

## Health and Care Professions Tribunal Service

# PRACTICE NOTE

## Case Management, Directions and Preliminary Hearings

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

### Introduction

1. In fitness to practise proceedings, the interests of justice are best served by a process which is simple, accessible and fair and where the issues in dispute are identified at the earliest opportunity. Those objectives can be secured by case management procedures which require:
  - a. the HCPC, which has the burden of proof<sup>1</sup>, to set out its case;
  - b. the registrant to identify in advance those parts of the HCPC's case which they dispute; and
  - c. the parties to provide information in advance of a hearing to assist the Panel in the conduct of the case.
2. Registrants and all those involved in fitness to practise proceedings benefit from good case management. For example, identifying before any hearing what is and is not in dispute, agreeing what evidence can be agreed, which witnesses need to attend the hearing and resolving preliminary applications will ensure that the final hearing will proceed more smoothly.

### Case management

3. Article 32(3) of the Health Professions Order 2001 imposes a statutory obligation on Panels to conduct proceedings expeditiously. Panels should meet that obligation by making full use of their case management powers, to ensure that cases are heard without undue delay, fairly, justly and in a manner which:

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<sup>1</sup> That burden only applies to the facts alleged. Whether those facts amount to the 'statutory ground' of the allegation (e.g. misconduct) and, in turn, constitute impairment are matters of judgement for the Panel conducting the final hearing: *CRHP v. GMC and Biswas [2006] EWHC 464 (Admin)*.

- a. encourages engagement and co-operation by the parties;
  - b. requires the parties to identify the issues which the Panel needs to decide;
  - c. avoids inflexibility or unnecessary formality in the proceedings;
  - d. makes effective use of the time of the Panel and all those giving evidence;  
and
  - e. enables the parties to participate fully in the proceedings.
4. Panels should use their case management powers in appropriate cases to:
- a. require the parties to identify the issues in dispute;
  - b. ensure that the Standard Directions are complied with;
  - c. issue additional Directions either in response to an application or of the Panel's own motion;
  - d. put arrangements in place to ensure that evidence, whether disputed or not, is prepared and presented clearly, effectively and by the most appropriate means;
  - e. ensure that the needs of any witnesses are considered before the hearing, including any application for measures to assist vulnerable witnesses;
  - f. encourage the use of agreed chronologies or statements of agreed facts;
  - g. ensure that cases are determined fairly and expeditiously.

## Directions

5. Panels and Panel Chairs have the power to give directions for the conduct of cases<sup>2</sup>, including directions as to the consequences of failure to comply.
6. There are two types of Directions which apply in HCPC proceedings. Standard Directions apply in *all* cases unless a Panel or a Chair of a Panel vary or disapply them. In addition to these Standard Directions, a Panel or Chair of a Panel can impose further directions where that is necessary or desirable to ensure that matters which can properly be resolved before a hearing are considered and determined.

## Standard Directions

7. To improve the management of cases and for the benefit of all those involved in HCPC proceedings, the Standard Directions set out in Annex A apply as 'default' directions in *every* case.
8. These Standard Directions require that:

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<sup>2</sup> Art. 32(3), Health Professions Order 2001; HCPC (Conduct and Competence Committee) (Procedure) Rules 2003, r. 7(1); HCPC (Health Committee) (Procedure) Rules 2003, r.7(1).

- a. The HCPC serve on the registrant a copy of the documents it intends to rely upon at the hearing at least 42 days before that hearing;
  - b. The Registrant serve on the HCPC a copy of the documents they intend to rely upon at the hearing at least 28 days before that hearing;
  - c. The HCPC and Registrant confirm what evidence (including witness statements) is agreed and which witnesses will be called to give evidence at least 21 days before the hearing;
  - d. Where it has not been possible to resolve the issue at a preliminary hearing, the Registrant and the HCPC to indicate to each other and to the HCPTS any preliminary applications they intend to make at the hearing, including any legal and procedural issues by skeleton arguments at least 7 days before the hearing.
9. If a party fails to comply with any of the Standard Directions, this may be brought to the attention of the Panel and could result in that Panel not receiving evidence which that party intended to rely upon, subject to the need for Panels to ensure the overall fairness of the proceedings.
10. Parties are also reminded of the following Standard Directions which enable the parties to clarify the issues in dispute and agree evidence in advance of the hearing, upon service of a Notice on the other party. These Standard Directions allow each party to:
- a. Serve a Notice to admit facts
  - b. Serve a Notice to admit documents
  - c. Serve a Notice to admit witness statements

