
PRACTICE NOTE

Joinder

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

Introduction

The procedural rules¹ for fitness to practise proceedings provide that, where it would be just to do so, a Panel may consider and determine together:

- two or more allegations against the same registrant; or
- allegations against two or more registrants.

Joining allegations against one registrant or dealing jointly with registrants accused of related allegations provides obvious practical benefits such as reducing demands on resources and witnesses' time. However, the overriding factor which Panels must take into account in considering the joinder of allegations is whether it would be just to do so.

Joinder

Joining allegations is a discretionary power, the exercise of which must be carefully considered by Panels. In exercising that discretion, the principles to be applied are largely derived from practice in the criminal courts, most notably the decision in *R v Assim*,² as follows:

- the governing factor in making joinder decisions is whether it is just to do so. In reaching a decision, Panels need to consider the interests of justice as a whole and foremost among those interests must be the interests of the registrant(s) concerned;
- as a general rule, it would be inappropriate for a Panel to join together several, unconnected, allegations against one registrant or to join unconnected allegations against several registrants;

¹ HPC (Investigating Committee) (Procedure) Rules 2003 (SI 2003/1574), r.4(8) and r. 6(7); HPC (Conduct and Competence Committee) (Procedure) Rules 2003 (SI 2003/1575), r.5(4); HPC (Health Committee) (Procedure) Rules 2003 (SI 2003/1576), r.5(4).

² (1966) 50 Cr. App. Rep. 224.

- joining allegations against a single registrant will only be appropriate where the allegations are linked in nature, time or by other factors, for example where the registrant faces several allegations:
 - of the same or similar character;
 - based on the same acts, events or course of dealing; or
 - based on connected or related acts, events or courses of dealing.
- joining allegations against more than one registrant will only be appropriate where they are subject to the same allegation, where there is evidence that they acted in concert or the allegations against them are linked in time or by other factors, for example where:
 - the allegations concern participation in the same act, event or course of dealing (or any series of them);
 - the allegations are based upon connected or related acts, events or courses of dealing; or
 - the allegations relate to actions taken in furtherance of a common enterprise.
- even if, based on the nature of the allegations, joinder would be appropriate, there may be other reasons why the discretion to do so should not be exercised. For example, where one registrant has failed to respond and joinder might cause delay or unfairness in dealing with another registrant or where it is apparent that registrants will present antagonistic or mutually exclusive defences.

Evidence

If allegations against more than one registrant are joined, it will not necessarily be the case that all of the evidence can be considered against all of the registrants. Each registrant is entitled to have their case decided solely on the evidence against them and Panels must take care to consider evidence only in relation to the allegation and registrant to which it relates.

Severance

The decision to join allegations will often be taken at an early stage in the case management process and, as matters progress, it may become apparent that it would be more appropriate for those allegations to be dealt with separately, for example, where witnesses are not available in respect of all the joined allegations or where one registrant is causing delays which will unfairly affect another. The Panel's discretion to join allegations includes the discretion to sever those allegations and deal with them separately where it would be just to do so.

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