1978<sup>9</sup> it is illegal to take, make, distribute, show or advertise indecent images of children.
69. 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.
70. Further details in relation to offences in this area are outlined in paragraphs 80-81 below.

## **Criminal convictions and cautions**

71. 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.

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<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>

72. 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.
73. Where a registrant has been convicted of a serious criminal offence, or as a consequence... 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.
74. Where the Panel deviates from the approach outlined above, it should provide clear reasoning.

### **Sex offender notification**

75. Although inclusion on the sex offenders' database is not a punishment, it is intended 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.
76. Where the Panel deviates from this approach, it should provide clear reasoning.

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

77. 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.
78. 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**

79. 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

80. Panels need to give careful consideration to the 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.
81. If the Panel is minded to depart from this approach, it should provided clear reasoning.

# Sanctions

## Determining what sanction is appropriate

82. If a Practice Committee Panel finds a registrant's fitness to practise to be impaired, it can:
- take no action;
  - impose a caution order;
  - impose a conditions of practice order;
  - impose a suspension order; or
  - strike the registrant off the register.
83. 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, but will only be appropriate where the impairment is minor, isolated in nature, and unlikely to recur, and where the registrant has displayed sound insight and has undertaken significant remediation.
84. 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.

## No action

85. A finding of impaired fitness to practise means that the panel has concerns about a registrant's ability to practise safely and effectively. It is therefore unlikely that the panel would take no action following a finding of impairment.
86. 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?

87. 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.

However, a caution may be taken into account if a further allegation is made against the registrant.

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

88. 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.
89. A caution order is likely to be an appropriate sanction for case 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.
90. 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.

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

91. 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.
92. 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?**

93. 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?**

94. 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, 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?**

95. 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.
96. Conditions are also less likely to be appropriate in more serious cases, for example those involving:
- abuse of trust;
  - violence;
  - sexual misconduct;
  - dishonesty; and
  - discrimination.
97. 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?**

98. Conditions typically cover the following areas (this list is not exhaustive):
- education and training requirements;
  - practice restrictions;
  - chaperones;
  - supervision;
  - treatment;
  - substance dependency;
  - informing the HCPC and others; and
  - personal development
99. 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.
100. 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 would 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.
101. However, conditions must also be workable and reasonable, taking in to account the registrant's practice setting, and not imposing a condition, or combination of conditions, which effectively suspend the registrant's practice.
102. 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?**

103. 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.

104. 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?**

105. A suspension order prohibits a registrant from practising their profession.
106. 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 practice proceedings for events which occur whilst they are suspended.
107. 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?**

108. 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 suspension order be imposed for?**

109. A suspension order should be imposed for a specified period up to one year.
110. 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 is currently unable to respond to and comply with conditions of practice but may be capable of doing so in the future.
111. 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 but has not reached the stage where they are safe to return to practice, even if 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.
112. Article 29(7)(b) of the Order enable 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?**

113. A striking off order removes a registrant's name from the Register and prohibits the registrant from practising their profession.
114. 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.

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

115. A striking off order is a sanction of last resort for serious, persistent, deliberate or reckless acts involving (this list is not exhaustive):
  - serious harm;
  - abuse of trust;
  - violence;
  - sexual misconduct;

- dishonesty; and
  - discrimination.
116. 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;
  - denies the concerns;
  - continues to repeat the misconduct or fails to address a lack of competence;  
or
  - is unwilling to resolve matters.
117. 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.

## Interim orders

### What is an interim order?

118. 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?

119. 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.
120. 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;

- 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; or
- the allegation is so serious that public confidence in the regulatory process would be seriously harmed if the registrant was allowed to remain in unrestricted practice.

### Multiple sanctions

121. 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.
122. 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.
123. 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.
124. 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 practice.<sup>10</sup>

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<sup>10</sup> The Panel would need to make an order to bring the existing sanction to an end.

## Review hearings

125. 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.
126. 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 any further sanction is required to protect the public.
127. 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.
128. The panel should take account of the same considerations (see para 1-120 it would for a new hearing, including the information available to it about the initial allegations, any further information received and the risk posed to the public.
129. No registrant should resume unrestricted practice until it is safe and appropriate for them to do so.

## **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, legal representatives, and service users and carers.
- 1.5 The consultation will run from **xxxx to xxxx**.

### 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
  - Chiropodists / podiatrists

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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>.

- 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/more serious 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>?

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:

[link will appear here]

- 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.**

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

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

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 in to 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 in 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.