### **Special or additional directions**

11. A Panel or Chair of a Panel may issue directions which:
- a. Vary or disapply a Standard Direction;
  - b. Require compliance with a Standard Direction which has not been complied with;
  - c. Supplement the Standard Directions by issuing directions which assist the effective and expeditious management of the case.
12. Any party who applies for additional directions must set out in their application the directions they want the Panel to make and the reasons why the directions are necessary.

## Preliminary hearings

13. Panels have the power to hold a preliminary hearing<sup>3</sup> *“in private with the parties, their representatives and any other person it considers appropriate where it considers it would assist the [Panel] to perform its functions”*<sup>4</sup>.
14. Most case management issues can be satisfactorily resolved ‘on the papers’ by issuing directions. The parties are also reminded of the importance of complying with the Standard Directions referred to above and set out in Annex A. In some cases it may be appropriate to hold a preliminary hearing.
15. Preliminary hearings may be held by the Panel Chair sitting alone who, with the parties’ consent, may take any action which the Panel could take at such a hearing. Wherever possible, Panels should adopt that practice.
16. The purpose of a preliminary hearing is to assist the Registrant, the HCPC and the Panel in preparing for and regulating the proceedings at a substantive hearing, for example, by resolving procedural, evidential, timetabling and other case management issues before the substantive hearing takes place.
17. A preliminary hearing should not generally be used to deal with issues which are more properly a matter for the full Panel at a substantive hearing, such as making findings of fact in respect of disputed evidence or determining admissibility. There may however be cases where it is appropriate for an issue to be resolved before a substantive hearing takes place, especially where that issue is likely to affect the management of the hearing and the witnesses to be called. In these circumstances the preliminary hearing should be held by a full Panel rather than a Chair alone, even if the parties consent to it being considered by a Chair alone. This is because Panel Chairs conducting preliminary hearings alone must take care not to make determinations in respect of substantive matters with which the other Panel members may disagree, such as the relevance of, or need for, particular evidence.
18. Having determined the issue in dispute, the Panel should indicate, having considered any views expressed by the parties, whether they recuse themselves as a panel or as individuals from sitting on any future hearing relating to the case. Before making that decision, the Panel should invite submissions from the Presenting Officer and the Registrant or their representative as to whether or not the Panel should recuse themselves. It is clearly established that the bar for recusal is a high one and Panels and Panel Members should not ordinarily recuse themselves simply because they have ruled on a preliminary issue or ruled that evidence seen by them should not be admitted. Panels should seek advice from

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<sup>3</sup> the legislation refers to “preliminary meetings” but that term has been found to mislead some parties as to the nature of the proceedings and the term “preliminary hearing” has therefore been adopted

<sup>4</sup> HCPC (Investigating Committee) (Procedure) Rules 2003, r.7(1),(2); HCPC (Conduct and Competence Committee) (Procedure) Rules 2003, r. 7(2),(3); HCPC (Health Committee) (Procedure) Rules 2003, r.7(2),(3).

their legal assessor regarding the approach they should take to recusal and give reasons for their decisions.

