# The purpose of and approach to sanctions

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## The purpose of sanctions

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The purpose of the Fitness to Practise Committee (the Committee) imposing a sanction is to meet our over-arching objective of protecting the public. This is made up of:

- protecting, promoting and maintaining the health, safety and wellbeing of the public
- promoting and maintaining public confidence in the professions
- promoting and maintaining proper professional standards and conduct for nurses, midwives and nursing associates in England.

Sanctions are imposed to protect the public from a professional who is currently unable to practise safely without restriction, or to maintain the public reputation of their profession.[1]

Sanctions should not be intended to punish the professional for their actions, as this is not part of our role as the regulator. An appropriate sanction may have a punitive effect, but this should not be the intention.

The sanction must always be proportionate to the facts and impairment found proved. The proportionate sanction is:

- the least restrictive sanction
- that will achieve public protection
- by reducing the risk that the professional poses
- looking at the reasons why the professional's fitness to practise is impaired
- and any aggravating or mitigating factors.[2]

To be proportionate, the Committee should think about and explain what action it needs to take to protect the public. It should also refer to the reasons why it has found that the professional's fitness to practise is impaired. There is also a public interest in the professional being allowed to practise their profession, but only where this is consistent with our over-arching objective of maintaining public safety and promoting public confidence and professional standards.

As with any decision, the Committee should be careful to ensure their decision is made on the basis of the information in front of them, and not their own assumptions about the professional, or any bias or stereotypes. The Committee may find it helpful to discuss their own potential biases to prevent those biases influencing their decision.

## Aggravating factors

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Before considering sanction, the Committee must consider any aggravating factors that are present. Aggravating factors are aspects of the case that make it more serious.

The Committee should always look carefully at any evidence about these factors. They might mean that the Committee needs to impose a more restrictive sanction to protect the public and maintain public confidence and professional standards.

Some possible aggravating factors include, but are not limited to:

- abuse of a position of trust
- conduct which deliberately or recklessly puts people receiving care at risk of suffering harm
- deliberate breaches of the Code
- a pattern of misconduct over a period of time
- any previous regulatory or disciplinary findings, especially if these suggest attitudinal issues or a pattern of impairment
- dishonesty in giving evidence (although this is not necessarily the same as the Committee rejecting the professional's defence, because registrants have the right to defend themselves; see Sawati below)[3]
- failure to attend hearings, or to engage in the Fitness to Practise (FtP) process, without good reason
- absence of or limited insight.
- vulnerability of the person receiving care (for example, mental health issues, being a child or young person, disability/frailty, bereavement, history of abuse or neglect)
- premeditated behaviour
- predatory behaviour
- failure to work collaboratively with colleagues (for example sexual harassment or discrimination)

The fact that a nurse, midwife or nursing associate has denied an allegation (and their defence has been rejected) might, in some cases, be regarded as an aggravating factor but panels must bear in mind the principle that professionals are fairly entitled to defend themselves. Panels should carefully consider the nature of the rejected defence before concluding that it can properly be regarded as an aggravating factor.[4]

The absence of insight or very limited insight is likely to be a significant aggravating factor. This is because it is very difficult for a professional to address the concerns without insight into what happened in the first place. In the case of very serious charges being found proved, insight is likely to be less significant. The level of insight cannot be both an aggravating and a mitigating factor.

Generally, whether or not harm happened is less important than whether the professional's actions caused a risk of harm. Actions creating the potential for significant harm are as serious as those causing actual harm. We explain why in our guidance on investigating what caused the death or serious harm of a patient. Someone suffering serious harm will only be an aggravating factor if the professional could and should have anticipated the harm. Deliberately causing serious harm to people in their care will always be a significant aggravating factor and will normally result in a striking-off order.

Failure to attend FtP hearings without good reason may be an aggravating factor. This is because the Committee may not have all the relevant evidence, for example the chance to ask the professional questions.[5] All registered professionals are under a professional obligation to cooperate with their regulator.

## Mitigating factors

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As with aggravating factors, the Committee must also consider what mitigating factors are present and the evidence about them. Mitigating factors are aspects of the case that make it less serious because they reduce the level of risk that the professional poses to public protection. They may mean that the risk to the public is reduced and a lesser sanction can manage the risk.

Mitigating factors will always be case-dependent but can broadly be grouped as related to either insight and strengthened practice or to personal mitigation.

Some possible mitigating factors related to insight and strengthened practice are (but aren't limited to):

- early admission of the facts
- apologies to anyone affected
- efforts to prevent similar things happening again, or any efforts to put problems right
- evidence that the professional has worked safely and professionally in the same or similar role since the events causing concern
- relevant training courses
- reflective accounts or discussions with colleagues about what happened
- evidence of keeping up to date with their area of practice.

Generally, evidence of insight and strengthened practice will be a mitigating factor as it suggests that the professional is less likely to pose a risk to public safety in future. Evidence of insight and strengthened practice may be less important in cases where the Committee have found a risk to public confidence in the profession and professional standards. This is because insight and strengthened practice do not lessen these risks in the same way.

Some possible personal mitigating factors include (but aren't limited to):

- periods of stress or illness (including addiction or substance misuse)
- personal and financial hardship
- level of experience at the time in question
- level of support in the workplace

Personal mitigating factors will have more weight if there is evidence to support them, such as a letter from the professional's GP, community or faith leaders the professional may have engaged with, or evidence from colleagues.

Because the purpose of sanctions is to protect the public, personal mitigation is usually less relevant than other forms of mitigation. The Committee may consider positive references and testimonials, however these are only likely to be relevant if it is clear the person providing them is aware of and understands the full extent of the concerns about the professional, so they understand the issues the Committee is considering.

