

What happens if a concern is raised about me?

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What happens if a concern is raised about me?

About this brochure

This brochure provides you with the information you need if a concern is raised about you. It gives you information about the process a case will go through and the possible outcomes.

We recognise that having a concern raised about you can be a stressful experience so we try to make our processes as open and clear as possible. We hope the information in this brochure will help you.

About fitness to practise

Our objectives are:

- to protect and promote the health and safety of the public;
- to protect and uphold public confidence in the professions we regulate;
- to set and maintain professional standards and conduct for members of those professions.

The health and care professionals we regulate must be fit to practise. By fitness to practise we mean where a registrant has the skills, knowledge, character and health to practice safely and effectively. Fitness to practise may also involve issues outside of professional or clinical performance. The conduct of a professional outside of their working environment may involve fitness to practise where it could affect the protection of the public or undermine public confidence in their profession.

What is the purpose of the fitness to practise process?

Our fitness to practise process is designed to protect the public from those registrants who are not fit to practise. If a registrant's fitness to practise is impaired (negatively affected), it means that there are concerns about their ability to practise safely and effectively. This may mean that they should not practise at all, or that they should be limited in what they are allowed to do.

Our focus is on current impairment – that is whether a registrant may continue to present a risk. Our fitness to practise process is not designed to punish past mistakes or provide redress for past incidents, although we can take into account past failings in assessing current fitness to practise.

When will a registrant's fitness to practise be found to be impaired?

We consider every case individually. However, a registrant's fitness to practise is likely to be found to be impaired if the evidence shows that they:

- were dishonest, committed fraud or abused someone's trust;
- exploited a vulnerable person;
- failed to act in the best interests of service users;
- committed serious breaches of service user's confidentiality or data protection requirements;
- have health problems which they have not dealt with, and which may affect the safety of service users;
- hid mistakes or tried to block our investigation;
- had an improper relationship with a service user;
- carried out reckless or deliberately harmful acts;
- made serious or persistent mistakes in service-user care;
- caused harm to service users or put them at risk of harm;
- have received a conviction or accepted a caution for a criminal offence;
- were involved in violence, sexual misconduct or indecent behaviour (including any involvement in child pornography); or
- carried out other, equally serious, activities which affect public confidence in their profession.

This is not a full list and we consider every case individually.

Our standards

When considering a fitness to practise case, we will assess whether the matters complained about could amount to a breach of our standards. The two sets of standards we use are the standards of proficiency for each profession and the standards of conduct, performance and ethics (which are the same for all professions). You can find our standards and other guidance on our website at www.hcpc-uk.org/standards

Practice notes

We have published a number of practice notes which you can find on the Health and Care Professions Tribunal Service website at www.hcpts-uk.org/legislation/rules/practicenotes. These explain various parts of the fitness to practise process. We explain some of these processes in this brochure. However, you may find it useful to look at these documents for further explanation and information.

How are fitness to practise concerns raised?

Who can raise a concern?

Anyone can raise a concern about a registrant. This includes members of the public, employers and other registrants. The police will also tell us about criminal proceedings against a registrant if they decide there is a pressing social need.

If we receive information in an unusual way (for example, from a newspaper article), we can still look into it if it suggests a registrant's fitness to practise may be impaired.

We are not usually able to take forward a concern that is made anonymously, or where the person making the complaint (complainant) wants to stay anonymous. This is because we want to operate a fair and transparent process and we cannot ask for more information from the complainant if we do not know who they are. However, as our main function is to protect the public, if the concerns raised are serious we may decide that it is in the public interest for us to investigate, even if we do not have the complainant's name.

What types of cases can you consider?

We can only consider cases about fitness to practise, which we explain in more detail above. The types of cases we can consider are those that suggest a registrant's fitness to practise may be impaired by one or more of the following factors.

