Sanctions for the highest risk cases

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Some concerns are particularly serious and are likely to attract the strongest sanctions because they are mostly likely to risk:

- the health and safety of the public
- public confidence in the profession
- upholding professional standards.

Cases involving dishonesty

Honesty is of central importance to a professional's practice because of the large degree of trust placed in them. Therefore, allegations of dishonesty will almost always put the public at risk of the professional not being trustworthy; because of this a professional who has acted dishonestly will always be at risk of strike-off. However, in every case the Committee must carefully consider the kind of dishonest conduct that has taken place. Not all dishonesty is equally serious.[1] Generally, the forms of dishonesty which are most likely to require consideration of striking-off will involve (but are not limited to):

- deliberately breaching the professional duty of candour by covering up when things have gone wrong, especially if this could cause harm to people receiving care
- misuse of power
- personal or financial gain from a breach of trust
- direct risk to people receiving care
- premeditated, systematic or longstanding deception.

Dishonest conduct will generally be less serious in cases of:

- one-off incidents
- spontaneous conduct
- no direct personal gain
- incidents outside professional practice.

This is not an exhaustive list.

Professionals who have behaved dishonestly can engage with the Committee to:

- show that they feel remorse
- recognise that they acted in a dishonest way
- explain, with evidence, how this will not happen again.

Where the professional denies dishonesty, it is particularly important that they make every effort to attend the hearing so that the Committee can hear at first hand their response to the allegations.

The Committee should always consider the sanctions in ascending order of seriousness, and work upwards to the next most serious sanction if it needs to. However, it is very unlikely that a sanction less than suspension will be proportionate to findings of dishonesty. Conditions of practice are unlikely to be an appropriate sanction, because dishonesty is an attitudinal concern which cannot easily be mitigated by conditions.

The Committee should be careful when it finds allegations of dishonesty proved after the professional denied them. This is known as a rejected defence of dishonesty. Professionals should have a proper opportunity to resist very serious allegations. This must be balanced against the necessity of protecting people receiving care and the

public from professionals whose honesty and integrity cannot be relied on.

The Committee may consider a rejected defence to dishonesty to be an aggravating factor, but should consider carefully that:

- Denying intrinsically dishonest conduct (like fraud or forgery) is more likely to be an aggravating factor than if the conduct could be performed either honestly or dishonestly.
- The Committee finding that a registrant resisted, or was dishonest in relation to, objectively verifiable facts (such as where they were at a particular time) is likely to be an aggravating factor.
- Whether there is any other evidence of lack of insight on the part of the professional, other than the rejected defence.
- Seeking to wrongly implicate or blame others, or falsely accusing witnesses of being dishonest, is likely to be an aggravating factor.[2]

Cases involving deliberate breach of an interim order, final order or an undertaking

If a professional deliberately doesn't comply with an interim or final order this can demonstrate a risk to the public. It is likely to be an aggravating factor and call into question whether they should remain on the Register, because it shows a disregard for the protections the Committee put in place and undermines the likelihood they will comply with any other sanction.[3]

Undertakings agreed between the professional and the case examiners are likely in part to include some "restrictive" measures, such as preventing a professional from undertaking a particular activity. Breaching an undertaking will be considered in the same way as breaching an interim or final order.

Example:

A previous Committee has imposed a conditions of practice order on a nurse following repeated clinical failings. The conditions include that the nurse must inform any employer or agency of the previous FtP decision and the conditions of practice order. At a review hearing, the nurse admits that they have not done this because they are embarrassed about the order and has been dishonest to agencies about their fitness to practise history. The Committee decides that the conditions of practice have not been effective, and they cannot be certain that the nurse would not seek work if she were suspended. As such, the only way to protect the public is a striking-off order.

Cases involving sexual misconduct

Sexual misconduct includes unwelcome behaviour of a sexual nature, or behaviour that can reasonably be interpreted as sexual, which degrades, harms, humiliates or intimidates another. It can be physical, verbal or visual. It could be a pattern of behaviour or a single incident. It includes sexual harassment and will be regarded as extremely serious whether or not it occurs in the workplace. Behaviour that was not intended to harass may still amount to harassment if it is unwanted.

Sexual misconduct may also include conduct that may have been consensual but still breaches professional boundaries. This might include sexualised behaviour towards a patient or a patient's family member, or a senior professional abusing their position of power over more junior colleagues.

When the sexual misconduct involved people receiving care, the Committee should also consider the guidance on sexual boundaries produced by the Professional Standards Authority. The Professional Standards Authority has also produced research on sexual misconduct between colleagues highlighting the negative impacts that this kind of behaviour can have on public safety and the quality of care.

