

Protecting the public: learning from fitness to practise

Introduction

CHRE is committed to promoting best practice and consistency in the regulation of healthcare professionals. This duty extends to the way the nine regulatory bodies it covers deal with concerns about the fitness to practise of healthcare professionals. Regulating fitness to practise is a core function of the regulators, and tends to be the element of regulation that attracts greatest public attention.

The regulators have worked hard in recent years to strengthen their fitness to practise procedures, for example by extending the range of sanctions they can impose. CHRE has been working with regulators to complement these advances, including working to develop indicative sanctions guidance that can be used by all the regulators.

Another way in which CHRE seeks to improve the quality of fitness to practise procedures is through Section 29 of the National Health Service Reform and Health Care Professions Act 2002. This allows for CHRE to refer decisions of the fitness to practise panels or committees of the nine regulators to the High Court, where it considers a ruling they have made is wrong or unduly lenient, and that it is necessary to do this to protect the public.

CHRE referrals under Section 29 have resulted in some decisions being changed. However, the importance of this work lies in the impact it can have on future fitness to practise decisions. The real value of Section 29 is the learning that is to be had not only from cases that have been referred, but also from those that are not referred and yet still raise important issues or concerns.

This document is a digest of feedback points that have arisen from CHRE's consideration of cases under Section 29. It is designed to assist fitness to practise panels in their consideration of future cases, and help to improve their processes and procedures. To find out more about CHRE, visit www.chre.org.uk.

Where the feedback comes from

Feedback points have arisen from three main sources:

- judgments from the High Court and Court of Appeal in Section 29 appeals;
- judgments from the High Court and Court of Appeal in cases where a registrant has appealed against a decision; and
- issues identified by CHRE members when they have considered cases at case meetings, and by CHRE staff when considering cases which have not been referred to a case meeting; these have all been discussed with the regulatory bodies.

Using this document

The feedback points are divided into four sections:

- Preparation of the case,
- Presentation of evidence,
- Conduct of hearings, and
- Making determinations.

Within each there are feedback points, and case notes, with brief details of the cases from which points have arisen.

The names of registrants are included only where the cases resulted in High Court or Court of Appeal judgments.

Most of the nine regulatory bodies have different names for their committees and panels; for simplicity, the term “panel” is used throughout. Also, the regulatory bodies have different statutory tests, so CHRE has used generic terms of “misconduct” and “impairment of fitness to practise”.

Initials for each of the regulatory bodies are used as follows:

GCC: General Chiropractic Council
GDC: General Dental Council
GMC: General Medical Council
GOC: General Optical Council
GOsC: General Osteopathic Council
HPC: Health Professions Council
NMC: Nursing and Midwifery Council
RPSGB: Royal Pharmaceutical Society of Great Britain
PSNI: Pharmaceutical Society of Great Britain

Contact us

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1. Preparation of the case

1.1 Drafting the charges

Charges must be drafted appropriately and accurately so that the panel reaches the correct finding in relation to the registrant's fitness to practise.

1.1.1 There are many examples of poorly drafted charges, which, had they been correctly or better framed, could have resulted in quite different findings. These include cases where:

- details of charges were incorrect or inaccurate, so they could not be proved, even though there was evidence of misconduct
- charges did not contain sufficient detail, so they could not be proven
- charges were too imprecise, for example by attempting to link too many separate allegations into a single charge

Case notes

1.1.2 In the case of *Rajeshwar*, the Court upheld CHRE's appeal under Section 29 on the basis that there had been a serious procedural irregularity due to incorrectly drafted charges. The judge said: "There is no doubt that the GMC should have amended the charge so as to allege indecency and/or a sexual motivation, but it simply failed to give any consideration to that issue. As a result, that issue was not considered by the panel." The judge allowed the appeal and remitted the case to the panel with a direction to amend the charge so as to allege that the registrant's conduct, as described in the charge, was sexually motivated and/or indecent, and for the matter then to be considered by a differently constituted panel. However, the charges were incorrectly drafted a second time, and as a result the panel was unable to consider the allegation of indecency.

1.1.3 In a GCC case, the charges alleged that the registrant had had sexual intercourse with two patients. The panel did not find this proved, but it did come to the view that he had had sexual contact with one patient. However, this particular allegation was not included in the charges.

