

PRACTICE NOTE

Health Allegations

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

Introduction

Article 22(1)(a)(iv) of the Health Professions Order 2001 (the **Order**) provides that one of the grounds upon which an allegation may be made is that a registrant's fitness to practise is impaired by reason of:

"(iv) his physical or mental health".

In turn, Article 26(6)(b)(ii) of the Order requires the Investigating Committee, where it concludes that there is a case to answer, to refer such health allegations to the Health Committee.

In addition, Rule 4(1) of the HPC (Conduct and Competence Committee) (Procedure) Rules 2003 (referral to Health Committee) provides that:

"Where it appears to the [Conduct and Competence] Committee that an allegation which it is considering would be better dealt with by the Health Committee, the [Conduct and Competence] Committee may refer the allegation to the Health Committee for consideration and shall suspend its consideration of the allegation"

The Health Committee can then either deal with the matter as a health allegation or refer the case back to the Conduct and Competence Committee.

What constitutes a health allegation?

In some instances the decision that an allegation is a "health allegation" will be straightforward. This is likely to occur in cases where fitness to practise concerns arise as a direct consequence of the registrant's a physical or mental condition and where there is no evidence to suggest that other factors are involved. However the decision is not so simple in cases where health is only one facet of broader or more serious concerns about the registrant's fitness to practise. ,

Equally, there are many cases where at the outset the evidence may not disclose an underlying health issue – for example, it would be wrong to assume in every allegation in which alcohol has played a part that the registrant has some form of alcohol dependency problem – but where such evidence comes to light as the case progresses.

Whether a matter should be referred to the Health Committee because it would be “better dealt with” by that Committee is a discretionary power intended to deal with cases of that kind.

In deciding whether a matter should be treated as a health allegation, the factors which should be taken into account – even where health issues are the predominant cause of allegation – include the overall seriousness of the allegation and the sanctions which are available to the Health Committee in dealing with the case.

The HPC's Health Committee, like its GMC counterpart, does not have a direct striking off power. In *Crabbie v General Medical Council*¹ the registrant had been sent to prison for causing death by dangerous driving and driving with excess alcohol in the blood but had presented evidence to the effect that her fitness to practise was affected by alcohol dependency. Referral of her case to the Health Committee was refused on the basis that the nature and gravity of the offence were such that the public interest would not be adequately protected by the sanctions available to that Committee.

The Privy Council, in upholding that decision, stated that:

"The power to refer arises where the opinion has been formed that the [registrant's] fitness to practise may be seriously impaired by reason of a physical or mental condition. The forming of the requisite decision does not, however, require the case to be referred to the Health Committee. The power to refer is a discretionary one. ... in considering whether or not to exercise the power, the [decision makers], should take into account all the circumstances of the case including the scope of the powers available to the Health Committee.

...the Health Committee has no power to direct erasure, whether as an initial direction or as a direction consequent upon the practitioner's failure to comply with conditions. ... if the case is one in which erasure is a serious possibility, neither [decision maker] should refer the case to the Health Committee notwithstanding that it may be one where the fitness to practise of the practitioner in question appears to be seriously impaired by reason of his or her physical or mental condition."

Similarly, in *R (on the application of Toth) v GMC*,² a case which concerned the exercise of the power to 'cross refer' a case to the Health Committee, the court held that:

"whilst the possibility of erasure remains, the [Committee] cannot lawfully refer the case to the Health Committee. That Committee cannot impose a sanction of erasure and it is one that the [Committee] may have to impose in the public interest. Whilst that remains a possibility, [it] should retain jurisdiction.

¹ [2002] UKPC 45.

² (2003) EWHC 1675 (Admin)

I would only add that even where the [Committee] does conclude that erasure is not a possible sanction, it may still be inappropriate to refer a case to the Health Committee because the public interest in complaints being determined in public and the need to maintain professional standards may outweigh the advantages of referring the matter to the Health Committee. However, once erasure has been discounted as a possible sanction, the power to transfer arises and it is for the [Committee] to weigh the considerations for and against exercising that power."

Evidence as to health

In many cases where health issues arise or which are referred as health allegations to the Health Committee, Panels will be able to draw appropriate inferences and conclusions from evidence about a registrant's health without the need for input from medical or other experts. It is for the Panel to decide whether such evidence is required. As the court noted in the *R v Turner*:³:

"an expert's opinion is admissible to furnish information which is likely to be outside the [Panel's] experience and knowledge. If on the proven facts the [Panel] can form their own conclusions without help, then the opinion of an expert is unnecessary."

It is clearly not the role of the Panel to go beyond the bounds of its own expertise and, for example, to make diagnoses. However, in many cases Panels will be able to understand and assess the available evidence and reach conclusions as to how the registrant's health is affecting his or her fitness to practise.

When considering medical or other expert reports which form part of the evidence, to the extent that it is relevant to do so, Panels should take account of:

- the expert's professional qualifications and area of specialisation;
- the extent of the expert's knowledge of the case, for example whether the expert has been involved in the care of the registrant over a lengthy period of time;
- the nature of any assessment undertaken by the expert, for example whether a report is based on a recent physical examination or simply a review of notes made by others;
- how closely in time the expert's report was prepared to the matters in issue.

Panels should also recognise that there are often logical reasons for seemingly conflicting expert evidence. For example, a GP's view of a relatively rare condition, based on symptoms present at its onset may understandably differ from the view of a consultant who is more familiar with the condition and generally sees patients at a later stage and when the symptoms are distinct.

³ [1975] QB 834

Medical Assessors

In cases where Panels consider that they need the advice and assistance of an expert, they have the option of appointing a suitably qualified registered medical practitioner as a medical assessor.

The decision as to whether a medical assessor is required in a particular case is a matter for the Panel alone, in line with the principle set out in *R v Turner*, but it is open to the parties to request that such an assessor be appointed.

The procedure for appointing medical assessors is set out in more detail in the 'Assessors and Experts' Practice Note.

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