



Health and Care Professions Council Process and Representation

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Health and Care Professions Council



The HCPC protect the public by regulating the profession.

They...

- set standards for professionals' education and training and practice;
- approve programmes which professionals must complete to register;
- keep a register of professionals, known as 'registrants', who meet their standards; and act if professionals on the Register do not meet the standards.



Referrals



Anyone can raise a concern about a registrant's fitness to practise. This includes members of the public, employers, the police, other organisations and other health and care professionals.

<https://www.hcpc-uk.org/concerns/raising-concerns/>



Self-referral

Standard 9.5 requires a registrant to tell the HCPC as soon as possible if:

- you accept a caution from the police or you have been charged with, or found guilty of, a criminal offence;
- another organisation responsible for regulating a health or social-care profession has taken action or made a finding against you; or
- **you have had any restriction placed on your practice, or been suspended or dismissed by an employer, because of concerns about your conduct or competence.**

<https://www.hcpc-uk.org/concerns/raising-concerns/self-referral/>



Employer capability Procedure

If possible, use capability procedures to resolve issues, rather than making a referral straight away.

The intention of the capability policy is to resolve situations which relate specifically to the lack of capability of an employee to perform the role at the level for which they are employed. It is anticipated that in most cases this procedure would not be invoked for a one-off error or mistake.

If the use of capability procedures have failed to address the issues, then a referral to the HCPC may need to be undertaken.



Process

The HCPC are notified of a concern

Within weeks, the HCPC will write to the registrant informing them that a concern has been raised. They will state that they will contact the registrant as the investigation proceeds. They do not have to inform an employer unless they are required by the HCPC to do so.

Once the initial investigation has completed, the concern is assessed to see if it reaches the 'threshold': the minimum criteria for proceeding.

If the case meets the threshold, the case will undergo a full investigation and the HCPC will at a future date refer the case to an Investigation Committee Panel Hearing.



Health and Care Professions Tribunal Service (HCPTS)

The Health and Care Professions Tribunal Service (HCPTS) is the hearings service of the Health and Care Professions Council (HCPC).

Cases received by the HCPC are referred to the HCPTS following an investigation and the HCPC has decided that the case to proceed to an Investigating Committee.

A Conduct and Competence Panel will hear cases concerning misconduct, lack of competence, a conviction or caution, or a determination by another regulatory body.

Cases that concern the health of the registrant are heard before a Health Panel.



Types of Hearing

- Investigation committee
- Interim Order hearing
- Fitness to Practice hearing



Interim orders

In certain cases, the HCPC on receipt of a referral may apply for an Interim Order during an investigation.

An Interim Order is a measure to protect the public by preventing a registrant from practising, or restricting their practise, whilst an investigation takes place.

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 if the registrant was allowed to practise without restriction.

The panel considering an Interim Order can choose to:

- Make no order, if they feel there is no immediate or serious risk presented by the registrant continuing to practise without restriction;
- Impose an Interim Conditions of Practice Order, which restricts a registrant's practice in the way set out by the panel;
- Impose an Interim Suspension Order, which prevents the registrant from practising for as long as the Order is in place.



HCPC Investigation Committee



The investigation undertaken by the HCPC can take a minimum of 12 months but can take up to 24 months. It rarely can last several years.

The HCPC writes to registrant following the conclusion of the investigation. They will inform the registrant that the case WILL BE referred to an investigating committee.

The Investigating Committee's role is to consider all evidence put before them, from the HCPC and the registrant and decide whether there is a case to answer and the matter should be referred to a fitness to practice hearing.

The investigation committee panel hearing will take place approximately between 6 to 12 months after the registrant has been notified that it will proceed.



The panel will not decide the facts of a case, but whether there is a realistic prospect of proving the allegation at a final hearing.

The panel consider cases in private, on the basis of the papers before them. The registrant will not be in attendance.

The Investigating Committee Panel can decide that:

- the case should be adjourned for further information to be obtained or for the allegations to be amended;
- there is a case to answer, and the case should go forward for a final hearing; or
- there is no case to answer and the case should be closed.

Once the panel has met the HCPC will notify the member of the outcome.



Fitness to Practice Hearings Substantive Hearing – Four Questions

If the case proceeds to a fitness to practice hearing this will take place usually between 6 to 9 months after the outcome of the investigatory committee

The member will be given 28 days notice of the hearing and will have the opportunity to submit their own statement of case.

What facts are proven?

Do the proven facts give rise to a “ground”?

Is the registrant’s fitness to practice currently impaired?

What, if any sanction is required?



Facts

The HCPC, represented by a barrister has the responsibility to prove the facts of any allegation it has made against a registrant.

The standard of proof is the "balance of probabilities," meaning the panel must be satisfied that it is more likely than not that the alleged facts happened.

A panel can find a fact proved either if the registrant admits it or if the panel is satisfied, on the balance of probabilities, that the fact has been proven.



Grounds

What are "grounds" in HCPC proceedings?

If the panel believe that the facts have been proven, they must then establish the legal basis for the allegation of impairment, such as misconduct, lack of competence, criminal conviction, or health issues.

- **Misconduct** – behaviour that falls short of what can reasonably be expected of a professional.
- **Lack of competence** – lack of knowledge, skill and judgement, usually repeated and over a period of time.
- **Conviction or caution** – for a criminal offence in the UK (or in another country if the offence would be a crime if committed here).