1.1.4 In a GOsC case some of the charges were framed very narrowly. In one key charge, it was alleged the patient was naked. However, since it was found that she was wearing a bra (albeit undone) and was lying face down, the panel could not find the charge proven.

1.1.5 In another GCC case charges relating to the registrant treating a patient in the absence of a chaperone were linked to a charge alleging that the registrant knew that the patient was a vulnerable patient. As the panel did not find that the registrant knew that the patient was vulnerable the other part of the charges automatically fell away.

1.2 Providing panels with all necessary information

Panels must assess whether they have all the information they need to consider the case so that the case is properly put.

- 1.2.1 Panels must consider carefully the merits of requiring witnesses to give evidence at hearings. Where witness evidence is essential for the panel to be able to reach a decision on a case and impose the most appropriate sanction, arrangements should be made to avoid witnesses being exposed to publicity or to undue stress.
- 1.2.2 In cases involving child pornography, panels must consider all the evidence available, even though it is likely to be upsetting or disturbing. CHRE has had concerns that, where a panel has not imposed the most severe sanction, it is because it has failed to investigate the case and consider the evidence thoroughly.
- 1.2.3 Child pornography offences vary considerably according to the sort of material possessed. In this regard reference to *Oliver* scale is recommended in the *Fleischman* judgment. The panel should know exactly how many images would be classified at each level. This information should normally be available from the Court transcripts or the investigating police (see also 2.1).
- 1.2.4 Possession of images of child pornography for the purposes of the panel's deliberation would not constitute an offence. However, the prosecution must be careful and sensitive in how it handles and circulates such images.

Case notes

1.2.5 The Court of Appeal judgment on the cases of *Ruscillo* and *Truscott* commented that “the disciplinary tribunal should play a more proactive role than a judge presiding over a criminal trial in making sure that the case is properly presented and that the relevant evidence is placed before it.”

1.2.6 The Section 29 appeal in the *Solanke* case was not upheld, but the judge was critical of the prosecution's failure to adduce more evidence on the circumstances in which the registrant's relationship with a patient began. He felt this would have been a good indicator of the risk of a recurrence. As a result the judge concluded that both the GMC and the panel were "*open to legitimate criticism*" and that the decision of the panel was "*not as informed as it might or indeed should have been*".

2. Consideration of evidence

2.1 Proper consideration of evidence

Panels must take account of all relevant information presented to them, and place the appropriate weight on individual pieces of evidence, including different types of evidence, such as:

- **performance assessments**
- **testimonials**
- **criminal convictions**

Case notes

2.1.1 In a GMC case the panel, when considering sanction, appeared to place considerable weight on a testimonial from someone for whom the registrant had worked for only three weeks. The panel decided on the basis of this to impose conditions on the registrant's registration even though a very detailed performance assessment of the registrant concluded that he was not fit to practise.

2.1.2 In another GMC case the panel appeared to accept without further investigation a doctor's statement that a child's airway had been "good", even though the child died shortly after as a result of the asthma attack for which he had been brought to the surgery.

2.1.3 In an RPSGB case the panel did not appear to take account of all of the charges it had found proved when determining sanction. The reasoning in the determination suggested that the panel had noted the fact that the pharmacist had supplied methadone to a patient not in accordance with a prescription, but had not found significant his failure to make an entry in the controlled drugs register.

- 2.1.4 In the High Court judgment on *Mulhem*, the judge ruled that the panel's sanction of 12 months' suspension was unduly lenient. The registrant had convictions for manslaughter, grievous bodily harm and assault. The panel had given too much weight to defective procedures in the hospital in which the registrant had been working, which were much less significant than the fact that he had been convicted of manslaughter.
- 2.1.5 Although it was not included in the judgment, the panel in *Mulhem* made a serious error in interpreting the evidence. It suggested that the registrant had assaulted members of his family because he was under stress due to the events surrounding a charge of manslaughter of a patient. However, one of the assaults had in fact preceded the manslaughter incident.
- 2.1.6 In another GMC case the registrant claimed that he had obtained certain drugs for members of his family who lived in a country where it was difficult to get hold of them. He claimed that he had provided the drugs as directed by a doctor in the foreign country. However, neither the GMC nor the panel made any enquiries to find out whether the foreign doctor actually existed.

