

PRACTICE NOTE

Drafting Fitness to Practise Decisions

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

Introduction

1. This practice note provides guidance on the drafting of fitness to practise decisions by HCPC's Practice Committees.
2. Panels need to explain their decisions, also called determinations, and provide adequate reasons for them:
 - a. so that everyone involved in a case, as well as members of the public, can understand the decision;
 - b. so that the registrant concerned is able to decide whether to exercise the right of appeal;
 - c. as part of the obligation to provide a fair hearing under Article 6 of the European Convention on Human Rights¹; and
 - d. in order to enable the Professional Standards Authority (PSA) to consider whether to exercise its statutory powers to challenge a decision.

What a 'reasoned' decision should include

3. Every decision needs to explain what the Panel decided and, just as importantly, why it did so. It should enable readers, without the need to refer to any other materials, to understand the nature and seriousness of the issues before the Panel, its findings and decision, and the reasons for them.
4. The reasons should provide a logical explanation of how and why the Panel decision was reached.
5. The detail required will depend upon the nature and complexity of the case, but decisions should include:

¹ As given effect by the Human Rights Act 1998

a. any relevant procedural issues

- i. A decision should record any significant procedural steps and how they were dealt with, such as adjournment requests, proceeding in absence, Human Rights Act and other legal challenges, and any advice given by the Legal Assessor.
- ii. Any decision by a Panel to disregard the Legal Assessor's advice must be recorded in detail.²

b. the allegations or a description of them

- i. Where the allegations are lengthy, complex, or of a technical nature, an overview may be helpful.

e.g. this case concerns the registrant's conduct towards service users [A and B] who were receiving [service C] at [facility D] between [dates E and F].

c. the Panel's findings on questions of fact

- i. The Panel should set out the undisputed facts, the facts alleged, the facts in dispute, and in relation to the latter the findings of fact which it made and why.
- ii. Where the credibility and/ or reliability of witnesses is in issue, or two witnesses give contradictory evidence, the Panel should set out any factors that it considered in giving appropriate weight to a witness' evidence, or which led to the evidence of one witness being preferred over another. This will help readers understand why a Panel has reached a particular decision on a particular issue.

d. whether the facts found proved amount to one or more of the statutory ground(s) of the allegation and why

- i. There are five statutory grounds upon which allegations can be based:
 - misconduct
 - lack of competence
 - conviction or caution
 - physical or mental health
 - determination by another regulator

² The requirement for a Committee to record any occasion where they do not accept the advice tendered by a legal assessor at a hearing is set out in article 5 of the Health Professions Order 2001 (Legal Assessors) Order of Council 2003

- ii. The Panel's judgement on this issue must be recorded in sufficient detail for readers to understand why the facts do or do not amount to the ground(s) alleged.
- iii. The decision should demonstrate that the Panel has considered the relevant [HCPC standards](#). It should state which standards are relevant, explaining whether or not they have been breached, and giving reasons for the Panel's decision.

e. whether or not fitness to practise is impaired and why

- i. Panels should refer to the [Finding Impairment Practice Note](#) when reaching their decision on impairment.
- ii. This aspect of a decision should address the current and forward-looking nature of the impairment test, any mitigating or aggravating features, and consideration of the wider public interest. When addressing the public interest, Panels should address both the personal and public components of impairment, and give reasons as to why impairment is or is not found for each component.
- iii. Where a Panel decides that fitness to practise is not impaired, it must take particular care to ensure that the decision clearly sets out its reasoning as to why the registrant's fitness to practise is not currently impaired, on both public protection and public interest grounds. The Panel should explain the basis on which it concludes that a fully informed member of the public would not have concerns about the reputation of the profession or the regulatory process if a finding of impairment were not made.

f. any sanction that was imposed and why it was appropriate

- i. The Panel must explain what sanction was imposed and why, and how the sanction will protect the public and wider public interest. In writing any decision on sanction, the Panel must provide clear and detailed reasoning to support its decision, explaining the issues it has considered and the impact any aggravating or mitigating factors have had on the outcome.
- ii. The Panel should consider each sanction in turn, in order of the least to most restrictive, and should explain in its decision why each sanction is or is not appropriate and proportionate in the particular case. It is not sufficient to assert that something is "appropriate" or "disproportionate" without explaining the reasons why.
- iii. The registrant's own interests, and the public interest in retaining a safe practitioner, are factors that are likely to be relevant to the

Panel's assessment of proportionality, and should be covered in the Panel's reasons where that is the case.

