

August 2015

UKPHR's indicative sanctions policy

Preface

In renewing UKPHR's accreditation for the year 03 April 2015 – 03 April 2016, the Professional Standards Authority provided the following learning points to be verified at the next annual review of accreditation:

1. UKPHR could consider developing an indicative sanctions policy
2. UKPHR could consider including the timeframes they will meet at each stage of the complaints process in their guidance for members of the public on their complaints and appeals procedures.

1. Introduction

- 1.1 Information received by UKPHR about the health, conduct or performance of a registrant, including information provided by a registrant, which raises concerns about his or her fitness to practise will be investigated by the Registrar in the first instance.
- 1.2 A preliminary investigation may result in a finding that the registrant's fitness to practise is not in fact impaired, in which instance the case will be closed and no action taken.
- 1.3 In the contrary case, namely a preliminary investigation discloses that a concern about fitness to practise appears justified, the Registrar will give consideration as to whether to refer to the Fitness to Practice Panel or to impose a sanction, and if so which sanction or sanctions.
- 1.4 The key prerequisites to applying appropriate sanctions are *effective investigation* and *timeliness*.
- 1.5 For a sanction to be seen as fair by all relevant audiences (which include the public, complainants, registrants and in some instances employers of registrants) it needs to be based on an accurate understanding of the facts justifying the imposition of a sanction and be reasonably close in time to the acts, omissions or conditions on which those facts are founded.

2. Options

2.1 The range of outcomes available to the Registrar and/or a Fitness to Practise Panel (and, on appeal, an Appeals Panel) is as follows:

No sanction imposed

Agree a statement of remedial action

(A statement of proposed training, medical treatment or such other steps agreed by the registrant, compliance with which is a condition of her/his continued registration with UKPHR)

Issue a warning to the Registrant regarding the behaviour relating to the complaint

Place condition/s upon the registrant's practice

Suspend the registrant's registration for a period not exceeding 12 months

Erase the registrant's name from the register.

3. Purpose

- 3.1 Registration is the appropriate regulatory response for the management of the risk of harm to the public arising out of public health practice.
- 3.2 Sanctions, where justified, will be applied with the purpose first and foremost of public protection through reducing risk of harm where possible and effectively managing such risk as cannot reasonably be further reduced.
- 3.3 This document sets out the specific factors that will be taken into account in each individual case in deciding the most appropriate response required to meet this purpose.

4. Registrar

- 4.1 The Registrar's options are:
- 4.2 Dismissal of a complaint if it is decided that it is frivolous, vexatious or obviously lacking in merit.
- 4.3 Referral of the matter to the Fitness to Practise Panel if it is decided that there is a realistic prospect that, if established, the facts would demonstrate that the registrant's fitness to practise is impaired to a degree justifying action on registration.
- 4.4 The Registrar may where he/she considers it appropriate suspend a referral to the Fitness to Practise Panel and invite the registrant to agree a statement of remedial action.

- 4.5 Consequently, from the sanctions options listed above, the Registrar may only choose to act to agree a statement of remedial action, otherwise the Registrar must dismiss the matter or refer the matter to the Fitness to Practise Panel, including where the Registrar invites the Panel to suspend registration or attach conditions pending a hearing in accordance with Rule 5.8 of the Fitness to Practise Rules.
- 4.6 In deciding whether to invite a registrant to agree a statement of remedial action the Registrar will have regard to the following factors:
- The appropriateness of this course of action as opposed to the imposition of a more severe sanction having regard to the seriousness of the acts, omissions or conditions which were found to have occurred, the risk of harm that may arise in future if these are not addressed and the likely effectiveness of this course of action in addressing that risk of harm.
 - The availability of training, medical treatment or such other steps as in the Registrar's view would, if undertaken by the registrant, address the concern which has been found to be justified.
 - The views of any complainant or complainants.
 - The views of the registrant and whether the registrant's consent is freely given and is sincere.

5. Fitness to Practise Panel

- 5.1 All the sanctions options listed above are available to the Fitness to Practise Panel if it decides that the registrant's fitness to practise is impaired. In deciding which sanction or sanctions to impose the Fitness to Practise Panel will have regard to the following factors:

No sanction imposed

The Fitness to Practise Panel may decide to take no further action because, for example, the facts disclose that any failing was minor, temporary or a technicality unlikely to reoccur and/or the investigation and hearing process has adequately brought to the registrant's attention what was wrong and as a result the same failing is unlikely to reoccur and/or publication of the Fitness to Practise Panel's finding is a sufficient sanction in the circumstances.

Agree a statement of remedial action

The same factors as those available to the Registrar (stated above) will be taken into consideration when deciding whether to invite a registrant to agree a statement of remedial action.

Issue a warning

This sanction may be appropriate where the facts disclose acts, omissions or conditions too serious for the Fitness to Practise Panel to take no action but not so serious as to justify the imposition of conditions on, or suspension or removal of, the registrant's registration. Factors that are likely to be taken into account in justifying this sanction include:

- The seriousness of the acts, omissions and conditions found to have occurred.
- The risk of harm if imposition of conditions, suspension or removal of registration is not implemented.
- Absence of any previous complaints or concerns about the registrant's practice.
- The registrant's reflection on the relevant failing or failings and willingness to access any relevant training, medical treatment or such other steps as in the Fitness to Practise Panel's view would, if undertaken by the registrant, address the concern which has been found to be justified.
- The views of any complainant or complainants.