2.2 Criminal penalties

Panels must give due weight to criminal convictions. CHRE has found that, in cases where registrants have a criminal conviction, panels have sometimes failed to appreciate the significance of the conviction, and have been inclined to adopt a lenient approach toward the registrant. In some cases where the penalty imposed by the court has been relatively light some panels have assumed that the offence must have not been very serious. Conversely, in some cases when the criminal penalty has been substantial the panels have taken the view that they should not impose a serious sanction on the basis that the registrant should not be punished twice for the same offence.

As a general principle, a practitioner who has been convicted of a serious criminal offence should not be permitted to resume their practice until they have satisfactorily completed their sentence.

- 2.2.1 Panels should bear in mind the judge's sentencing remarks, and not just the penalty imposed. Panels should not take account of mitigation which might be relevant to the criminal trial but is not relevant to their own consideration.
- 2.2.2 In the case of a serious criminal conviction, any alleged motivation for the offence does not reduce the gravity of the offence.

Case notes

- 2.2.3 In the *Fleischmann* case the judge said that, as a general principle, where a registrant has been convicted of a serious criminal offence, they should not be permitted to resume practise until they have completed their sentence. The judge ruled that the sanction of 12 months' suspension imposed by the panel of the GDC, in a case involving the possession of a large collection of child pornography, including some photos at the highest levels of seriousness, was unduly lenient. The judge thought that erasure was the only appropriate sanction. The dentist involved had not received a custodial sentence solely because he was a carer for his parents. However, this mitigation was not relevant in considering a sanction in relation to his fitness to practise.
- 2.2.4 In *Fleischmann*, the judge also expressed concern about the panel's consideration of the dentist's defence that he was suffering from depression at the time of the offences. He said that "the gravity of such offending is not reduced by the asserted motivation (that is, other people who have suffered from depression have not resorted to such criminal behaviour)".
- 2.2.5 In a GMC case, the panel took account of the lighter penalty imposed by a judge because of delays in bringing the case to court. But this was not a relevant factor in assessing the registrant's fitness to practise.

2.3 Registrant's work status

Full registration normally means that the registrant can change their field of practice. Therefore, any restriction placed upon a registrant needs to take account of this possibility.

Case notes

- 2.3.1 In an RPSGB case it appeared that the panel did not erase the pharmacist because he had sold his premises. This ignored the fact that he could have purchased other premises, or worked as a pharmacist in premises he did not own.

2.4 Previous misconduct

In cases where a registrant has been subject to a finding of misconduct in the past the panel should have details about that finding.

- 2.4.1 In considering cases of restoration to the Register, panels must consider the seriousness of the original misconduct. Although the registrant might have taken action in the meantime to make themselves fit to practise, there might be offences which are so serious that restoration is unlikely under any circumstances.

Case notes

- 2.4.2 In two RPSGB cases the panel did not seem to take account of previous findings relating to similar misconduct in determining sanction. This resulted in a sanction which appeared unduly lenient.

2.5 Mitigation

Personal mitigation, such as testimonials and an unblemished record, should not be taken into account when deciding whether a registrant is guilty of misconduct or impairment of fitness to practise. Such mitigation should be considered only when deciding on the sanction, after misconduct has been proved.

- 2.5.1 The Court of Appeal provides a summary for panels setting out in five steps how the panel should approach finding the facts proved, deciding on misconduct and applying personal mitigation to sanction (see para 46 of the *Campbell vs GMC* judgment.)
- 2.5.2 The Court does not entirely rule out considering certain factors in order to put the alleged conduct in context.

Case notes

- 2.5.3 In the judgment of *Campbell* the Court of Appeal said that it was wrong that the panel took personal mitigation into account in reaching its finding of serious professional misconduct.
- 2.5.4 In the case of *Silver* the Privy Council took into account the fact the registrant was a sole practitioner in a deprived area, as this might have gone to the question of whether his practice was so disorganised that finding misconduct was justified.

2.6 Where the registrant admits misconduct

In cases where the registrant admits misconduct, it can be helpful to have expert evidence provided. The panel should ensure it has sufficient evidence on which to base a reasoned determination. However, obtaining expert evidence has cost implications, and a balance needs to be struck.

Case notes

- 2.6.1 In a GMC case which was technical in nature and involved a death in childbirth, the panel might have had a better understanding of the registrant's culpability if it had been provided with more evidence.
- 2.6.2 In an NMC case none of the witnesses was called to give evidence, and an agreed 'statement of facts' was given to the panel. This included an admission of guilt.
- 2.6.3 In the *Truscott* case, the registrant appeared to achieve a lighter sanction by admitting the charges, resulting in less evidence being given to the panel.