- **Misconduct** – behaviour which falls short of what can reasonably be expected of a registrant.
- **Lack of competence** – lack of knowledge, skill and judgement, usually repeated and over a period of time, which means a registrant is unfit to practise.
- **A conviction or caution** for an offence in the UK (or somewhere else for an offence that would be a crime if committed in England and Wales).
- **Physical or mental health** – usually an untreated or unacknowledged physical or mental-health condition. You can find information about how we approach health matters on our website at www.hcpc-uk.org/concerns/how-we-investigate/if-a-concern-has-been-raised-about-you/how-we-investigate-health-concerns
- **A decision made by another regulator responsible for health or social care.**

For fitness to practise case studies, visit our website at www.hcpc-uk.org/concerns/resources/case-studies

We can also consider allegations about whether an entry to our Register was made fraudulently or incorrectly. This might be the case if, for example, a registrant gave false information when they applied to be registered.

Because our function is to protect the public, we can investigate concerns relating to events which happened at any time or which took place before the registrant was registered. However, the length of time that has passed since the incidents of concern can affect the quality and availability of relevant information. As a result, we may not be able to investigate concerns that relate to incidents which are over five years old. We will consider each case on its own merits and will assess the methods we can use to gather relevant information, as well as any public interest factors that would justify investigation despite the length of time since the events.

What can I expect from you if a concern is raised about me?

If a concern is raised about you, you can expect us to treat you fairly and explain what will happen at each stage. We will give you details of a case manager who you can contact if you have a question and who will keep you up to date with the progress of our investigation.

Role of the case manager

We allocate a case manager to each case. The allocated case manager may change during the course of the investigation depending on the stage the case is at. If this happens, we will tell you and you will always have a named contact. Case managers are neutral and do not take the side of either you or the person who raised the concern. Their role is to manage the progress of the case throughout the process and to gather relevant information. They act as a contact for everyone involved in the case.

Case managers cannot give you legal advice but they can explain how the process works and what panels consider when making their decisions.

How long will the process take?

We understand that the investigation process can be stressful, so we try to consider cases as quickly as we can.

We aim to:

- have a case considered by the Investigating Committee within eight months of receiving criteria, which is explained below concern (if the concern meets our threshold); and
- hold a final hearing within nine months of the Investigating Committee panel's decision that there is a case to answer.

While these are our aims, the time a case takes to reach the end of the process can vary depending on the nature of the investigation we need to carry out and how complicated the issues are. As a result of this, each stage may take a shorter or longer period of time.

Your case manager will keep you informed of the progress of your case. But, if you have any questions about what is happening, or why it may be taking longer than our aims, you can contact them for an update.

What should I do?

If you are a member of a union or a professional body, you should contact them. They know our fitness to practise process well and are a good source of advice and may be able to offer you legal support if you need it. Or, you can find your own independent legal advice.

Communicating with us during the investigation process

Communicating with us, especially with the help of an adviser (see above), will make sure that your views are heard. How you respond and react to any concerns raised about you are important factors in the panel's assessment of whether your fitness to practise is impaired, if a case reaches that stage.

Your early involvement in the fitness to practise process helps us to know whether there are any other issues, such as health concerns, which may need to be taken into account and may have an influence on whether a full contested final hearing is necessary. In many cases this is likely to significantly reduce the stress of the situation, especially if it is agreed that a concern can be dealt with without a full contested final hearing.

To make sure you receive correspondence from us, please tell us about any changes to your address.

Emotional support

There are support organisations, such as the Samaritans, which can give you confidential emotional support if you need it. This may also be available through your union or professional body. You may also want to speak to your family or colleagues.

Can I continue to practise?

You can continue to practise while we investigate your case, unless a panel has placed an interim order on you preventing you from practising or restricting your practice. There is more information about interim orders on the next page.

You cannot remove yourself from our Register while there are fitness to practise proceedings outstanding against you.

Interim orders

In certain cases, we may apply for an interim order during an investigation. An interim order is a measure to protect the public by preventing you from practising, or placing limits on your practice, until your case is heard. If we do get an interim order, it will apply immediately. An interim order will be required in cases where concerns about a registrant's fitness to practice are so serious that public safety would be put at risk, or there would be a risk to the public interest or to the registrant themselves.

