

Health and Care Professions Tribunal Service

PRACTICE NOTE

Abuse of process applications

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

Introduction

1. The purpose of this Practice Note is to provide guidance on the approach to be taken when considering an application for a stay of proceedings on the grounds that there has been an abuse of process.
2. Abuse of process arguments are arguments that a case should not proceed (and should be stayed) because:
 - a. it is impossible for a Registrant to have a fair hearing and/or
 - b. continuing with the case would in all the circumstances offend the Panel's sense of justice and propriety or would undermine public confidence in regulation.¹
3. Abuse of process arguments can be made for a number of reasons and on multiple grounds. There is no definition or limitation on what circumstances may give rise to an abuse of process argument.
4. When an abuse of process argument is made, it is for the Registrant to show on the balance of probabilities that it is more likely than not that the proceedings should be stayed.²

¹ R v Maxwell [2011] 1 WLR 1837

² Hamilton v Post Office [2021] EWCA Crim 577

5. Whilst Panels do have jurisdiction to stay a case as an abuse of process, this should be an extremely rare course of action to take and there is a high bar to be met for any abuse argument to succeed. Panels should bear in mind that if a case is stayed as an abuse, this will mean that the allegations will never be fully considered or decided on.

Abuse of process on grounds that a fair hearing cannot be held

6. In considering an abuse of process argument on the basis that it is impossible for the Registrant to have a fair hearing, Panels should bear in mind that it is not enough for the Registrant to demonstrate that the factual circumstances which gave rise to the abuse have occurred. For example, it is not sufficient for the Registrant establish that there has been significant delay or that there is evidence which is missing without addressing the effect of those circumstances on their ability to have a fair hearing.
7. A Registrant must be able to demonstrate that as a result of those circumstances they have suffered such serious prejudice that it is now impossible for them to have a fair hearing. Panels considering any abuse argument on this ground will also need to carefully assess the actual level of any prejudice that has been suffered by a Registrant.³
8. In most cases, any potential unfairness to a registrant arising from the factual circumstances which have given rise to the application can be adequately dealt with through case management and/or the usual hearing process. Panels can, for example, issue directions to ensure that there is effective case management in the future so that no further delays occur, or can issue directions for the disclosure of evidence. In addition to this, Panels routinely assess the impact of factors such as the passage of time when considering the evidence which is presented in the case.
9. Panels should only, therefore, stay a case in circumstances where the Registrant has established that they have suffered serious prejudice and in cases where there is nothing that can be done to mitigate or manage the prejudice that has been suffered by the Registrant. In most cases, even where there has been some prejudice to a Registrant, this will not mean that it is impossible for the Registrant to have a fair hearing.

Abuse of process on grounds that it offends the Panel's sense of justice or would undermine confidence in regulation⁴

³ R(Gibson) v GMC [2004] EWHC 2781

⁴ R v Maxwell, [2011] 1 WLR 1837, paragraph 108

10. A Registrant may also argue that, irrespective of whether a fair hearing can take place, the proceedings should be stayed as to continue with them would be an affront to justice/bring regulation into disrepute, or, in other words, that even when a fair hearing could be possible it is, nonetheless, unfair for the case to continue at all.
11. It will be exceptional for any stay to be granted on this basis. In order for any such application to be made, the Registrant will need to demonstrate that there has been alleged bad faith, unlawfulness or executive manipulation by the HCPC through specific examples that are evidence based. A mere assertion that the HCPC has acted in bad faith or unlawfully without any specific examples and/or evidence will not be sufficient for this purpose.
12. When considering an application to stay a case on this basis, Panels will need to balance any issues raised by the Registrant with the public interest in allegations being heard and adjudicated upon. Panels considering an abuse of process argument should always be mindful of their overarching objective to protect the public (which includes the public interest) and when considering arguments of this kind, this should be at the forefront of the Panel's considerations.

Process for determining abuse of process applications

13. Abuse of process applications for a stay of proceedings should ordinarily be determined at a preliminary hearing unless the factual circumstances which give rise to the abuse argument arise in the course of the final hearing into the matter.
14. The Registrant will need to ensure that they provide the HCPC with full details of their application and should usually include a skeleton argument or written argument and any supporting evidence so that the HCPC has adequate time to consider and respond to the abuse argument. Once the HCPC is in receipt of the application the HCPC will then confirm that the matter should be listed for a preliminary hearing and the duration of that hearing. The HCPC will ensure that any response to the abuse of process argument is served no later than 7 days before the hearing.
15. If the circumstances which give rise to the abuse of process arise at the final hearing, Panels must ensure that the HCPC is afforded sufficient time to

respond to any application. Due to the fact that abuse of process arguments can be made for a number of reasons and on multiple grounds, the Panel should also ensure that once both parties' arguments have been received/heard, sufficient time is afforded to the Legal Assessor to enable them to provide the Panel with the relevant legal advice.