3. Conduct of hearings

3.1 Referrals to the Health Committee

Panels should not refer cases to the Health Committee if the registrant's misconduct was so serious that it could warrant erasure from the register, regardless of whether or not their fitness to practise was impaired due to ill health. This is because, unlike a conduct panel, the Health Committee is unable to erase a registrant.

Case notes

2.1.2 In a GDC case the panel referred a case to the Health Committee and commented that, if the Health Committee did not find the dentist's fitness to practise to be impaired, the panel would consider whether erasure was necessary. This was not appropriate in light of *Crabbie*, a case in which the GMC panel had been found to have wrongly referred a registrant who had caused death by dangerous driving to the Health Committee.

3.2 Adjournments

If it is necessary to adjourn a case, panels should consider how to ensure the public is protected until the case can be heard.

3.2.1 Where a case has been adjourned, for example because the notice was not served in accordance with the regulator's rules, or because a witness is not available, the panel should consider providing for an interim order to protect the public until the case is heard.

3.2.2 A number of cases have been adjourned for considerable periods, or repeatedly adjourned, during which no action was taken to protect the public. In such cases, panels should consider options such as seeking undertakings from registrants until their case can be heard. Note that a breach of an undertaking normally counts as misconduct.

Case notes

- 3.2.3 In a PSNI case the panel adjourned for a year the case of a pharmacist who had been convicted of serious offences relating to the storage of controlled drugs. There was no restriction on the pharmacist's registration in the meantime. Unfortunately the PSNI's panel does not have the power to impose conditions. However, this might have been a case where an undertaking from the registrant (such as that in the cases of Dr Brennan and Dr Urquhart – see 4.5.3) would have been appropriate in order to protect the public.
- 3.2.4 In one RPSGB case, involving a pharmacist with alcohol addiction problems, the RPSGB succeeded in obtaining the pharmacist's agreement to an undertaking requiring him to have close medical supervision and treatment. The pharmacist breached the undertaking and, at a further hearing, was erased from the register.

3.3 Immunity from disciplinary proceedings in cases of expert witnesses

Experts who give evidence in court are not immune from regulatory proceedings in the way they are from civil liability. This is because ultimately regulators have the right to decide when and against whom to take disciplinary proceedings.

Case notes

- 3.3.1 In the registrant appeal in the case of *Meadow*, the judge said that immunity from legal action for an expert who gives evidence to Court should be extended to disciplinary proceedings, and that immunity extends to the preparation of that evidence. One of the judge's reasons for this was that experts might otherwise refuse to come forward, particularly in cases before the Family Court.
- 3.3.2 A GMC appeal against the High Court's judgment was upheld, and the Court rejected the High Court judge's assertions that an expert witness should be immune from disciplinary proceedings by the appropriate professional regulatory body. The evidence was that actions against professionals on the basis of evidence given at trial was rare, and such actions being permitted may have the added benefit of ensuring that evidence given at trial is of the highest quality.

3.4 Registrants' attendance at hearings

Regulatory bodies do not have the power to compel a registrant to attend a fitness to practise hearing. However, regulators should make clear to registrants that they are expected to attend, to ensure the panel imposes the most appropriate sanction. Where registrants do not attend, there must be sufficient evidence available to be able to arrive at a correct and reasoned judgment.

3.4.1 In several cases, it appears that the registrant may have received a lighter sanction because they did not attend the hearing.

Case notes

3.4.2 In an HPC case, the panel restored a registrant to the register following a period of suspension, even though she did not attend the hearing, and the panel had no information relating to her fitness to practise during her period of suspension.

4. Making determinations

4.1 Giving reasons in determinations

Panels are obliged to give reasons for their findings, including findings of fact, so that:

- the registrant, the complainant and other interested parties understand the decision; and
- CHRE can properly carry out its role under Section 29.

Also, providing reasons is more likely to produce the best outcome. Panels have a duty to explain how the sanction they have imposed protects the public.

4.1.1 When producing their findings, panels must ask themselves:

- is what we have decided clear? and
- have we explained our decision and how we have reached it, in such a way that the parties can understand it?