Examples of cases where we may apply for an interim order include sexual misconduct, serious mistakes in service-user care, or using controlled drugs in the workplace. This is not a full list and we consider every case individually. In most cases we will not ask for an interim order and that means you will be able to continue to work without any restrictions.

If we apply for an interim order, a hearing will be held at relatively short notice. You will normally be given seven days' notice of the hearing, but there may be circumstances where a hearing needs to be held at shorter notice. Because of the nature of interim order applications, a request for an adjournment (to postpone the hearing) is unlikely to be granted other than in the most exceptional circumstances.

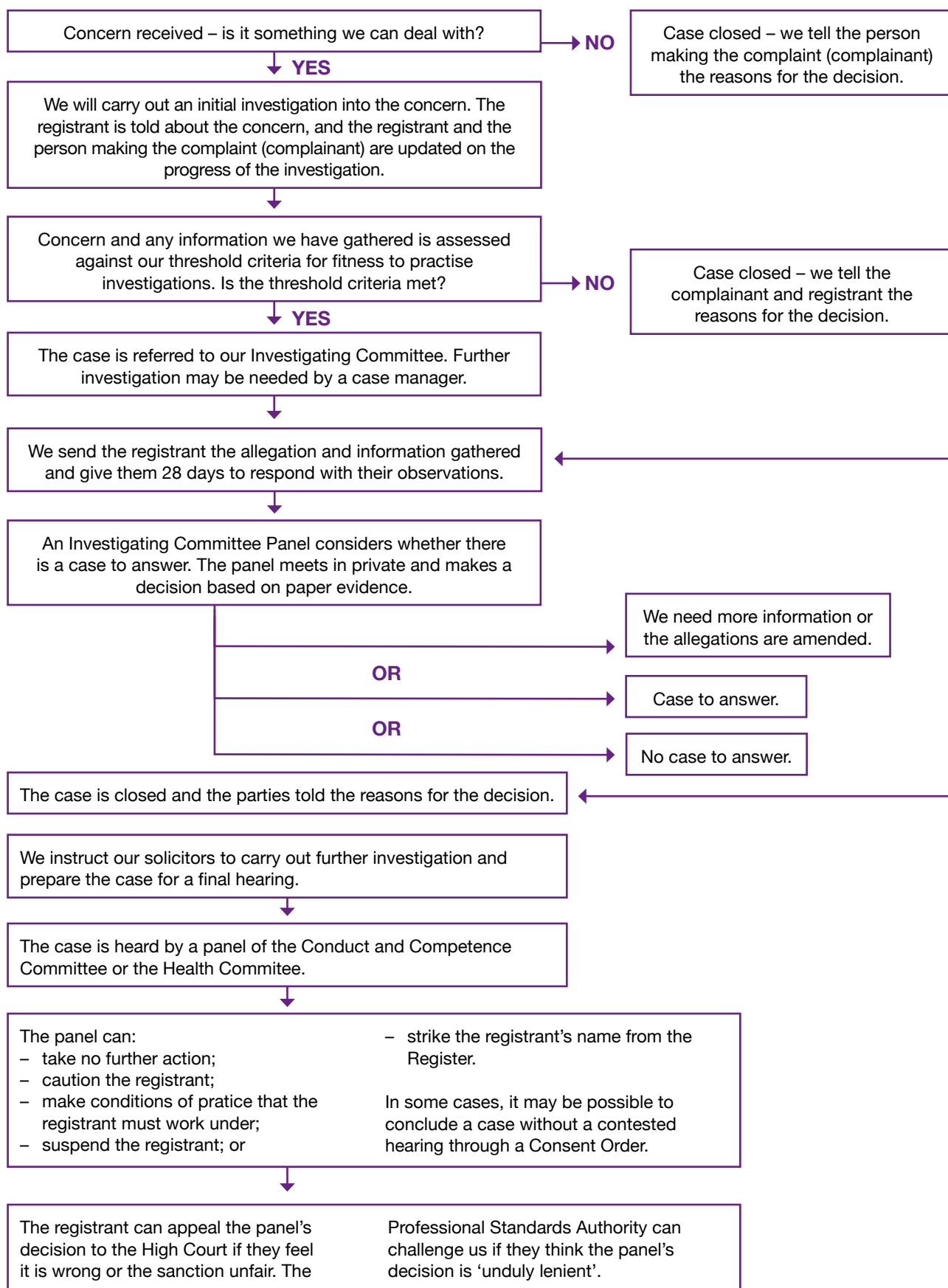
The panel who hear the application will decide whether the allegation is serious enough for an interim order.

