

## **HCPC's Threshold Policy for Fitness to Practise Investigations**

### **Introduction**

The Health and Care Professions Council is the regulator of 15 professions that provide health and care services. It is our job to protect, promote and maintain the health and safety of the public; promote and maintain public confidence in the professions we regulate; and promote and maintain proper professional standards and conduct for members of those professions<sup>1</sup>.

We do this by:

- Maintaining a register of properly qualified members of the professions;
- Approving and upholding high standards for the education and training of the professions, and their continued good practise;
- Setting the standards that professionals have to meet throughout their careers; and
- Investigating concerns that registered professionals may not meet those standards, and taking action where necessary to protect the public.

This document explains our approach to investigating concerns about the professionals on our register, our decision making process and how we apply our threshold criteria.

We have a threshold policy to help us to identify those cases that raise a fitness to practise concern and require investigation. It supports our core purpose of maintaining public protection by enabling us to make decisions that are fair, transparent and consistent, while at the same time allowing us to manage our resources effectively.

We investigate all concerns independently and objectively and do not take the side of either the registrant or the person who has raised the concern. During our investigations it is likely we will need to contact the complainant or other third parties to ask them for more information about the concerns that have been raised. Providing information we have requested in full and within the timeframes we have set will help us to investigate concerns effectively and efficiently.

Our legislation gives us the powers to require a person to provide us with information or documentation where relevant to the exercise of our statutory functions. We may use these powers to obtain information where it is necessary to do so during a fitness to practise investigation<sup>2</sup>.

Our website has more information about how to [raise a concern](#), our investigation and fitness to practise [process](#) and [what to expect from us during an investigation](#).

### **Fitness to practise**

To remain on our register, the health and care professionals we regulate must be fit to practise. By fitness to practise we mean where a registrant has the skills, knowledge, character and health to practise safely and effectively. It is about more than being a competent health and care professional. As well as the need for registrants to keep their skills and knowledge up to

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<sup>1</sup> Article 3(4) and (4A) of the Health Professions Order (2001) states that the HCPC's over-arching objective is to protect the public, and sets out how this objective should be pursued.

<sup>2</sup> Article 25(1) sets out our powers to require the disclosure of information.

date, and to work within their field of competence, fitness to practise requires registrants to treat service users with dignity and respect and to act with honesty and integrity.

Fitness to practise may also involve issues outside of professional or clinical performance. The conduct of a professional outside of their working environment may involve fitness to practise where it could affect the protection of the public or undermine public confidence in the profession.

One of the ways we make sure that professionals are fit to practise is by investigating concerns we receive about them.

### **Impaired fitness to practise**

The Health Professions Order 2001 (the Order), sets out that a registrant's fitness to practise may be impaired for one or more of the following five reasons<sup>3</sup>.

- Misconduct;
- Lack of competence;
- Conviction or caution for a criminal offence;
- Physical or mental health;
- A determination by another health or social care regulatory or licensing body.

Impaired fitness to practise means more than a suggestion that a professional has done something wrong. It means a concern about their conduct, competence, health or character, which is serious enough to suggest that the registrant is unfit or unsafe to practise without restriction, or at all.

Our focus as set out in the Order is on current impairment; that is whether a registrant may continue to present a risk. Our fitness to practise process is not designed to punish past mistakes or provide redress for past incidents, although we can take into account past failings in assessing current fitness to practise. In some cases, a past event will be so serious that a finding of current impairment is required to protect the public interest, even where the registrant no longer presents a risk of harm to service users.

### **Our approach to fitness to practise investigations**

The HCPC is committed to carrying out efficient, effective and appropriate investigations, to ensure that the right regulatory action is taken to manage any risk to public protection.

We recognise that parties to an investigation may have differing views about the services provided by a registrant and the incident(s) that gave rise to a fitness to practise concern. We are mindful of balancing the full range of views in undertaking our enquiries.

Our Standards of Conduct, Performance and Ethics, Standards of Proficiency and other relevant guidance explain the professional standards that we expect all of our registrants to adhere to. When we consider a concern and the information obtained during an investigation we will assess whether the matters complained of could amount to a breach of those Standards.

We take a proportionate, risk-based approach to investigating fitness to practise concerns that are raised with us. Our aim is to enable our decision makers to make decisions that are correct, consistent, evidence-based and fair at the earliest opportunity.

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<sup>3</sup> Article 22(1)(a) of the Order sets out the statutory grounds of impairment as listed above.