4.1.2 The panel should decide how detailed reasoning needs to be for each determination. The amount of detail will depend on the complexity of the case. However, there are four main areas panels need to consider when explaining their decisions:

- **what the allegations are**, in sufficient detail for the reader to understand clearly the nature and seriousness of the alleged misconduct. It can be useful to refer to breaches of the regulator's Code of Conduct;
- **why the allegations have or have not been found proved**. If a decision turns simply on the credibility of one witness as opposed to another, then the reasons for the decision could be commensurately brief. Where a finding may appear to be inexplicable in relation to the evidence received, then more detailed reasons are needed;
- **whether the findings on the allegations found proved amount to misconduct/impairment of fitness to practise** and why;
- **the sanction**, in particular, why the outcome is the most appropriate one and how it protects the public. At this stage there should be a reference to the relevant Indicative Sanctions Guidance (ISG). Where the panel's decision does not appear to accord with the ISG, it should explain why, based on the specific circumstances of the case.

4.1.3 There are other areas where reasons might also be necessary, including:

- explaining important background facts or evidence which led the panel to the conclusion. In one case, for example, the panel said it was satisfied that the registrant had not been misusing controlled drugs, but did not refer by way of explanation to the fact it had seen medical reports, including drug test results.
- explaining whether a resumed hearing is necessary. This will normally be in cases in which a suspension or period of conditional registration has been imposed.
- specifying the sort of evidence the registrant would be expected to provide at a resumed hearing.
- properly relating the findings of the panel to the charges. For example, in one case, the panel's findings appeared not to relate to the charges at all, but to an allegation that was not included in the charges. This raises another issue in relation to whether the charges had been framed correctly (see 1.1).

Case notes

4.1.4 In the judgment on the GOC registrant appeal in the case of *Threlfall* it was held that panels are obliged, by common law and pursuant to Article 6 of the European Convention on Human Rights, to give adequate reasons in good time. The judge stated: "*There is a further practical reason why disciplinary committees should give adequate reasons for their decisions, and that is to enable the Council for the Regulation of Health Care Professionals to consider whether to exercise its powers under section 29 of the 2002 Act.*"

4.1.5 In the *Basiouny* Section 29 appeal judgment, although the judge's comments were obiter dicta (not a binding part of the judgment), he clearly felt that panels are obliged to give reasons for their findings. This accords with the *Threlfall* judgment.

4.1.6 In the *Marshall* Section 29 appeal judgment, the judge supported the views made in *Threlfall* that panels should give reasons to enable CHRE to carry out its functions. He also made it clear that there is a duty on panels to explain how the sanction they have imposed protects the public.

4.1.7 The judgment on the registrant appeal in the case of *Phipps* suggests that panels should give reasons in relation to their findings of fact. The need to give reasons for findings of fact will vary from case to case and will depend on the matter under consideration. The judge also said that the principles in *English v Emery Reimbold* [2002] E WLR 2409, that "*justice will not be done if it is not apparent to the parties why one has won and the other has lost*" are universal and apply to any tribunal charged with the duty to reach a judicial or quasi-judicial conclusion.

4.1.8 At a resumed hearing in a PSNI case, the determination did not include the charges or any information about the deficiencies in the registrant's practice that resulted in him initially being brought before the panel. Without reading the determination from the previous hearing and the transcript of the most recent hearing it was difficult to glean a clear understanding of the case.

4.1.9 Earlier case law in this area includes the registrant appeal cases of *Stefan, Gupta and Selvanathan*.

4.2 The purpose of sanctions

When considering sanctions, panels must consider not only protecting the public from a registrant's actions, but also public confidence and the reputation of the profession.

It was notable that the judge in the *Southall* judgment agreed with the GMC's Indicative Sanctions Guidance (ISG) which includes three public interest purposes of the sanctions available to its panel:

- to protect patients
- to maintain public confidence in the profession; and
- to declare and uphold proper standards of conduct.

The judge added that protection can extend, in appropriate cases, beyond patients to others directly affected by the registrant's actions.

Case notes

4.2.1 In *Leeper* the judge felt that the panel's reason for not imposing suspension was flawed. Although the purpose of sanctions is not to punish the registrant, the panel needs to consider whether the sanction is sending out the right signals to the profession and the public.

4.2.2 In *Fleischmann* the judge felt that the GDC's panel had failed to give sufficient weight to the need to maintain the reputation of the profession in making its determination.