Current impairment

Two broad components:

- The “personal” component: The current competence, behaviour etc. of the registrant concerned.
- The “public” component. Itself split into the HCPC’s requirement to:
 - Protect service users;
 - Declaring and upholding proper standards of behaviour;
 - Maintaining public confidence in the professions concerned.



The panel must decide on whether the registrant's fitness to practice continues to present a risk to service users at the time of the hearing.

The key questions which need to be answered are:

- a. are the acts or omissions which led to the allegation remediable?
- b. has the registrant taken remedial action?
- c. are those acts or omissions likely to be repeated?

The extent of the registrant's insight and remorse into those acts or omissions.

The extent that their behaviour fell below professional standards.

The learning they have undertaken to remedy any issue and avoids any future repetition.

That given the nature of the allegation and the facts found proved, would public confidence in the profession and how it is regulated be undermined if there were to be no finding of impairment?





HCPC Witnesses

The Health and Care Professions Council (HCPC) call witnesses to support evidence they wish to present in hearings held by the HCPCTS.

The HCPC may contact a potential witness if they have been named in relation to the events subject to the investigation or as a witness on behalf of the registrant subject to proceedings.



Why must I attend?

If contacted by the HCPC you must comply with the request.

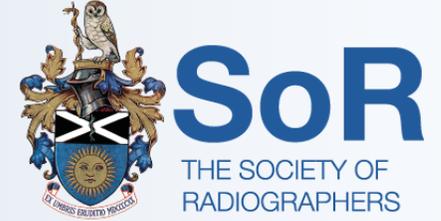
- Article 25(1) of the Health Professions Order 2001 (the 2001 Order) allows the HCPC to require any person who is able to supply information or produce any document which appears relevant to the discharge of any such function, to supply that information or produce that document.
- Article 32(2)(m) of the 2001 Order allows the HCPC to require persons to attend and give evidence at hearings or to produce documents at hearings.

What if I refuse?

Article 39(5) of the 2001 Order states that a person who, without reasonable excuse, fails to comply with either of the above requirements is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale. (£5000)



Representation



HCPC witness

If you are asked to be a witness on behalf of the HCPC there is no right to representation from the society. Your fitness to practice is not in question and the HCPC appointed barrister will assist you in the process of providing your statement and prepare you to attend the hearing.

The HCPC offers support from [POhWER](#) who may require support during the process.

Registrant witness

If you have asked to be a witness on behalf of a registrant, you will be contacted by an officer who will discuss the process with you and how you can be of assistance. You may be asked to submit a factual or character statement or in some circumstances a written character reference. If you are asked to attend the hearing we assist you in preparing to attend.



Giving evidence



Giving evidence is not a memory test; if you have made a witness statement and it has been submitted to the Panel, you will have a copy of this statement available in the hearing room.

- Take your time to think about the questions being asked.
- If you do not understand a question or do not know the answer, you should tell the Panel.
- Direct your answers to the Panel, not the person asking you questions.
- Try to speak slowly and clearly when giving evidence so that everyone can hear you and the Panel has an opportunity to note down what you say.



Important case law

When considering current impairment:

Cohen V GMC [2008] EWHC 581 (Admin)

Separates the panel's decision on Impairment from others stages such that a finding on facts and grounds does not automatically mean that the registrants fitness to practice is currently impaired.



Important case law

The comments of Dame Janet Smith in:

Safeguarding Patients: Lessons from the Part – Proposals for the Future (Cm6394), the 5th report of the Shipman Inquiry (2004)

These comments ask has the registrant:

- a) In the past acted and / or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm; and / or
- b) In the past brought and / or is liable in the future to bring the medical profession into disrepute; and / or
- c) In the past committed a breach (other than one which is trivial) of one of the fundamental tenets of the profession and / or is liable to do so in the future;
- d) In the past acted dishonestly and / or is liable to act dishonestly in the future.



Important case law

Council for Healthcare Regulatory Excellence V NMC and 920 Grant
[2011] EWCH 927 (Admin)

Highlights that current fitness to practice involves consideration of past misconduct and any steps taken to remedy the misconduct.



Review of Substantive Orders

Restrictive orders such as Conditions of Practice or Suspension are reviewed before they expire.

- *Abraheam V GMC* [2008] EWCH 183 (Admin) states: “in practical terms this places a ‘persuasive burden’ on the registrant to demonstrate at a review hearing that he or she has fully acknowledged the deficiencies which led to the original finding and has addressed that impairment sufficiently ‘through insight, application, education, supervision or other achievement’”



A very good question.

The “rejected defence” as defined in:

Sawati V General Medical Council [2022] EWHC 283 (Admin)

The issue: “How can a professional have a fair chance before a tribunal to resist allegations, particularly of dishonesty, without finding the resistance itself unfairly counting against them if they are unsuccessful.”



Cost of Representation

Non SOR members will need to finance the cost of their legal team, should they wish to engage one.

Costs for a 1-day hearing funded by a registrant is circa £6000. This does not include the cost of preparing submissions and preparing the registrant for the hearing. The cost for this is Circa £350 - £500 an hour

SOR members will be provided with support and representation but must notify the SOR immediately when first contacted by the HCPC.

Members must have been in membership when the notification from the HCPC is first received and at the date of the incident leading to a referral.

Members must notify the SOR immediately tuir@sor.org



Any Questions