## Procedure

19. A Panel may decide to hold a preliminary hearing of its own motion or at the request of one of the parties.
20. As many preliminary issues can be resolved by issuing Directions, a Panel should only agree to hold a preliminary hearing where it is satisfied that there are substantial procedural or evidential issues to be resolved and which cannot be resolved by other means.
21. Where a party asks for a preliminary hearing to be held, before agreeing to do so, the Panel should require that party to outline the reasons for the request, including the issues which will be raised if the hearing is held and the steps which that party has already taken in order to resolve those issues.
22. Normally, the parties should be given at least 14 days' notice of a preliminary hearing. In setting the time and place for a hearing, Panels must take account of Article 22(7) of the Order, which requires preliminary hearings to be held in the UK country in which the registrant concerned is registered.
23. Regardless of the reasons for holding a preliminary hearing, the Panel (or Panel Chair, if sitting alone) should take the opportunity to verify the parties' compliance to date with all requirements relating to the proceedings, including the Standard Directions and any other Directions which have been issued. The Panel or Panel Chair may:
  - a. consider issues relating to the hearing of the case including:
    - i. the extent to which any evidence is agreed and where facts are not in dispute, requiring the parties to produce a statement of agreed facts;
    - ii. where agreed between the parties, directing that witness statements are to stand as evidence in chief;
    - iii. ordering the joinder of allegations;
    - iv. issuing Witness Orders or Production Orders;
    - v. determining any dispute regarding the admissibility of expert evidence
    - vi. determining any dispute regarding the contents of bundles or redactions
    - vii. determining applications for all or part of the hearing to be held heard in private;

- viii. ordering special measures or providing for any other needs of vulnerable witnesses;
- ix. determining whether any facilities are required for particular evidence, such as interpreters or equipment for recordings or other exhibits;
- b. make arrangements for any further investigation which the Panel has agreed to have conducted and which the registrant has requested or consented to (such as a medical examination or test of competence);
- c. set a date for (or the arrangements for setting the date for) the hearing or a further preliminary hearing, including requiring the parties to provide dates to avoid and time estimates;
- d. giving any additional directions, not covered by the Standard Directions, for the exchange of documents prior to the hearing, including:
  - i. requiring the mutual disclosure of documents and setting time limits or other requirements for disclosure or service;
  - ii. requiring agreed bundles or skeleton arguments to be submitted (the requirement for skeleton arguments should only be imposed if the parties are legally represented)

24. Determinations of preliminary hearings held in private to consider case management issues are not published. However, it remains important for Panels and Panel Chairs to produce a public version of their determination. This ensures transparency of process and that if a request is made for disclosure of the determination, there is a public version which can be provided.

### **Parties and their representatives**

25. Panels are entitled to expect that parties or their representatives attending a preliminary hearing will be familiar with the case and its history and be in a position to assist the Panel in managing the case, including:
- a. resolving any outstanding issues which are impeding the setting of a hearing date;
  - b. agreeing dates for the hearing; and
  - c. setting an informed and realistic timetable for that hearing.

## Annex A

### Standard Directions

#### Standard Direction 1. Exchange of Documents

- (1) The HCPC shall, no later than 42 days before the date fixed for the hearing of the case, serve on the registrant a copy of the documents which the HCPC intends to rely upon at that hearing.
- (2) The registrant shall, no later than 28 days before the date fixed for the hearing of the case, serve on the HCPC a copy of the documents which he or she intends to rely upon at the hearing.
- (3) The HCPC and the registrant shall, no later than 21 days before the date fixed for the hearing, agree what evidence is agreed and which witnesses are required to attend the hearing to give evidence;
- (4) The HCPC and the registrant shall, no later than 7 days before the date fixed for the hearing, indicate to each other and the HCPTS any preliminary applications they intend to make including any procedural or legal issues, supported where appropriate by skeleton arguments;
- (5) The parties shall, at the same time as they serve documents in accordance with this Direction, provide the Panel with a redacted copy of their bundle of documents.

#### Standard Direction 2. Notice to admit facts

- (1) A party may serve notice on another party requiring that party to admit the facts, or part of the case of the serving party, specified in the notice.
- (2) A notice to admit facts must be served no later than 21 days before the date fixed for the hearing of the case.
- (3) If the other party does not, within 14 days, serve a notice on the first party disputing the fact or part of the case, the other party is taken to admit the specified fact or part of the case.

