

Health and Care Professions Tribunal Service

PRACTICE NOTE

Conviction and Caution Allegations

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

Introduction

1. Article 22(1)(a)(iii) of the Health Professions Order 2001 (the Order) provides that one of the grounds upon which an allegation may be made is that a registrant's fitness to practise is impaired by reason of:
"a conviction or caution in the United Kingdom for a criminal offence, or a conviction elsewhere for an offence which, if committed in England and Wales, would constitute a criminal offence,".
2. Thus, what are often termed "conviction allegations" include allegations that a registrant's fitness to practise is impaired as a consequence of:
 - a. being convicted for an offence by a criminal court in any part of the UK;
 - b. accepting a caution for an offence from a UK police force or other law enforcement agency;
 - c. being convicted by a court outside of the UK, but for an offence which is recognised as a crime in English law; or
 - d. being convicted by a Court Martial.
3. Conviction allegations are not about punishing a registrant twice for the same offence. A conviction or caution should only lead to further action being taken against a registrant if, as a consequence of that conviction or caution, the registrant's fitness to practise is found to be impaired. The Panel's role is "to protect the public and maintain the high standards and reputation of the profession concerned."

Cautions

4. The practice for administering cautions varies in England and Wales, Scotland and Northern Ireland but certain common principles apply throughout the UK. It remains important however to check that the correct approach is taken depending upon the country in which the caution or equivalent was imposed.

5. Cautions are generally a discretionary, non-statutory, means of disposing of offences without the need for the offender to appear before a court. Typically, they are used for first time, low level offences by adults, where diversion from the courts is appropriate for both the offence and the offender.
6. Although most cautions are non-statutory disposals, they are nonetheless treated as an 'offence brought to justice' and will appear on Disclosure and Barring Service and equivalent criminal record checks. For that reason, there are safeguards in place to protect the offender in all three UK jurisdictions, the principles of which are that cautions should only be administered where:
 - a. the evidence is sufficient to provide a realistic prospect of conviction;
 - b. the offender unequivocally admits having committed the offence; and
 - c. the offender agrees to accept the caution and understands the significance of, doing so
7. Cautions should not be administered where there is insufficient evidence to bring a prosecution, or where a person does not admit the offence or there are doubts about the offender's capacity to do so.

Binding Over and Discharge

8. The powers available to certain criminal courts include the power to 'bind over' offenders or to discharge them either absolutely or subject to conditions. These methods of disposal do not constitute a conviction for the purposes of Article 22(1) of the Order.
9. Binding over is a preventative measure which, even though it may be imposed as a penalty, is not regarded as a criminal conviction. Similarly, the Powers of Criminal Courts (Sentencing) Act 2000 provides that "absolute discharge" and "conditional discharge" orders are not to be treated as a conviction for the purposes of any enactment (such as the Order) which authorises the imposition of any disqualification or disability upon convicted persons.
10. Consequently, in cases where a registrant is bound over or receives an absolute or conditional discharge, a conviction allegation cannot be made against the registrant. If the HCPC investigates the circumstances which led to that action being taken and wishes to pursue the matter further, it must make an allegation of misconduct against the registrant.
11. Different terms and approaches are used in Scotland and Panels should ensure that they understand the significance of these type of orders when considering disposals in Scotland.

Dealing with conviction allegations

12. The Panel rules provide that:

“where the registrant has been convicted of a criminal offence, a certified copy of the certificate of conviction (or, in Scotland, an extract conviction) shall be admissible as proof of that conviction and of the findings of fact upon which it was based;”

13. Those rules also provide that, evidence is admissible before a Panel if it would be admissible in civil proceedings before the appropriate court in that part of the UK where the Panel is sitting.
14. In all three UK jurisdictions, evidence that a person has been convicted of an offence is generally admissible in civil proceedings as proof that the person concerned committed that offence, regardless of whether or not the person pleaded guilty to that offence.
15. Consequently, in considering conviction allegations, Panels must be careful not to ‘go behind’ a conviction and seek to re-try the criminal case.
16. The Panel’s task is to determine whether fitness to practise is impaired, based upon the nature, circumstances and gravity of the offence concerned, and, if so, whether any sanction needs to be imposed. A similar approach should be adopted when considering cautions, as a caution should not have been administered unless the offender has made a clear admission of guilt.
17. In considering the nature, circumstances and gravity of the offence, Panels need to take account of public protection in its broadest sense, including whether the registrant’s actions bring the profession concerned into disrepute or may undermine public confidence in that profession. In doing so, Panels are entitled to adopt a ‘retrospective’ approach and consider the conviction as if the registrant was applying for registration with the HCPC.
18. In reaching its decision, a Panel should also have regard to any punishment or other order imposed by the courts, but must bear in mind that the sentence imposed is not a definitive guide to the seriousness of an offence. Panels should not assume that a non-custodial sentence implies that an offence is not serious. One factor which may have led the court to be lenient is the expectation that the registrant would be subject to regulatory proceedings. In any event, the purpose of imposing sentences in criminal cases and sanctions in regulatory proceedings is different.
19. As Dame Janet Smith noted in the Fifth Shipman Inquiry Report:

“The fact that the court has imposed a very low penalty or even none at all should not lead the [regulator] to the conclusion that the case is not serious in the context of [its own] proceedings...The role of the [regulator] in protecting [service users] involves different considerations from those taken into account by the criminal courts when passing sentence...What may well appear relatively trivial in the context of general criminal law may be quite serious in the context of [professional] practice.”