

Health and Care Professions Tribunal Service

PRACTICE NOTE

Case Management, Directions and Preliminary Hearings

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

Introduction

In fitness to practise proceedings, the interests of justice are best served by a process which is simple, accessible and fair and where the issues in dispute are identified at the earliest opportunity. Those objectives can be secured by case management procedures which require:

- the HCPC, which has the burden of persuasion¹, to set out its case;
- the registrant to identify in advance those parts of the HCPC's case which he or she disputes; and
- the parties to provide information to assist the Panel in the conduct of the case.

Expecting registrants to participate in this process is not contrary to their rights, as they retain the right to deny every element of an allegation if they wish to do so.

Case management

Article 32(3) of the Health Professions Order 2001 imposes a statutory obligation on Panels to conduct proceedings expeditiously. Panels should meet that obligation by making full use of their case management powers, to ensure that cases are heard without undue delay, fairly, justly and in a manner which:

- is proportionate to their importance and complexity;
- encourages engagement and co-operation by the parties;
- avoids inflexibility or unnecessary formality in the proceedings;
- makes effective use of the Panel's time and expertise; and

¹ That burden only applies to the facts alleged. Whether those facts amount to the 'statutory ground' of the allegation (e.g. misconduct) and, in turn, constitute impairment are matters of judgement for the Panel conducting the final hearing: *CRHP v. GMC and Biswas [2006] EWHC 464 (Admin)*.

- enables the parties to participate fully in the proceedings.

Effective case management eliminates unnecessary complexity. Some cases are simpler than others and Panels should ensure that straightforward cases are dealt with straightforwardly. Panels should use their case management powers in appropriate cases to:

- identify the issues in dispute and seek to ensure that they are subject to no greater factual inquiry than justice requires;
- put arrangements in place to ensure that evidence, whether disputed or not, is prepared and presented clearly, effectively and by the most appropriate means;
- ensure that the needs of any witnesses are taken into account;
- encourage the use of collaborative tools, such as agreed chronologies or statements of agreed facts;
- set an appropriately early hearing date and establish a realistic timetable and programme for the conduct of the proceedings.

Directions

Panels and Panel Chairs have the power to give directions for the conduct of cases², including directions as to the consequences of failure to comply.

Directions are intended to ensure that the Panel and parties have a full understanding of the case before a hearing takes place. Directions should be used, in particular, to ensure that the issues in dispute are identified and to help the parties focus their preparation on those issues.

Directions should be used, at an early stage, to require the parties to:

- exchange documents;
- identify the written evidence they intend to introduce and the other exhibits or material they wish to present;
- identify witnesses that are expected to give oral evidence, the order in which they will do so and any special arrangements which need to be made for a witness;
- request any witness or production orders which are required to compel the attendance of a witness or the production of evidence;
- draw attention to any points of law that they intend to raise which could affect the conduct of the hearing; and
- indicate the timetable they expect to follow.

² Art. 32(3), Health Professions Order 2001; HCPC (Conduct and Competence Committee) (Procedure) Rules 2003, r. 7(1); HCPC (Health Committee) (Procedure) Rules 2003, r.7(1).

Standard Directions

To improve the management of cases, the Standard Directions set out in Annex A apply as 'default' directions in every case. At a minimum, Panels should actively manage cases to ensure compliance with the Standard Directions.

Where it considers that it is appropriate to do so, either of its own motion or at the request of a party, a Panel may give directions (Special Directions) which disapply, vary or supplement the Standard Directions.

Preliminary hearings

Panels have the power to hold a preliminary hearing³ *"in private with the parties, their representatives and any other person it considers appropriate where it considers it would assist the [Panel] to perform its functions"*⁴.

Most case management issues can be satisfactorily resolved 'on the papers' by issuing directions. In the small number of cases where that is not possible, the Panel may need to hold a preliminary meeting.

Preliminary hearings may be held by the Panel Chair sitting alone who, with the parties' consent, may take any action which the Panel could take at such a hearing. Wherever possible, Panels should adopt that practice.