- iv. As well as providing reasons for the type of sanction imposed, the Panel should also provide full reasons for the length of the sanction decided.
- v. It is usually helpful to refer in the decision to relevant paragraphs of the HCPC's [Sanctions Policy](#). If the sanction imposed may appear to deviate from any part of the Sanctions Policy, this must be addressed in the Panel's reasons.

Drafting Style

- 6. Decisions should be written in plain English and should be concise, while still providing all the relevant information. Any determination should be a standalone document so that anyone reading it can understand the Panel's reasons. Panels should also bear in mind that their decisions may be reviewed by bodies such as the High Court or the PSA.
- 7. Decisions should be written:
 - a. using clear and unambiguous terms, short sentences and short paragraphs;
 - b. using precise but everyday language rather than complicated or unfamiliar words (e.g. "start" instead of "commence"); and
 - c. avoiding jargon, technical or esoteric language (or explaining any that must be used).
- 8. Panels should also be conscious of the "tone of voice" of written decisions and ensure this is appropriate, particularly where the registrant and/or witnesses may be vulnerable. Whilst panels should give clear reasons for their assessment of the credibility or reliability of a witness, language which is overly critical of a party's evidence, or adversarial language, should be avoided.

Sanctions

- 9. Panels must refer to the [HCPC's Sanctions Policy](#) when reaching a decision on the appropriate sanction to impose. Any sanction imposed by a Panel must be set out in the form of an order, which is addressed to the HCPC's Registrar. The Registrar will then annotate or amend a registrant's entry in the HCPC Register, in accordance with the Panel's decision, from the date that the order takes effect.
- 10. Caution Orders and Suspension Orders need to direct the Registrar to annotate or suspend a register entry for a specified period.

11. A Striking Off Order needs to direct the Registrar to strike a registrant from the Register.
12. Conditions of Practice Orders should:
 - a. direct the Registrar to annotate the Register (to show that the registrant is subject to the conditions);
 - b. set out the conditions with which the registrant must comply;
 - c. specify the length of the Order;
 - d. specify any review periods required.
13. Those detailed conditions should be written in the second person ('you', 'your') so that they are clearly addressed to the registrant concerned.
14. A set of sample conditions can be found in the [Conditions Bank document](#). The conditions set out in this document are not prescriptive, and merely act as guidance on the type of conditions a Panel can impose.

Assistance from the Legal Assessor

15. Panels are reminded that Legal Assessors will assist a Panel in the drafting of its decision but will not take any part in the decision making process.

Appendix 1

Quick reference list of quality indicators for decisions

1. The decision includes the allegations against the registrant.
2. If the allegations are lengthy, complex, or technical, the Panel provided an overview.
3. The Panel sets out whether the facts are proved or not, including how and why they came to their decision.
4. The Panel sets out if the facts amount to the ground(s) alleged, including how and why they came to their decision.
5. The Panel sets out their findings on impairment, explaining its conclusions about what the public interest requires. This may include reference to both the personal and public components of impairment.
6. The Panel set out how and why they have come to a decision on what sanction, if any, to impose, or why they have not imposed a sanction.
7. Any sanction is in line with the Sanctions Policy and where not, the Panel provided clear reasons for diverting from the policy.
8. The Panel's reasoning is consistent at each stage (facts / grounds / impairment).
9. Only relevant factors are considered at each stage.
10. The Panel provided clear reasons for any assessment on the credibility and/or reliability of any witness.
11. The decision is self-contained, so that without any other materials the average person is able to understand the case before the Panel, the decision it reached, and why it did so.
12. The decision is written in plain English and in clear and unambiguous terms, using short sentences and short paragraphs.
13. The decision is written in an appropriate tone of voice, having particular regard to any vulnerable registrants or witnesses.