As explained above, deliberately putting people using services at risk of harm is an aggravating factor, whether or not harm was caused.

Aggravating and mitigating factors may carry different weights. The Committee should not count the number of aggravating factors compared to the number of mitigating factors, but instead consider the weight of these factors in the round.

## Sanctions for charges related to upholding public confidence in the profession or upholding proper professional standards

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A professional's FtP maybe impaired both because they cannot provide safe care and because it is necessary to uphold public confidence in the profession and to uphold proper professional standards.

A professional's fitness to practise may still be impaired even if the concerns are not directly about their clinical practice. For example, their conduct might be so serious that a finding of impairment is necessary to uphold public confidence in the profession or to uphold proper professional standards. In such cases, the panel should still consider each sanction in ascending order of seriousness to determine the least restrictive sanction that would uphold public confidence and professional standards.

Where the Committee has found impairment to uphold public confidence and professional standards, it is unlikely that a conditions of practice order will be an appropriate sanction. This is because conditions of practice are intended to allow a professional to practise safely while they strengthen their practice. However in cases where the impairment relates only to upholding standards or public confidence, the panel has already found that there are no concerns about the professional's clinical practice. As such, conditions are unlikely to have any impact on the professional's practice or upholding public confidence and professional standards.

In the most serious cases, it is possible that striking-off is still the most appropriate sanction, even if the professional is now capable of safe practice. This would only be the case if it is not possible to uphold public confidence in the profession and uphold professional standards while the professional continues to practise.

### Example:

> The Committee has found that a nursing associate has failed to provide appropriate care, made a range of recording errors and has been bullying junior colleagues. Since the incidents, he has undergone a lot of relevant training, read widely on the impact of bullying on patient care and undertaken therapy to understand the reasons for his behaviour. While the Committee is impressed by the work done to improve his practice, they decide that the seriousness of the allegations found proven mean that public confidence in the profession cannot be upheld without a finding of impairment.
>
> The Committee considers that the risk to public confidence in the profession is such that a sanction is required. Conditions of practice would be inappropriate, as the nursing associate has already strengthened his practice. A suspension would be disproportionate given his insight into what happened and how he has improved his practice. As such the Committee decides to impose a caution order.

## Previous interim orders and their effect on sanctions

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It may be relevant for the Committee to consider whether the professional was subject to an interim order while the FtP process was ongoing. They should consider the effect this might have on sanction, but remember that interim orders have a separate purpose from final sanctions. The purpose of interim orders is to manage risk while a case is being investigated and before the Committee makes a final decision. The purpose of a final order is to decide how best to protect the public once a professional's fitness to practise has been found to be impaired.

## Effects on which sanction to impose

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If a professional has been subject to an interim order they may have had limited opportunities to address the risks in their practice through working, which may have made it harder for them to strengthen their practice than a professional without an interim order. If they have complied with an interim conditions of practice order, or engaged with any testing required, this may demonstrate insight and evidence a lower current and future level of risk.

Equally, any evidence that they did not fully comply with an interim order may be relevant to their:

- level of insight
- attitude towards professionalism
- likelihood of complying with any final sanction.

## Effects on length of sanction

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The fact that a professional was previously under an interim order, and for how long, may be relevant to the length of the final sanction, depending on the individual case.[6] However, this doesn't mean that the length of any interim order must be deducted from a sanction, because they serve different purposes.[7]

Any interim order is highly unlikely to be relevant where there is a current risk to public safety. This is because the professional's practice needs to improve before it is safe for them to practise unrestricted.

## Previous FtP history

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The professional's FtP history can be relevant to a decision on sanction. It's most likely to be useful in cases about similar kinds of concerns. If problems seem to be repeating themselves, this may mean that previous orders weren't effective to help the professional strengthen their practice. If the Committee is considering a similar order again, it may need to consider whether this is likely to reduce the risks in the professional's practice.

Sometimes, the professional's conduct may be so serious that it is fundamentally incompatible with continuing to be a registered professional. In this case, the fact that the professional does not have any FtP history cannot change the fact that what they have done means that they cannot continue to be on our register.

The absence of FtP history is unlikely to be relevant if the allegations relate to attitudinal concerns that the professional hasn't fully addressed.

## How conditions and other sanctions apply to those registered on more than one part of our register

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Sanctions apply to all parts of a professional's registration. For example, if someone is a nurse and a midwife and has a conditions of practice order, all of the conditions will apply to both their nursing and midwifery practice, unless the order states otherwise. For the same reason, a suspension order will apply to all of a nurse or midwife's registration. We cannot suspend someone from only one part of the register.

If a Committee wanted to prevent the professional from practising in only one of those professions, it must do so using a conditions of practice order. The conditions would say (for example) 'you must not practise as a nurse'. This would be

appropriate if someone had problems in one of their professions that mean that they should not be practising, but a complete restriction on all areas of practice would not be necessary to protect the public.

[1] Bolton v Law Society [1994] 1 W.L.R. 512, CA

[2] R (Uddin) v General Medical Council [2012] EWHC 1763 (Admin), paragraph 54. See also Giele v General Medical Council [2005] EWHC 2143 (Admin).

[3] Sawati v GMC [2022] EHWC 283 (Admin)

[4] Sawati v GMC [2022] EHWC 283 (Admin)

[5] General Medical Council v Adeogba [2016] EWCA Civ 162

[6] Akhtar v General Dental Council [2017] EWHC 1986 (Admin)

[7] Article 31(1)-(2) of the Order