The purpose of a preliminary hearing is to assist the Panel in preparing for and regulating the proceedings at a substantive hearing, for example, by resolving procedural, evidential, timetabling and other case management issues before the substantive hearing takes place.

A preliminary hearing should not be used to deal with which are properly a matter for the full Panel at a substantive hearing, such as making findings of fact in respect of disputed evidence.

In particular, Panel Chairs conducting preliminary hearings alone must take care not to make determinations in respect of substantive matters with which the other Panel members may disagree, such as the relevance of, or need for, particular evidence.

³ the legislation refers to "preliminary meetings" but that term has been found to mislead some parties as to the nature of the proceedings and the term "preliminary hearing" has therefore been adopted

⁴ HCPC (Investigating Committee) (Procedure) Rules 2003, r.7(1),(2); HCPC (Conduct and Competence Committee) (Procedure) Rules 2003, r. 7(2),(3); HCPC (Health Committee) (Procedure) Rules 2003, r.7(2),(3).

Procedure

A Panel may decide to hold a preliminary hearing of its own motion or at the request of one of the parties.

As many preliminary issues can be resolved by issuing Directions, a Panel should only agree to hold a preliminary hearing where it is satisfied that there are substantial procedural or evidential issues to be resolved and which cannot be resolved by other means.

Where a party asks for a preliminary hearing is held, before agreeing to do so, the Panel should require that party to outline the reasons for the request, including the issues which will be raised if the hearing is held and the steps which that party has already taken in order to resolve those issues.

Normally, the parties should be given at least 14 days' notice of a preliminary hearing. In setting the time and place for a hearing, Panels must take account of Article 22(7) of the Order, which requires preliminary hearings to be held in the UK country in which the registrant concerned is registered.

Regardless of the reasons for holding a preliminary hearing, the Panel (or Panel Chair, if sitting alone) should take the opportunity to verify the parties' compliance to date with all requirements relating to the proceedings, including the standard directions which apply to (or any special directions which have already been made in respect of) those proceedings. The Panel (or Panel Chair) may:

- consider issues relating to the hearing of the case including:
 - the extent to which any evidence is agreed including, where facts are not in dispute, requiring the parties to produce a statement of agreed facts;
 - where agreed between the parties, directing that witness statements are to stand as evidence in chief;
 - ordering the joinder of allegations;
 - issuing Witness Orders or Production Orders;
 - determining whether expert evidence is required;
 - determining applications for all or part of the hearing to be held heard in private;
 - ordering special measures or providing for any other needs of vulnerable witnesses;
 - determining whether any facilities are required for particular evidence, such interpreters or equipment for recordings or other exhibits;
- make arrangements for any further investigation which the Panel has agreed to have conducted and which the registrant has requested or consented to (such as a medical examination or test of competence);

- set a date for (or the arrangements for setting the date for) the hearing or a further preliminary hearing, including requiring the parties to provide dates to avoid and time estimates;
- giving any special directions for the exchange of documents prior to the hearing, including:
 - requiring the mutual disclosure of documents and setting time limits or other requirements for disclosure or service;
 - requiring agreed bundles or skeleton arguments to be submitted (this requirement should only be imposed if the parties are legally represented).

Parties and their representatives

Panels are entitled to expect that parties or their representatives attending a preliminary hearing will be familiar with the case and its history and be in a position to assist the Panel in managing the case, including:

- resolving any outstanding issues which are impeding the setting of a hearing date;
- agreeing dates for the hearing; and
- setting an informed and realistic timetable for that hearing.

22nd March 2017

Annex A

Standard Directions

Standard Direction 1. Exchange of Documents

- (1) The HCPC shall, no later than 42 days before the date fixed for the hearing of the case, serve on the registrant a copy of the documents which the HCPC intends to rely upon at that hearing.
- (2) The registrant shall, no later than 28 days before the date fixed for the hearing of the case, serve on the HCPC a copy of the documents which he or she intends to rely upon at the hearing.
- (3) The parties shall, at the same time as they serve documents in accordance with this Direction, provide the Panel with five copies of those documents.