If the panel imposes an interim order, another panel will review it after six months and then every three months after that. You can also apply for an early review of the order. The panel will decide whether it is still appropriate for an interim order to be in place.

You can find more information about interim orders on our website at www.hcpc-uk.org/concerns/how-we-investigate/interim-orders

The investigation process at a glance

At all stages of the process we can apply for an interim order to prevent the registrant from practising, or to place conditions on their practice, until the case has been closed by a panel.



What happens when we receive a concern?

We will first consider whether a concern is something we can deal with. This assessment takes place during our triage stage. If a concern is not a matter for us, we will take no further action.

If we have made a decision at the triage stage that a matter is something we can deal with, we will carry out an initial investigation to gather the relevant information about that concern. This may involve gathering information from a number of sources.

We will tell you if we have begun an initial investigation into a fitness to practise concern about you. We may also let your employer know and ask them for information, depending on the nature of the concern.

Once we have completed our initial investigation we will assess the concern (and the information we have gathered about it), against our threshold criteria for fitness to practise investigations.

This is to decide whether the concern, and the information we have gathered, amounts to an allegation that a registrant's fitness to practise may be impaired. We will take into account whether the matter could amount to a breach of our standards.

If we consider that the threshold has not been met we will close the case and take no further action.

If we find that the concern does meet the threshold, we will refer the matter to our Investigating Committee.

You can find a copy of our Threshold policy for fitness to practise investigations on our website at www.hcpc-uk.org/resources/policy/threshold-policy-for-fitness-to-practise-investigations

What happens if the threshold criteria for fitness to practise investigations is met?

If we find the concern has met our threshold criteria, we will draft a formal allegation based on the relevant information we have gathered. We may need to carry out further investigations to get more information which is relevant to those allegations. We will then refer the allegations to

a panel of our Investigating Committee, who will consider if there is a case to answer.

Article 25(1) of the Health Professions Order 2001 gives us the power to require a third party to provide us with information relevant to fitness to practise allegations. However, this does not apply to you. You do not have to give us information, or go to a hearing, if you choose not to.

You can find a copy of the Order at www.hcpc-uk.org/resources/legislation/orders/consolidated-health-professions-order-2001

This power overrides the General Data Protection Regulation 2018 and other data-protection safeguards, such as Caldicott Guardian arrangements.

The allegation and your response

We will send the allegation to you, together with a copy of the information we have gathered. We will invite you to respond, in writing, within 28 days of our letter.

If you need more than 28 days to make your response, you may ask for an extension of time. We will consider all requests for an extension and may allow further time depending on the reasons for your request. The maximum extension we can grant is 28 days. If you need more time after this, you will need to make a written application to the Investigating Committee.

It helps the Investigating Committee to make a decision if you respond and they have information from you. However, you do not have to send a response if you would prefer not to.

When we write to you, we will give you some information about what you might want to consider including in your response. For example, you could include a timeline for the events that have given rise to the concern and, if it applies, any evidence of learning and any action you have taken to improve your practice. You may want to get advice from your union or professional body (if you are a member) or a lawyer before you respond.

If you do provide a response, we will not give this to the person who raised the concern about you. However, we may need to ask them questions as a result of the points you raise.

Serious concerns

Some concerns we receive are so serious that they will meet the threshold criteria at the point that we decide that the concern is something we can deal with (at the triage stage). Examples of serious concerns include serious violence, any criminal offence relating to a child or serious or sustained dishonesty. This is not a full list.

We will automatically refer these cases to the Investigating Committee from the triage stage, without going through an initial investigation. This is because, if proven, they are likely to result in us taking action on a registrant's registration.