#### Standard Direction 3. Notice to admit documents

- (1) A party may serve notice on another party requiring that party to admit the authenticity of a document or exhibit disclosed to that party and specified in the notice.
- (2) A notice to admit documents (together with those documents unless they have already been provided to the other party) must be served no later than 21 days before the date fixed for the hearing of the case.
- (3) If the other party does not, within 14 days, serve a notice on the first party disputing the authenticity of the documents or exhibits, the other party is taken to accept

their authenticity and the serving party shall not be required to call witnesses to prove those documents or exhibits at the hearing.

#### **Standard Direction 4. Notice to admit witness statements**

- (1) A party may serve notice on another party requiring that party to admit a witness statement disclosed to that party and specified in the notice.
- (2) A notice to admit a witness statement (together with that statement unless it has already been provided to the other party) must be served no later than 21 days before the date fixed for the hearing of the case.
- (3) If the other party does not, within 14 days, serve a notice on the first party requiring the witness to attend the hearing and give oral evidence (and thus be available for cross examination), the other party is taken to accept the veracity of the statement and the serving party shall not be required to call the witness to give evidence at the hearing.

#### **Standard Direction 5. Independent expert evidence**

- (1) A party intending to rely on independent expert evidence must have served a copy of that expert evidence on the other party within 8 weeks of the service of the notice of allegation.
- (2) In the event that a party is unable to serve the independent expert evidence on which they intend to rely on the other party within 8 weeks of the service of the notice of allegation, they must inform the other party of:
  - their intention to rely on expert evidence
  - the issue(s) to which that expert evidence is relevant
  - the date by which they expect that expert evidence to be ready for service
- (3) Where a party intends to rely on independent expert evidence in response to independent expert evidence served by the other party, within 3 weeks of the service of the other parties independent expert evidence they must notify the other party of:
  - their intention to rely on expert evidence in response
  - the date by which they expect that expert evidence to be ready for service.

#### **Standard Direction 6 . Withdrawal of admissions**

The Panel may allow a party, on such terms as it thinks just, to amend or withdraw any admission which that party is taken to have made in relation to any notice served on that party under Standard Directions 2 to 4.

Annex B

**[PRACTICE] COMMITTEE**

**NOTICE TO ADMIT [FACTS] [WITNESS STATEMENTS]  
[AUTHENTICITY OF DOCUMENTS]**

To: [name and address of party ]

**TAKE NOTICE** that in the proceedings relating to [identify proceedings] [the HCPC or name of other party], for the purpose of those proceedings only, requires you to admit:

[the following fact(s):

- 1.
- 2.
- 3.

**RESPONSE\***

Admit/Dispute  
Admit/Dispute  
Admit/Dispute]

[the authenticity of the following document(s):

- 1.
- 2.
- 3.

**RESPONSE\***

Admit/Dispute  
Admit/Dispute  
Admit/Dispute]

[the statement(s) made by the following witness(es), [a copy][copies] of which [is][are] are enclosed with this notice:

- 1.
- 2.
- 3.

**RESPONSE\***

Admit/Dispute  
Admit/Dispute  
Admit/Dispute]

\* delete as appropriate

**AND FURTHER TAKE NOTICE** that, if you do not within 14 days of the date of this notice serve a notice on [the HCPC or name of other party] disputing [any of those facts] [the authenticity of any of those documents] [any of those witness statements], they shall be admitted by you for the purpose of those proceedings.

Signed: \_\_\_\_\_ Date: \_\_\_\_\_

For [the HCPC or name of other party]  
[Address]

**DO NOT IGNORE THIS NOTICE**

If you dispute [any of the facts][the authenticity of any of the documents][any of the witness statements] set out above, you should respond to this Notice (by striking out “Admit” or “Dispute” as appropriate) and returning a copy of it to the address shown above by no later than [date].

If you fail to respond to this Notice in the time allowed, you will only be able to [dispute those facts][dispute the authenticity of those documents][ask for the witnesses who made those statements to attend and give oral evidence] with the leave of the Panel.

**RESPONSE**

The [facts] [authenticity of the documents][witness statements] set out above are admitted or disputed by [the HCPC or name of other party] as I have indicated above.

Signed: \_\_\_\_\_ Date: \_\_\_\_\_

For [the HCPC or name of other party]  
[Address]