Standard Direction 2. Notice to admit facts

- (1) A party may serve notice on another party requiring that party to admit the facts, or part of the case of the serving party, specified in the notice.
- (2) A notice to admit facts must be served no later than 21 days before the date fixed for the hearing of the case.
- (3) If the other party does not, within 14 days, serve a notice on the first party disputing the fact or part of the case, the other party is taken to admit the specified fact or part of the case.

Standard Direction 3. Notice to admit documents

- (1) A party may serve notice on another party requiring that party to admit the authenticity of a document or exhibit disclosed to that party and specified in the notice.
- (2) A notice to admit documents (together with those documents unless they have already been provided to the other party) must be served no later than 21 days before the date fixed for the hearing of the case.
- (3) If the other party does not, within 14 days, serve a notice on the first party disputing the authenticity of the documents or exhibits, the other party is taken to accept their authenticity and the serving party shall not be required to call witnesses to prove those documents or exhibits at the hearing.

Standard Direction 4. Notice to admit witness statements

- (1) A party may serve notice on another party requiring that party to admit a witness statement disclosed to that party and specified in the notice.

- (2) A notice to admit a witness statement (together with that statement unless it has already been provided to the other party) must be served no later than 21 days before the date fixed for the hearing of the case.
- (3) If the other party does not, within 14 days, serve a notice on the first party requiring the witness to attend the hearing and give oral evidence (and thus be available for cross examination), the other party is taken to accept the veracity of the statement and the serving party shall not be required to call the witness to give evidence at the hearing.

Standard Direction 5. Withdrawal of admissions

The Panel may allow a party, on such terms as it thinks just, to amend or withdraw any admission which that party is taken to have made in relation to any notice served on that party under Standard Directions 2 to 4.

Annex B

[PRACTICE] COMMITTEE

**NOTICE TO ADMIT [FACTS] [WITNESS STATEMENTS]
[AUTHENTICITY OF DOCUMENTS]**

To: [name and address of party]

TAKE NOTICE that in the proceedings relating to [identify proceedings] [the HCPC or name of other party], for the purpose of those proceedings only, requires you to admit:

[the following fact(s):

- 1.
- 2.
- 3.

RESPONSE*

Admit/Dispute
Admit/Dispute
Admit/Dispute]

[the authenticity of the following document(s):

- 1.
- 2.
- 3.

RESPONSE*

Admit/Dispute
Admit/Dispute
Admit/Dispute]

[the statement(s) made by the following witness(es), [a copy][copies] of which [is][are] are enclosed with this notice:

- 1.
- 2.
- 3.

RESPONSE*

Admit/Dispute
Admit/Dispute
Admit/Dispute]

* delete as appropriate

AND FURTHER TAKE NOTICE that, if you do not within 14 days of the date of this notice serve a notice on [the HCPC or name of other party] disputing [any of those facts] [the authenticity of any of those documents] [any of those witness statements], they shall be admitted by you for the purpose of those proceedings.

Signed: _____ Date: _____

For [the HCPC or name of other party]
[Address]

DO NOT IGNORE THIS NOTICE

If you dispute [any of the facts][the authenticity of any of the documents][any of the witness statements] set out above, you should respond to this Notice (by striking out “Admit” or “Dispute” as appropriate) and returning a copy of it to the address shown above by no later than [date].

If you fail to respond to this Notice in the time allowed, you will only be able to [dispute those facts][dispute the authenticity of those documents][ask for the witnesses who made those statements to attend and give oral evidence] with the leave of the Panel.

RESPONSE

The [facts] [authenticity of the documents][witness statements] set out above are admitted or disputed by [the HCPC or name of other party] as I have indicated above.

Signed: _____ Date: _____

For [the HCPC or name of other party]
[Address]