You can find more information about the serious concerns process in our Threshold policy for fitness to practise investigations, which is available on our website at www.hcpc-uk.org/resources/policy/threshold-policy-for-fitness-to-practise-investigations

The Investigating Committee

After you have had the opportunity to respond, we will send a copy of the allegation, the information we have gathered and your response (if you have provided one) to a panel of the Investigating Committee to decide whether there is a 'case to answer'. Each Investigating Committee panel is made up of at least three people, including someone from the same profession as you and a lay person (someone who is not on our Register). The Investigating Committee Panel's task is to look at the documentary evidence that is available and decide whether we will be likely to prove the facts of the allegation that has been made against you. The meeting is held in private and you (and the person who raised the concern) will not be invited to attend.

The Investigating Committee Panel do not decide whether the allegation is proven, they only decide whether we have a real prospect of proving the facts of the allegation at a final hearing.

The Investigating Committee Panel can decide that:

- more information is needed or that the allegation needs to be amended;
- there is a 'case to answer' (which means they will refer the case to a final hearing); or
- there is 'no case to answer' (which means that the case does not need to be taken any further).

The Investigating Committee Panel will give reasons for their decision. We will write to you (and the person who raised the concern) after the meeting and will give you the Investigating Committee Panel's decision and reasons. There is no process to appeal against a decision at this stage.

If the Investigating Committee Panel decides there is no case to answer and within three years we receive another concern about your fitness to practise which is similar in nature, the Investigating Committee Panel can take the first case into account when considering the new information.

The purpose of this power is to make sure a concern which has been closed because a case to answer could not be established can still be taken into account if another similar concern is made against you, and it is relevant to do so.

The previous concern will be taken into account as similar-fact evidence and will not be reopened as a new investigation.

What happens if the case is referred to a final hearing?

If the Investigating Committee Panel decides that there is a case to answer, your case will proceed to a final hearing. The case will be heard by:

- a panel of the Conduct and Competence Committee for cases about misconduct, lack of competence, convictions or cautions and decisions by other regulators; and
- a panel of the Health Committee for cases where your health may be affecting your ability to practise.

We usually ask solicitors to prepare the case for, and to act for us at, the final hearing itself. We will give you the details of the solicitors who will act for us when we write to you to tell you the outcome of the Investigating Committee Panel's decision.

We will put information about the allegation against you on our website four weeks before the date of your hearing. However, this information is not private and we can release it if someone asks for it.

Consent orders

In some cases, it may be possible to finish a case without a full contested final hearing. The consent process allows you to provisionally agree a proposed outcome with us, which will then be considered by a panel. The panel will either approve the proposed outcome or send the case to a full contested hearing.

This only applies in cases where you admit the allegation in full and where there is no public interest in holding a full contested hearing. A final hearing is still held, and information about the case is still available to the public. However, it can be dealt with more quickly and there is no need to call witnesses. The outcomes which may be agreed are a caution or conditions of practice or suspension orders.

In some cases, you may apply to be voluntarily removed from the Register. This is likely to only be available if you are no longer fit to practise due to a serious or long-term health condition or if you do not plan to continue to practise. If the panel approve a consent order for your voluntary removal, you will have to enter into an agreement with us confirming that you will no longer practise your profession.

Discontinuing proceedings

Occasionally, after a case has been referred for a final hearing, an assessment of the evidence gathered since the 'case to answer' decision was made may suggest the evidence is not enough to prove all or part of the allegation. If this happens, we will invite a panel to discontinue either the whole allegation or part of it. The panel will need to be satisfied that discontinuing would be appropriate.

Representation

You are entitled to be represented, or to represent yourself, throughout the fitness to practise process. It is up to you whether you want to be represented at the final hearing, but you may want to get advice from your union or professional body (if you are a member), or get independent legal advice.

Where will the final hearing be held?

Your hearing will be held in the country where you are registered, or in London if your registered address is outside the UK. In most cases, hearings in England are held at our dedicated hearing centre in Kennington (in South London).

Before the final hearing

We schedule hearings months in advance – we will ask you (or your representative) about any days we need to avoid so you will be available on the day we schedule for the hearing.