4.3 Use of conditions as a sanction

Imposing conditions on a registrant can be a powerful and useful sanction. Some regulators do not currently have the power to impose conditions. Even allowing for this, conditions are not used as often as they might. To be effective, conditions need to be framed with care.

- 4.3.1 Since conditions are meant to address public protection concerns, panels should ensure registrants are entirely fit to return to unrestricted practice before conditions are revoked or allowed to lapse. Conditions should last for as long as is necessary for the registrant to:
- overcome issues such as addiction; and
 - bring their practice up to the required level before returning to unrestricted practice.
- 4.3.2 When framing conditions, panels must consider what the registrant will be required to do, and when, for the condition to cease and therefore for the registrant to be returned to the register as a full practising member.
- 4.3.3 The primary purpose of conditions should be to protect the public, so conditions should often impose a requirement for the registrant to be supervised. The amount of supervision should be appropriate to the level of protection needed.
- 4.3.4 Any conditions should take account of the fact that a registrant might change their field of practice, and that the conditions should apply more broadly, where necessary.
- 4.3.5 Conditions should be applied only where the panel believes the registrant will comply with them. If there are doubts about this, other forms of sanction should be considered.
- 4.3.6 Where the conditions are aimed at retraining, the public must be protected in the meantime.
- 4.3.7 Conditions also have to be realistic and relevant. For example, it is unnecessary and inappropriate to impose a condition for which breaching would mean breaking the law (such as drinking and driving).
- 4.3.8 Conditions must be monitored if they are to be effective, and the registrant needs to know that failure to comply could result in a resumed hearing. The GMC has set up a dedicated team to review and monitor compliance of those registrants with conditions on their registration.

4.3.9 Conditions should be written so that they are clear, and all parties are aware what is actually required of the registrant. A condition should never be confused with a recommendation or advice.

Case notes

4.3.10 In a GOsC case the panel urged the registrant to address record-keeping as part of his continuing professional development (CPD), rather than imposing a condition requiring him to do so. There was no formal requirement for the registrant to comply with this request, and there would be no opportunity for a panel to monitor his progress at a resumed hearing.

4.3.11 In a GMC case, a registrant with a history of drug addiction had conditions revoked even though his most recent drug test result indicated he had recently taken codeine. Although the codeine may have been for genuine pain relief, it would have been more appropriate to have continued the conditions for a further six months until a clear drug test result was received.

4.3.12 In a GOsC case the panel imposed a Conditions of Practice Order requiring the registrant to cease practising until he had passed a test of competence. However, it was unclear how the registrant's name would be returned to the register when he had satisfied these conditions. In addition, this condition related only to the panel's concerns about the registrant's competence, even though it had made a separate finding in relation to a misconduct charge.

4.3.13 In a GMC case, conditions imposed on a registrant required them to have an educational supervisor, but failed to address a need for workplace supervision to provide for public protection.

4.3.14 In another GMC case, the conditions placed restrictions on the registrant practising in his current field of practice, but would not restrict him at all if he practised outside that specialty. There was no evidence to suggest that his weaknesses only applied to his current field of practice.

4.3.15 In an HPC case, the panel required the registrant to complete a course within two years. However, there was no provision to ensure that the public was protected during this time.

4.3.16 In the *Southall* judgment the judge said that the condition the GMC's panel had imposed should have been drawn more tightly. It should have been clear that all that the registrant could do if he believed a patient might have suffered abuse and needed protection was to report his concerns to the relevant child protection doctor.

4.4 Use of undertakings as a sanction

Undertakings by registrants, for example not to work in areas of practise where their performance has been called into question, can be a useful sanction to ensure protection of the public. However, to be effective and enforceable, undertakings should be added to the register and made available to anyone enquiring about a registrant.

- 4.4.1 In a number of cases the panel accepted evidence or assurances from registrants in the absence of objective information which could have been obtained. This has happened even in cases in which the registrant had been found to be dishonest.
- 4.4.2 If a registrant offers reasonable undertakings which would be sufficient to ensure public protection, the panel should accept and formalise them.