We will first consider whether a concern is something that we can deal with. This assessment takes place during our triage stage. If a concern is for us, we will go on to carry out an investigation of the potential fitness to practise issues in the concern. We have set out in more detail below our approach to making decisions at these two stages.

## **Triage stage**

We receive concerns from many different sources. These include members of the public, service users, employers, notifications from the police, other organisations involved in health or social care, self-referrals from registrants and media reports. We can act on information we receive from any source that may call into question a registrant's fitness to practise<sup>4</sup>. We consider all concerns in the same way, regardless of how they originated.

When we receive a concern we will consider whether it:

- Relates to an HCPC registered professional;
- Has been made in writing;
- Relates to any of the five statutory grounds of impairment set out in our legislation;

We will also undertake a risk assessment on receipt of the concern. This enables us to identify any serious concerns or potential Interim Order matters that need to be prioritised through the fitness to practise process (see sections on Serious Concerns and Interim Orders below).

The HCPC can only look into concerns about individual professionals on our register. We cannot deal with complaints about organisations, even if a registered professional may have worked there<sup>5</sup>.

We must be able to identify the registrant who the concern is about. There may be some situations where the name of the registered professional is not known. In these cases we will make reasonable efforts to trace them.

In the interests of transparency and fairness a concern must be made in writing, even if it was originally received over the phone. This is because the registrant needs to know the source of the complaint in order to provide a full response to the concerns. We also require the concern to be in writing so that we can be clear and confident about the precise nature of the concerns. Where necessary we will make reasonable adjustments to ensure this can be done. For example, we may be able to take down a concern over the phone where someone is unable to write, or we can provide a copy of our concerns form on coloured paper to assist someone who has a visual impairment.

For those reasons, we are usually not able to take forward a concern that is made anonymously, or where the complainant wishes to remain anonymous. However, where the concerns raised are serious we may decide that it is in the public interest for us to investigate even where the complainant is, or wishes to remain, anonymous.

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<sup>4</sup> Under Article 22(6) of the Order we have the powers to investigate information about a registrant's fitness to practise that does not come to us in the form of a referral.

<sup>5</sup> The HCPC has Memoranda of Understanding and information sharing agreements with other systems and professionals regulators and healthcare organisations. We may share information with other relevant bodies or organisations to assist them in their investigations or other regulatory activities. When sharing information we will comply with our requirements under the [General Data Protection Regulation \(GDPR\) and the Data Protection Act 2018](#).

We can only look into concerns that raise questions about a registrant's fitness to practise. We cannot look at concerns that are solely about customer service or employment issues or the level of fees charged by a registrant. We are not a complaints resolution service and do not have the powers to make a registrant apologise, or provide a refund or compensation.

Further examples of the types of concerns we are and are not able to look into are available on our [website](#).

We may need to seek further clarification on receipt of a concern to enable us to make a full and informed decision about whether it is something we can deal with.

The triage decision is a simple assessment as to whether a concern is within our remit to deal with. It is necessarily a low bar and only those concerns that do not meet this test may be closed at this stage.

If the concern is one that the HCPC can deal with it will move forward through our process for an investigation.

### **Investigation stage and threshold criteria**

Where we have made a decision at the triage stage that a matter is within our remit, we will carry out an investigation to obtain the relevant information about that concern. Our investigation aims to understand the full extent of the possible fitness to practise issues raised in the concern.

This may involve gathering information from a number of sources. Types of information we may obtain include, for example, service user records, documents relating to an employer investigation or complaints process, witness statements from those who can provide relevant evidence, independent clinical advice on treatment provided by a registrant, copies of police or court documents, a copy of a professional report written by a registrant for court proceedings or another purpose.

The threshold test we apply at this stage is whether the concern we have received, and any associated information that we have gathered about it, amounts to an allegation that the registrant's fitness to practise may be impaired on one or more of the statutory grounds set out in the Order. In applying this test, we will consider whether the information we have obtained substantiates the original concerns we received.

The main criteria we take into account when assessing whether the information we have received meets that test include:

- The actual or potential risk to public safety;
- Whether the matter may undermine public confidence in the profession;
- Whether the matters complained of could amount to a breach of the HCPC's Standards of Conduct, Performance and Ethics, Standards of Proficiency and other relevant guidance for registrants.
- Whether the matter is a serious concern of the type listed below;
- Whether the information calls into doubt the registrant's honesty or integrity;
- If the registrant has a physical or mental health condition that may present a risk to their ability to practise safely or effectively;
- Whether the matter relates to an isolated incident or indicates a wider pattern of behaviour;

- If the registrant has taken action to remediate their practise;
- Whether there have been previous, similar concerns about the registrant.
- Any other public interest considerations.