Up to 60 days before –
we will give you notice of the actual hearing date.

Up to 42 days before – we will give you the information that we plan to rely on at the hearing.

At least 28 days before – we expect to receive the information you plan to rely on at the hearing.

28 days before – we will publish, on our website, the date of the hearing and the allegations against you. We do this as hearings are heard in public.

You do not have to go to the final hearing but it is generally in your best interests to do so. If you do go, you (or your representative) will have an opportunity to question witnesses and give your side of events. If you do not go, you can provide written statements to be read out in your absence, but this will not allow you to respond directly to evidence heard on the day. The hearing may take place even if you are not there, as long as we can prove that we have given you proper notice of the hearing.

If you want an adjournment (to postpone the final hearing), you need to set out, and provide evidence for, why an adjournment should be granted. Panels will rarely grant adjournments simply because it would be more convenient for us, you or your representative to have the hearing on another date.

If you need a witness to come to the final hearing and they refuse, the panel can insist that they attend. This is known as a 'witness order'. Please contact us if you are having any problems with this and we can discuss this with you (or your representative).

At the final hearing

Hearings are usually held in public. This means that members of the public (including the media) can attend. Information heard in public may result in reports in newspapers, on the internet and sometimes on television.

Sometimes hearings are held in private due to the confidential information involved. This may be the case if, for example, the panel think they need to protect service users' confidentiality or to protect your private life or that of any witnesses. You (or your representative) can apply to the panel to hear all or part of a hearing in private. Even if the panel hold a hearing in private, any decisions the panel make, and the reasons for them, still need to be given in public (although sensitive or confidential information will not be revealed).

The panel considering the case will usually be made up of:

- a registrant from the same profession as you;
- a lay person who is not registered with us; and
- a panel chair (who may be a lay person or a registrant from one of our professions) who leads the hearing and speaks for the panel.

An independent legal assessor (an experienced lawyer) will also be at the hearing. They will give advice on law and procedure to the panel and other people taking part in the hearing. A transcript writer takes notes of everything that has been said at the hearing.

You can find more information about what happens at final hearings on the Health and Care Professions Tribunal Service website at www.hcpts-uk.org

The HCPC presenting officer (usually a lawyer) will normally open the hearing by presenting our case and calling our witnesses. You or your representative may question the witnesses. The panel may then also ask some questions. After we have presented our case and called our witnesses, you or your representative will present your case, call witnesses or make statements to the panel.

The panel will then leave the hearing room to make its decision on whether the allegation is 'well-founded'. The panel have to decide whether:

- we have proved the facts set out in the allegation;
- the facts amount to the 'grounds' set out in the allegation (for example, misconduct or a lack of competence); and
- your fitness to practise is impaired.

When they make their decision, the panel will look at whether your past behaviour suggests you may still present a continuing risk of harm. For each decision they make, they will give reasons that they will read out in public.

What other factors will the panel consider?

In deciding whether your fitness to practise is impaired, the panel take account of other factors. These relate to you and the wider public. Those factors include:

- whether you have ignored previous warnings;
- whether you have taken action to correct your behaviour;
- whether you have insight (understanding of the harm you have caused);
- whether you know what action to take to practise safely and effectively;

- the link between the conduct and your profession;
- whether your behaviour has undermined public confidence;
- whether you have not met our standards of conduct, performance and ethics; and
- whether you are likely to repeat the behaviour.

The decision is based on whether your current fitness to practise is impaired and so is based on your circumstances at the time of the hearing.

What powers do the panel have?

If the panel find the case is well-founded, they will return to hear submissions from you or your representative and from us about what action they should take. You may want to make a statement to the panel at this stage. The panel can:

- take no further action or order mediation (a process where an independent person helps you and the other people involved agree a solution to any issues);
- caution you (place a warning against your name on the Register for between one to five years);
- set conditions of practice that you must meet (for no longer than three years);
- suspend you from practice (for no longer than one year); or
- strike your name from our Register (which means you cannot practise).

Actions the panel take are to protect the public and are not meant as a punishment. The panel carefully consider the circumstances of each case and take into account all that has been said at the hearing before making their decision.

