

Health and Care Professions Tribunal Service

PRACTICE NOTE

Concurrent Proceedings

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

Introduction

1. Article 32(3) of the Health Professions Order 2001 requires Panels to conduct fitness to practise proceedings “expeditiously” and it is in the interest of all parties that allegations are heard and resolved as quickly as possible.
2. Panels may be asked to consider staying proceedings brought by the HCPC because other proceedings are ongoing. The purpose of this Practice Note is to assist Panels in their consideration of such applications. Such ‘other’ proceedings may include civil, criminal, coronial or employment proceedings brought against a registrant who may claim that fitness to practise proceedings should not proceed until these other proceedings have concluded.
3. When considering applications to stay proceedings brought by the HCPC until the resolution of other proceedings, Panels must consider carefully the nature of the other proceedings, the basis of and reasons for the application and give detailed reasons for their decision. That decision should be made in the context of assistance which can be found in case law and the Panel’s legal assessor will advise Panels of the principles derived from the relevant cases.
4. It is important, however, to note that decisions in previous cases are fact specific and that although they provide guidance regarding the correct approach, Panels must not over rely on them. Each case must be considered on its own merits.
5. Whilst there may be circumstances in which it is appropriate for fitness to practise proceedings to be postponed when a registrant is being tried concurrently¹ for related criminal charges, postponement should not be regarded as automatic and will rarely be appropriate where the registrant or the subject matter of an allegation is the subject of other civil proceedings.

¹ Concurrent proceedings are also referred to as parallel proceedings

Concurrent criminal proceedings

6. In many cases, the HCPC will await the outcome of criminal proceedings before progressing fitness to practise proceedings. In appropriate cases, the public and the public interest can be protected by applying for an interim order during this period. The HCPC will liaise with the police and prosecuting authorities to check on the progress of the criminal proceedings and keep under review its decision regarding how to proceed where there are concurrent criminal proceedings.
7. However, as the Court of Appeal held in *Mote v Secretary of State for Works and Pensions*², civil proceedings can often proceed concurrently without risk to the defendant's rights in a related criminal trial, and there is a 'real discretion' as to whether or not to adjourn those civil proceedings. In particular, the Court pointed out that, as criminal defendants are now required to disclose their defence at an early stage, no prejudice arises from the fact that a defendant may disclose his or her defence to the criminal charges in civil proceedings.
8. The decision in *Mote* also clarifies that neither the privilege against self-incrimination nor the risk of 'double jeopardy' are grounds for delaying civil proceedings, as both are only relevant to criminal proceedings.³
9. Consequently, whilst Panel proceedings may be postponed until any related criminal trial has concluded⁴, there is no automatic obligation to do so and the decision is one within the discretion of the Panel.
10. Panels will be aware that acquittal in the criminal courts does not always preclude subsequent regulatory action. In some cases, the grounds for acquittal may be irrelevant for the purpose of fitness to practise proceedings. For example, a registrant who is charged with a sexual offence against a service user may be acquitted on the basis of doubts about the service user's consent or lack of it, but may still face an allegation of misconduct based upon the inappropriate nature of the relationship with the service user.
11. As the Divisional Court made clear in *Ashraf v GDC*⁵, pursuing fitness to practise proceeding following acquittal in the criminal courts is not inherently unfair or abusive, as criminal and regulatory proceedings serve differing purposes.

Concurrent civil proceedings

12. The courts have shown a marked reluctance to stay regulatory proceedings when asked to do so by parties who are the subject of concurrent civil

² [2007] EWCA Civ 1324

³ the privilege against self-incrimination only applies to incriminating oneself of a criminal offence. Similarly, double jeopardy only arises where a person is tried more than once by the criminal courts for essentially the same offence.

⁴ it is open to HCPC to seek an interim order where FTP proceedings are postponed

⁵ [2014] EWHC 2618 (Admin)

proceedings. As Stanley Burnton J. stated in *R v Executive Council of the Joint Disciplinary Scheme*⁶:

“Regulatory investigations and disciplinary proceedings perform important functions in our society. Furthermore, the days have gone when the High Court could fairly regard the proceedings of disciplinary tribunals as necessarily providing second class justice”.

13. The need for the discretion to stay one set of concurrent civil and regulatory proceedings to be exercised sparingly and with great care was highlighted by the Court of Appeal in *R v Panel on Takeovers and Mergers ex parte Fayed*⁷:

“It is clear that the court has power to intervene to prevent injustice where the continuation of one set of proceedings may prejudice the fairness of other proceedings. But it is a power to be exercised with great care and only where there is a real risk of serious prejudice which may lead to injustice.”

14. Whether there is “a real risk of serious prejudice which may lead to injustice” is a matter for the Panel and will depend upon the facts of the case.
15. It is open to the parties in fitness to practise proceedings to ask the courts to stay those proceedings but, in the first instance, it is more likely that an application to stay the proceedings will be made to the Panel which is due to hear the fitness to practise case.

Staying proceedings

16. If Panels are asked to stay proceedings on the basis that a party is subject to concurrent civil or criminal proceedings, the approach which should be adopted, derived from the decisions of the courts⁸, is as follows:
- a. Panels must exercise the discretion to stay concurrent proceedings sparingly and with great care;
 - b. a stay must be refused unless the party seeking the stay can show that, if it is refused, there is a real risk of serious prejudice which may lead to injustice in one or both of the proceedings;
 - c. if the Panel is satisfied that there is a real risk of such prejudice arising then it must balance that risk against the countervailing considerations, including the strong public interest in seeing that the regulatory process is not impeded;
 - d. each case turns on its own facts and Panels can only derive limited assistance from comparing the facts of a particular case with those of other cases.

⁶ [2002] EWHC 2086

⁷ [1992] BCC 524

⁸ For example, *R v Executive Counsel of the Joint Disciplinary Scheme* [2002] EWHC 2086, which follows *R v Chance, ex p Smith* [1995] BCC 1095 and *ex p Fayed*