The length of time that has passed since the incidents that gave rise to a concern can affect the quality and availability of relevant information, which in turn may affect whether that information meets the threshold. Concerns that relate to incidents over five years old may therefore not be capable of meeting the threshold test. We consider each case on its own merits and will assess the means open to us to obtain relevant information, as well as whether there are any public interest concerns that would warrant investigation despite the length of time since the events.

If we consider that the threshold has been met we will draft allegations based on the relevant information we have obtained. We may need to carry out further investigation to obtain information pertinent to those allegations. These allegations will then be referred to a panel of our Investigating Committee, who will consider if there is a case to answer.

When an allegation is referred to the Investigating Committee the case passes into their jurisdiction. Once a matter is within the jurisdiction of the Investigating Committee it cannot return to the previous stage, be re-assessed against the threshold or otherwise pass out of the Investigating Committee's jurisdiction. As such, once the allegations are in the jurisdiction of the Investigating Committee panel the case cannot be closed other than by the panel making a no case to answer decision. The only exception to this is in the rare circumstance where the HCPC loses jurisdiction to investigate a case, following the death or striking off from the Register of the relevant registrant.

Further information about how the Investigating Committee Panel consider cases can be found in our [Indicative Sanctions Policy](#) and [Case to Answer Practice Note](#).

If we consider that the threshold test is not met then the case may be closed. The reasons for our decision to close the case will be provided to the relevant parties.

We provide operational guidance for our teams to assist them in applying the threshold criteria consistently and fairly.

The flow-chart at Appendix A illustrates how a case moves through the triage and threshold criteria decision points.

## **The public interest**

Our legal framework makes clear that our overarching objective is to protect the public. This applies to everything we do. All HCPC decision makers in the fitness to practise process must consider whether their decision helps us to protect the public.

When we say a particular decision may be required in the public interest, we mean more than needing to protect the health and safety of the public. It is also about needing to maintain public confidence in the professions we regulate, as well as the regulatory process, and the need to uphold and declare to our registrants the importance of the professional standards we expect from them.

## **Serious fitness to practise concerns**

Some concerns we receive are so serious that they will meet the threshold criteria at the point of triage and will be referred automatically to the Investigating Committee. This is because, if proven, they are likely to result in us taking action on a registrant's registration. Due to the higher risk to public protection presented by these cases, we consider that it would not be appropriate for regulatory decisions about their outcome to be taken outside of the Investigating Committee panel.

Such cases would include<sup>6</sup>.

- Serious violence;
- Sexual assault or indecency;
- Any criminal offence relating to a child;
- Improper sexual, emotional or financial relationship with a service user;
- Any criminal offence where the registrant has been given a custodial sentence;
- Dishonesty;
- Serious or reckless errors in a registrant's practise which have caused, or have the potential to cause, serious harm to service users.

Where the risk assessment carried out at the triage stage identifies a concern as being a serious matter, it will always meet the threshold criteria on that basis. Serious concerns will therefore pass automatically into the jurisdiction of the Investigating Committee panel from the point we decide that the case is within our remit.

The case will remain in the Investigating Committee panel's jurisdiction until they consider the case. It cannot return to the previous stage, be reassessed against the threshold decision or otherwise pass out of the Investigating Committee's jurisdiction. As a result, these cases cannot be closed other than by the Investigating Committee panel.

This process also ensures that serious concerns can be prioritised and expedited through our fitness to practise process. See the flow-chart at Appendix A for an illustration of how serious cases move through the decision points.

We provide guidance for our decision makers to assist them in undertaking accurate risk assessments and identifying serious concerns.

## **Interim Orders**

The HCPC has the power to apply for an Interim Order during an investigation<sup>7</sup>. These are measures to protect the public by temporarily restricting or suspending a registrant from practising while their case is being investigated. An Interim Order will be required in cases where concerns about a registrant's fitness to practise are so serious that public safety would be put at risk, or there would be a risk to the public interest or to the registrant themselves, were the registrant allowed to continue to practise.

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<sup>6</sup> The serious concern process excludes protected cautions and convictions. Under the Rehabilitation of Offenders Act 1974, certain criminal offences become protected after a relevant period of time has passed. The HCPC is not able to look into a concern that a registrant's fitness to practise may be impaired on the basis of a protected caution or conviction, and these offences will therefore not meet the triage test or threshold criteria.