After the hearing we will write to you and send you a copy of the panel's decision. If the allegation against you is well-founded, we will put this information on our website. This will include the panel's reasons for their decision. If the case has involved any particularly sensitive information about your health or personal circumstances, we will make sure that the version available on the website does not include these very personal details. If you have any concerns about this, please contact the Fitness to Practise Department.

You can find more detail about the sanctions the panels may use in the Indicative sanctions policy. You can find a copy of this document on our website at www.hcpc-uk.org/resources/policy/indicative-sanctions-policy

After the final hearing

Publishing the decisions of the hearing

We publish decisions on our website. We do this to keep to the common law principle of open justice and Article 6 of the European Convention on Human Rights. The outcome of fitness to practise cases is a matter of legitimate public interest and the panel's decisions provide valuable information about the standards expected of registrants, help service users to make informed choices and help to maintain public confidence in the professions we regulate.

However, we recognise that a fair balance must be struck between these aims of public interest and fairness to you and other people involved in the hearings. For that reason, we normally remove hearing decisions from the website within set timescales. You can find these timescales, and more information about what we do and do not publish, in our Fitness to practise publication policy. You can download this from www.hcpc-uk.org/resources/policy/fitness-to-practise-publications-policy

Review of conditions of practice and suspension orders

If a conditions of practice order or suspension order has been made, another panel will review it shortly before it is due to run out. If you were asked to meet some conditions of practice, the panel will look for evidence that you met these conditions. If you were suspended, the panel will probably look for evidence that you have dealt with the problems that led to your suspension.

A review panel will always want to make sure that the public are protected. If they think you are not fit to practise (or if they think you should not practise without restrictions), they may extend the conditions of practice order or suspension order. They may also replace the order that is running out with another order that could have been made at the time of your original hearing. For example, they may replace a 'suspension order' with a 'conditions of practice order' if they think this provides enough public protection. They may also consider continuing the suspension order or striking you off the Register.

Applying for a review

Although conditions of practice orders and suspension orders are automatically reviewed before they run out, you can apply to have an order reviewed early. You can do this if you think your circumstances have changed since the order was put in place.

For example, if you were ordered to have training and you finished it before you had to, or if you have taken steps to sort out the issues that led to the order being made. This is not the same as appealing against the decision to impose the order.

Appeal

You can appeal against the panel's decision if you think it is wrong or the sanction is unfair. You can appeal to the High Court or the Court of Session in Scotland. You may want to get advice before you decide to appeal.

Restoration

If you are struck off the Register, you can apply for restoration (to be put back on the Register) after five years. A hearing will be held by a panel to consider your application.

Professional Standards Authority for Health and Social Care

The Professional Standards Authority for Health and Social Care is an organisation that promotes best practice and consistency among the UK health and social care regulators. It reviews all final decisions made by the regulators' fitness to practise committees. It can refer a decision to the High Court or the Court of Session in Scotland if it considers the decision is unduly lenient or not sufficient for the protection of the public.

Contact details

If you need any more information, please contact our Fitness to Practise Department using the following contact details.

Fitness to Practise Department

The Health and Care Professions Council
Park House
184—186 Kennington Park Road
London
SE11 4BU

Phone: +44 (0)20 7840 9814

Freephone (in the UK): 0800 328 4218

Fax: +44 (0)20 7820 9684

Email: ftp@hcpc-uk.org

Website: www.hcpc-uk.org

Feedback

We are constantly working towards improving our process. At the end of your case, you will receive a feedback form that will allow you to provide feedback, good or bad, about the service the Fitness to Practise Department provided to you.

If you are unhappy with the way we have dealt with the concerns raised about you and would like to make a complaint, you should contact us in writing using the following details.

Service and Complaints Manager
The Health and Care Professions Council
Park House
184—186 Kennington Park Road
London
SE11 4BU

Email: feedback@hcpc-uk.org

For more information, see our website at www.hcpc-uk.org/contact-us/customer-service

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Welsh or an alternative format,
email publications@hcpc-uk.org**