Health and Care Professions Tribunal Service

PRACTICE NOTE

Joinder

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

Introduction

The Panel rules[1] provide that, where it would be just to do so, a Panel may consider and determine together:

- two or more allegations against the same registrant; or
- allegations against two or more registrants.

Joining allegations

Joinder is a discretionary power which must be carefully exercised by Panels. Joining several allegations against a registrant or dealing jointly with registrants accused of related allegations provides obvious practical benefits, such as reducing demands on resources and witnesses' time. However, the overriding factor which Panels must take into account is whether it would be just to do so.

In exercising that discretion, the principles applied by the criminal courts offer helpful guidance, most notably those derived from the decision in *R v Assim*:[2]

- the governing factor in making joinder decisions is whether it is just to do so. In reaching a decision, Panels need to consider the interests of justice as a whole and foremost among those interests must be those of the registrant(s) concerned;
- joining allegations against a single registrant will be appropriate where the allegations are linked in nature, time or by other factors, such as where the registrant faces several allegations:
  - of the same or a similar character;
  - based on the same acts, events or course of dealing; or
  - based on connected or related acts, events or courses of dealing.

[1] HCPC (Investigating Committee) (Procedure) Rules 2003, r.4(8) and r. 6(7); HCPC (Conduct and Competence Committee) (Procedure) Rules 2003, r.5(4); HCPC (Health Committee) (Procedure) Rules 2003, r.5(4).

[2] (1966) 50 Cr. App. Rep. 224.

- as a general principle, it would be inappropriate for a Panel to join unconnected allegations against several registrants;
- joining allegations against more than one registrant will be appropriate where they are subject to the same allegation, where there is evidence that they acted in concert or the allegations are linked in time or by other factors, for example where:
  - the allegations concern participation in the same act, event or course of dealing (or any series of them);
  - the allegations are based upon connected or related acts, events or courses of dealing; or
  - the allegations relate to actions taken in furtherance of a common enterprise.
- where joinder would be appropriate based on the nature of the allegations, there may be other reasons why the discretion to do so should not be exercised. For example, where one registrant has failed to respond and joinder might cause delay or unfairness in dealing with another registrant or where it is apparent that registrants will present antagonistic or mutually exclusive defences.

Joinder and fitness to practise

The criminal law is not of direct application in fitness to practise proceedings and, whilst it provides helpful guidance, Panels should not take the analogy too far. As the court stated in *Wisson v HPC*[3] the criminal rules on joinder exist in part because a defendant will be tried:

> *"...by a jury who cannot be expected necessarily to have the expertise to be able to differentiate between conduct on one occasion and another; and they might well be adversely affected if there is a joinder of charges against an individual where there is no proper link and no proper basis for that joinder....The situation is somewhat different when one is dealing with a panel of specialists..."*

Ultimately, a Panel will need to decide whether a registrant's fitness to practise is impaired and, where that is found to be the case, what steps need to be taken to protect the public. A Panel will be aided in that task if it has a proper understanding of all that the registrant is alleged to have done. In *Reza v GMC*[4] the Privy Council set out the Panel's need:

> *"...to be informed of all the facts alleged and all the background which would help them to determine in the interests of the public and the profession what if anything is to be done by way of [sanction]."*

This does not mean that allegations against the same registrant should always be joined. A balance must be struck and justice will always be the governing factor, but the connection between allegations or the relevance of one to another are important considerations. This was explained in *Wisson* in the following terms:

[3] [2013] EWHC 1036 (Admin)

[4] [1991] 2 AC 182

"it is always necessary that the totality of any alleged conduct is decided where there are issues and where there are disputes before any sanction is to be imposed. That does not of itself necessarily mean that the same Panel must deal with all issues but it is a pointer in that direction..."

Evidence management

If allegations against more than one registrant are joined, it will not necessarily be the case that all of the evidence presented is relevant to all of the allegations faced by all of those registrants.

Each registrant is entitled to have their case decided solely on the evidence against them and Panels must take care to consider evidence only in relation to the allegation and registrant to which it relates.

Severance

The decision to join allegations will often be taken at an early stage in the case management process and, as matters progress, it may become apparent that it would be more appropriate for those allegations to be dealt with separately. For example, where witnesses are not available in respect of all the joined allegations or where one registrant is causing delays which will unfairly affect another. A Panel's discretion to join allegations includes the discretion to sever and deal separately with joined allegations where it would be just to do so.