<sup>7</sup> Article 31 of the Health and Social Care Professions Order (2001).

Interim Orders are likely to be required in the types of serious concerns listed above, though may be required in relation to other matters too. When we take the decision to apply for an Interim Order, following a risk assessment of information we have received on a case, the threshold criteria will automatically be met and the case passes into the jurisdiction of the Investigating Committee. As explained in relation to serious concerns above, the case cannot be reconsidered against the threshold criteria or otherwise pass out of their jurisdiction.

In summary, where a case is deemed to warrant an Interim Order application it must proceed to the Investigating Committee panel for a decision on that application. Once a case has been referred to the Investigating Committee panel in this way, it cannot be closed other than by the panel making a no case to answer decision. This process applies whether an Interim Order is ultimately granted or not, or whether an Order that has been granted is later revoked before the case reaches the Investigating Committee panel. This is illustrated in the flow-chart at Appendix A.

## **Health concerns**

The HCPC's [Approach to the Investigation of Health Matters](#) explains in more detail how we investigate concerns that suggest a registrant may have a health condition that affects their fitness to practise, and the relevant factors we take into account. The same threshold test applies to these cases as to all other cases.

## **Remediation**

We sometimes receive information when a concern is referred to us, or during our investigations, that indicates that steps have been taken by the registrant to remediate fitness to practise concerns, since the incidents that gave rise to the referral. This may be documentation that shows that a registrant has undergone retraining, learning or a period of performance supervision, for example.

This information will be assessed against our threshold criteria in the usual way. If we consider that the information demonstrates that any retraining, learning or improvements are embedded in the registrant's practise, we may decide that the registrant no longer presents a risk to members of the public or the wider public interest and that the threshold criteria is not met. However, we will also need to assess whether the nature of the concerns are such that the Investigating Committee panel is still required to consider the case in the public interest, for example where the original concerns posed a potentially serious risk to patient safety. A case may therefore still meet the threshold criteria and proceed to the Investigating Committee panel, even where a registrant may have taken steps to change their practise.

Where we receive information relating to a registrant's remediation after a case has been referred to the Investigating Committee panel, it will be treated as a registrant's formal observations to the panel. This is because the case has passed into the jurisdiction of the Committee, and so cannot be re-considered against the threshold criteria. The panel will take account of any evidence of remediation in their consideration of whether there is a case to answer.

## **Registrants' engagement with fitness to practise investigations**

The Standards of Conduct, Performance and Ethics sets out that registrants 'must co-operate with any investigation into your conduct or competence, the conduct or competence of others, or the care, treatment or other services provided to service users' (Standard 9.6).

The HCPC expects registrants to cooperate with a fitness to practise investigation, whether they are the subject of the investigation, a complainant or involved in some other way. Whilst we cannot compel a registrant who is the subject of an investigation to engage with us, doing so will help us reach an outcome more efficiently and effectively.

Where a registrant is involved in an investigation as a third party, for example as a complainant or witness, and does not cooperate with our investigation, we may consider whether that lack of engagement itself gives rise to a fitness to practise concern.

### **After an investigation**

Once we have made a decision against our threshold criteria we will notify the parties of the outcome. We will explain why we decided that the case should be closed or referred to the Investigating Committee Panel, and set out how we assessed the matter in relation to the Standards of Conduct, Performance and Ethics, Standards of Proficiency and other relevant guidance.

Where a case has been closed, either at the threshold stage or by the Investigating Committee panel, the HCPC may take that matter into account in assessing any future concerns we receive about a registered professional.

The Investigating Committee panel may also take into consideration any other complaint made against a registrant in the previous three years, when deciding whether there is a case to answer in relation to an allegation<sup>8</sup>.

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### **Related documents**

- HCPC's Approach to Investigating Health Matters.
- Operational guidance for HCPC on applying the threshold policy.
- Operational guidance for HCPC on investigating health matters.
- Standards of Conduct, Performance and Ethics, Standards of Proficiency and other guidance.

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<sup>8</sup> Rule 4 of the Health and Care Professions Council (Investigating Committee) (Procedure) Rules 2003 provides that in determining whether there is a case to answer the Committee may take account of any other allegation made against the registrant in the previous three years.

Appendix A

Diagrammatic application of FTP Threshold Policy decision making