Case notes

- 4.4.3 The Section 29 appeals in the GMC cases of *Brennan* and *Urquhart* were settled by agreement of all of the parties in an uncontested hearing. The registrants gave undertakings not to work in areas of practice where their performance had been called into question. The GMC agreed that the undertaking would be added to the registrants' registration and would be discloseable to anyone making enquiries about this. Previously the GMC had accepted undertakings from registrants but had not added them to the Register in this way, with the result that they were not monitored or enforced.
- 4.4.4 In a GOsC case the registrant offered to give a formal undertaking which would have addressed the panel's concern. Instead the panel just imposed an admonishment.

4.5 Defining periods of conditions and suspensions

Periods of suspension and conditions should be given as a length of time, rather than specifying a date on which the suspension or condition should cease. Specifying dates could mean that the suspension could lapse before the fitness to practise process is complete, for example if there is an appeal, the suspension could lapse before the appeal is ruled on.

Case notes

- 4.5.1 In the *Gage* case, the registrant was told that his suspension would be in effect until 31 October 2004. However, as he appealed, the suspension did not come into effect until the appeal had been heard. The judgment was not given until after 31 October 2004, so the suspension had elapsed before it came into effect. This

meant that it was not possible to review the suspension and Mr Gage had to be restored to the register with unrestricted registration.

4.6 Resumed hearings

Where a panel has imposed conditions or suspended a registrant, it should usually make provision for a resumed hearing before the end of the period of conditions or suspension. Otherwise the registrant will return to full registration without any further assessment of their fitness to practise. Regulators' rules differ on this, but it is worth noting that in her *Fifth Report of the Shipman Inquiry* Dame Janet Smith stated that there should always be a review in such cases.

4.6.1 Where a panel orders a resumed hearing it is important that it specifies the evidence required at that hearing.

Case notes

4.6.2 In the *Basiouny* Section 29 appeal the judge felt that even in cases where the substantive sanction imposed by the panel was appropriate, a failure to direct that there should be a resumed hearing before the expiry of the conditions or suspension could mean that the decision was unduly lenient.

4.6.3 In the judgment on the *Southall* Section 29 appeal the judge held that imposing a condition on Professor Southall's registration was not unduly lenient and that erasure was not required. However, he allowed CHRE's appeal partly on the basis that the panel showed undue leniency in that it did not use the relevant provision of the GMC's old rules, which would have allowed for a resumed hearing before the end of the three-year period of the conditions.

4.6.4 In an HPC case in which there was evidence that the registrant had alcohol-related problems, the panel failed to specify evidence it would require at the resumed hearing, for example whether the registrant had gained any insight into her problems and complied with any treatment.

4.7 Sanctions for cases of sexual relationships with patients

No regulator considers it appropriate for a registrant to have a sexual relationship with a patient. In several early appeal cases, courts decided that suspension was the right outcome in such cases. A more recent judgment upheld an appeal against erasure, suggesting that this should not be the automatic ruling, and that the circumstances of a case may mean that a lesser sanction is appropriate.

Case notes

- 4.7.1 In the registrant appeal case of *Giele*, the judge upheld the appeal on the grounds that the GMC should not have erased the registrant, and replaced the erasure with a suspension. Although the judgment was not necessarily consistent with GMC guidance, it was consistent with some previous court judgments, including an earlier registrant appeal case of *Bevan*, and Section 29 appeal judgments in the cases of *Solanke* and *Leeper*. In all of these cases the court had decided that suspension was the right outcome in a case of a sexual relationship with a patient. In the *Giele* case, the judge took particular account of testimonials, in line with the earlier judgment on the case of *Southall*. The judge also felt that the community would lose a valuable resource if the registrant was erased from the register.
- 4.7.2 In one GCC case the panel concluded that a relationship the registrant had entered into with a patient was improper at the beginning, but was not improper once the registrant had entered into a joint tenancy agreement with the patient, on the basis that they were “an established couple”.

4.8 Reference to other bodies’ regulatory arrangements

When considering sanctions, panels should generally not rely on sanctions made by other organisations or their disciplinary panels.

Case notes

- 4.8.1 In the judgment on the *Jellett* case the judge felt that the panel of the HPC was wrong to rely on Mr Jellett’s undertaking to the Chartered Society of Physiotherapy (CSP) and its enforcement arrangements.
- 4.8.2 The judge also stated that in restoring Mr Jellett to the register the panel should have made a ‘conditions of practice’ order that would enable the HPC to police the chaperoning arrangements, given the seriousness of his actions (indecent assault of three patients).