Place conditions on practice

This sanction may be appropriate where the facts disclose acts, omissions or conditions too serious for the Fitness to Practise Panel to issue a warning but not so serious as to justify suspension or removal of, the registrant's registration. Factors that are likely to be taken into account in justifying this sanction include:

- The seriousness of the acts, omissions and conditions found to have occurred.
- The risk of harm if suspension or removal of registration is not implemented.
- Evidence of any previous complaints or concerns about the registrant's practice.
- The registrant's reflection on the relevant failing or failings and willingness to access any relevant training, medical treatment or such other steps as in the Fitness to Practise Panel's view would, if undertaken by the registrant, address the concern which has been found to be justified.
- The views of any complainant or complainants.

These factors equally apply in a situation when the Fitness to Practise Panel has been invited by the Registrar to place condition/s on practice pending a final hearing. In this situation, the Fitness to Practise Panel will additionally have to be satisfied that no less an action can be taken to manage the perceived risk of harm pending the final hearing. If the Fitness to Practise Panel considers that the matter is so urgent that a decision should be made before hearing from the registrant it will take steps to arrange an early hearing for the purpose of ascertaining the views of all parties and considering whether to continue or to withdraw the condition pending the final hearing.

Suspend registration

This sanction may be appropriate where no action short of preventing the registrant from practising is sufficient to protect the public from the risk of harm such is the seriousness of the impairment of the registrant's fitness to practise. The Fitness to Practise Panel will be deciding between this option and ending the registrant's registration altogether. Factors that are likely to be taken into account in justifying this sanction rather than any of the foregoing sanctions include:

- The seriousness of the acts, omissions and conditions found to have occurred.
- The risk of harm if suspension or removal of registration is not implemented.
- Evidence of any previous complaints or concerns about the registrant's practice.
- The views of any complainant or complainants.

These factors equally apply in a situation when the Fitness to Practise Panel has been invited by the Registrar to suspend the registrant's registration pending a final hearing. In this situation, the Fitness to Practise Panel will additionally have to be satisfied that no less an action can be taken to manage the perceived risk of harm pending the final hearing. If the Fitness to Practise Panel considers that the matter is so urgent that a decision should be made before hearing from the registrant it will take steps to arrange an early hearing for the purpose of ascertaining the views of all parties and considering whether to continue or to withdraw the condition pending the final hearing.

Factors that are likely to be taken into account in justifying this sanction rather than ending the registrant's registration altogether include:

- The seriousness of the acts, omissions and conditions found to have occurred.
- The risk of harm if suspension or removal of registration is not implemented.
- Evidence of any previous complaints or concerns about the registrant's practice.
- The registrant's reflection on the relevant failing or failings and willingness to access re-training and/or necessary medical treatment while under suspension as in the Fitness to Practise Panel's view would, if undertaken by the registrant, address the concern which has been found to be justified.
- The views of any complainant or complainants.

End the registrant's registration (Erasure)

This sanction may be appropriate where no action short of preventing the registrant from practising altogether is sufficient to protect the public from the risk of harm such is the seriousness of the impairment of the registrant's fitness to practise. Factors that are likely to be taken into account in justifying this sanction include:

- The seriousness of the acts, omissions and conditions found to have occurred.
- The risk of harm if suspension or removal of registration is not implemented.
- Evidence of any previous complaints or concerns about the registrant's practice.
- The views of any complainant or complainants.

6. Timeframes for complaints processes

Fitness to practise complaints

- 6.1 UKPHR will normally acknowledge receipt of written communications within 3 working days.
- 6.2 Any decision by the Registrar to dismiss a complaint or refer it to the Fitness to Practise Panel will normally be made within ten working days of receipt of any response from the registrant or within 60 working days of receipt of the Complaint, whichever is the sooner. If more time than this is needed, interested parties including any complainant and the registrant will be notified of this fact, together with the reasons and a new deadline for making a decision.
- 6.3 Within 60 working days of the Registrar's referral, the Fitness to Practise Panel will send all parties notice of a hearing date unless:
 - 6.3.1 The Registrar asks for more time in which to collect evidence and prepare for the hearing.
 - 6.3.2 The complainant and/or the registrant ask for a delay in setting the hearing date for a reason or for reasons the Fitness to Practise Panel thinks reasonable.
- 6.4 The notice of a hearing date must specify a date for the hearing that is at least 20 working days from the serving of the notice.
- 6.5 The Fitness to Practise Panel will provide all parties prior to the hearing with its estimate of the likely length of the hearing.
- 6.6 The Fitness to Practise Panel will, where possible, make its decision and notify its decision to all parties at the end of the hearing. If it is necessary to reserve its decision to a later date, the Fitness to Practise Panel will give all parties its estimate of when it will make its decision.
- 6.7 A notice of appeal must be sent to the Administrator within 20 working days of the date of the Fitness to Practise Panel's decision. Appeals are heard by a separate Appeals Panel.

UKPHR service complaints

- 6.8 UKPHR will normally acknowledge receipt of written communications within 3 working days.
- 6.9 UKPHR aims to resolve complaints relating to its services normally within 28 working days. If more time than this is needed, UKPHR will notify the complainant or complainants of this fact, together with the reasons and a new deadline for making a decision.
- 6.10 There is no time limit on requesting a review of a decision taken by UKPHR to resolve a complaint but UKPHR reserves the right to decline to carry out a review if a review is requested a considerable time afterwards (more than 3 months after the complaint was resolved).

6.11 UKPHR will give a decision in respect of a review normally within 28 working days of receiving the request for a review. If more time than this is needed, UKPHR will notify the complainant or complainants of this fact, together with the reasons and a new deadline for making a decision.