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The fitness to practise adjudication service
of the Health and Care Professions Council.

Health and Care Professions Tribunal Service

PRACTICE NOTE

'Half-Time' Submissions

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

Introduction

A registrant may make a 'half-time' submission that there is 'no case to answer'[1] after the HCPC has presented its case. It is a submission to the effect that the HCPC has failed to discharge the burden of persuasion, and in consequence, that the case (or a part of it) should not proceed further.

The Panel rules[2] make no express provision for half-time submissions, but it is entirely proper for a Panel to consider and rule upon a half- time submission made by or on behalf of a registrant.

No useful purpose is served by a Panel continuing proceedings if, based upon the case which it has been put before the Panel there is no real prospect of the HCPC proving the facts alleged or of the Panel concluding that the facts amount to the statutory ground of the allegation (e.g. misconduct) and, in turn, that fitness to practise is impaired.[3]

Managing half-time submissions

Fitness to practise proceedings are civil in nature, but share some of the characteristics of criminal proceedings in that they are not based upon a dispute between parties but upon an allegation made against a registrant by a public authority. Consequently, in dealing with half-time submissions, Panels should have regard to the test which applies in criminal proceedings laid down in *R v Galbraith*[4]:

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[1] This is a challenge to the case which the HCPC has been put before the Panel at the hearing, not the earlier case to answer decision made by an Investigating Panel.

[2] HCPC (Investigating Committee) (Procedure) Rules 2003; HCPC (Conduct and Competence Committee) (Procedure) Rules 2003; HCPC (Health Committee) (Procedure) Rules 2003.

[3] The HCPC has the burden of proving the facts alleged. Whether those facts amount the statutory ground and, in turn, whether fitness to practise is impaired are matters of judgement for the Panel which do not require separate proof *CRHP v GMC and Biswas* [2006] EWHC 464 (Admin).

[4] [1981] 1 WLR 1039, per Lord Lane CJ

"If there is no evidence that the crime alleged has been committed by the defendant, there is no difficulty - the judge will stop the case. The difficulty arises where there is some evidence but it is of a tenuous character, for example, because of inherent weakness or vagueness or because it is inconsistent with other evidence.

Where the judge concludes that the prosecution evidence, taken at its highest, is such that a jury properly directed could not properly convict on it, it is his duty, on a submission being made, to stop the case.

Where however the prosecution evidence is such that its strength or weakness depends on the view to be taken of a witnesses reliability, or other matters which are generally speaking within the province of the jury and where on one possible view of the facts there is evidence on which the jury could properly come to the conclusion that the defendant is guilty, then the judge should allow the matter to be tried by the jury."

Procedure

The approach which Panel should adopt in dealing with half-time submissions proceedings is first to address the following question in respect of each disputed allegation (or element of an allegation) :

1. has the HCPC presented <u>any</u> evidence upon which the Panel could find that allegation or element proved?

If not, then the answer is straightforward. The burden of proof has not been discharged and there is no case to answer in respect of that allegation or element.

Where the HCPC has presented some relevant evidence, then the Panel should move on to address the following questions:

2. is the evidence so unsatisfactory in nature that the Panel could not find the allegation or element proved?

3. if the strength of the evidence rests upon the Panel's assessment of the reliability of a witness, is that witness so unreliable or discredited that the allegation or element is not capable of being proved?

In addressing these questions, the Panel must take care in applying the burden and standard of proof, remembering that it is for the HCPC to prove the facts alleged and that the requisite standard of proof is the balance of probabilities. If either question is answered in the affirmative, then again there is no case to answer in respect of that allegation or element.

If the case proceeded to its conclusion, the decision of whether it is 'well founded' would require the Panel to determine whether, in its judgement, the facts alleged:

- amount to the statutory ground of the allegation; and

- in turn, establish that a registrant's fitness to practise is impaired.

Consequently, in dealing with any half-time submission, the Panel may also need to address those issues by answering the following question:

4. is the evidence which the HCPC has presented such that, when taken at its highest, no reasonable Panel could properly conclude that:
   (a) the statutory ground of the allegation is met; or
   (b) the registrant's fitness to practise is impaired?

This question is likely to arise in one of two ways, where it submitted either that

- the evidence is unsatisfactory, for example, being tenuous, vague, weak or inconsistent; or
- the allegation is misconceived, in that the evidence is not disputed but the undisputed facts are insufficient to establish the statutory ground and, in turn, impairment.

If either limb of that question is answered in the affirmative then the Panel is entitled to conclude that there is no case to answer in respect of that allegation or element.

Proceeding further

Unlike a judge sitting with a jury, Panels must decide matters of both law and fact. In dealing with half-time submissions Panels need to recognise that, having considered a submission, they may disagree with it. In that event, the Panel will need to proceed further and hear any evidence that the registrant wishes to present. Panels must do so fairly and objectively, retaining and applying an open mind in relation to all the facts.

For that reason, in reaching a decision on any half-time submission, the Panel should only consider the evidence which has been presented by the HCPC. It should disregard any evidence which the registrant has provided in advance but has not yet presented to the Panel.

22nd March 2017