Sexual misconduct is likely to create a risk to people receiving care and to colleagues as well as undermining public trust and confidence. This is the case even if the victim is not a colleague or someone receiving care. This is because it calls into question the professional's understanding of personal boundaries. The Committee should always consider the duration of the conduct, the professional's relationship to those involved and the vulnerabilities of anyone subject to the alleged conduct.

The Committee should consider the following aggravating factors (although other aggravating factors may also be present):

- where the professional has abused a position of trust or power they hold, either as a registered professional or otherwise. This is particularly so for cases involving cruelty, exploitation and predatory behaviour. All people receiving care will be vulnerable to some extent in their relationship with a professional, but the degree of vulnerability will depend on the person and relationship.[4]
- long-term or repeated conduct.
- sexual misconduct towards people receiving care or colleagues. Sexual misconduct towards people receiving care suggests a direct risk to public safety. It always constitutes an abuse of a position of trust or power, given the inherent imbalance in power between professionals and those they care for. Sexual misconduct towards colleagues may indirectly risk public safety through creating an unsafe workplace environment. It also risks the dignity of colleagues.[5]
- in general, where a professional has been convicted of a serious criminal offence or offences they should not be permitted to resume practice until they have satisfactorily completed their sentence.[6] However, this is a general principle rather than an absolute rule and panels will always have to consider what sanction is required on the facts of each individual case to preserve public safety and uphold public confidence and professional standards.[7]
- situations where the professional has been registered as a sex offender. In such cases, the Committee should consider whether it is appropriate for the professional to return to unrestricted (or any) practice while still registered as a sex offender.
- Convictions for sexual offences including those relating to images or videos involving child sexual abuse or exploitation. These offences gravely undermine the public's trust in the professions. Any such conviction makes it highly unlikely the professional can uphold the standards and values set out in the Code.

Any professional who is found to have behaved in this way will be at risk of being removed from the Register. This is because of the severe impact the conduct has on:

- public confidence
- a professional's ability to uphold the standards and values set out in the Code
- the safety of people receiving care.

If the Committee decides to impose a less severe sanction, they will need to make sure they explain the reasons for their decision clearly and carefully. This will allow others, including the victims of such behaviour, to properly understand the decision.

Example:

> A Committee has found that a nursing associate made repeated sexually motivated comments towards people receiving care and asked several people receiving care to have sex with him. While the nursing associate has demonstrated remorse and insight, the Committee conclude that public confidence in the profession cannot be upheld without a striking off order.

Abuse or neglect of children or vulnerable people

Safeguarding and protecting people from harm, abuse and neglect is an integral part of the standards and values set out in the Code. Any allegation involving the abuse or neglect of children or vulnerable adults should always be treated seriously.

By vulnerable adult, we mean adults who have care and support needs and, as a result of this, are unable to take care of themselves or protect themselves from abuse or neglect.

However, all people receiving care are likely to have a degree of vulnerability, given the relationship between health and social care professionals and those receiving care.[8] The Committee should consider carefully the extent to which the power dynamic between a professional and a person using services creates vulnerability.

Abuse or neglect of children or vulnerable adults can have a particularly severe impact on:

- public confidence
- a professional's ability to uphold the standards and values set out in the Code
- the safety of people receiving care.

If the Committee decides to impose a less severe sanction, they will need to make sure they explain the reasons for their decision clearly and carefully. This will allow others, including the victims of such behaviour, to properly

understand the decision.

Cases involving criminal convictions or cautions

The Committee's purpose isn't to punish professionals in addition to criminal sentencing. Because of this a criminal sentence isn't always a reliable guide to how the conviction affects the professional's fitness to practise. Personal circumstances or mitigation are less likely to affect sanction than in the criminal court, because the Committee is focussed on how a sanction will protect the public.

While findings of fact in the criminal courts amount to proof of those facts[9], the Committee will need to consider separately how those facts may impact on (among other considerations):

- the quality of care given
- what they say about the professional's attitude and ability to practise safely and effectively going forward
- the likely effect that they would have on the public's confidence in the profession.

The Committee will have to decide the risks the behaviour represents to the protection of the public by considering all the information before it, as well as our cautions and convictions and misconduct guidance.

There are some offences we have specified as particularly serious because they raise fundamental questions about the professional's ability to uphold the standards and values set out in the code. If a registrant has been convicted of one of these offences, it is unlikely that any sanction less than strike-off will be appropriate. This is because we do not consider that public confidence could be maintained in the profession if they remained on the register. However, the Committee will still need to consider the facts of the individual case.

Ongoing criminal sentences

The Committee should consider whether the professional should be able to practise before they have completed their sentence. This includes suspended sentences, probation, and restrictions such as being banned from driving. In general, a professional should not be permitted to practise until they have completed a sentence for a serious offence.[10] However this does not mean that the Committee has no choice but to remove the professional from the register permanently.[11]

DBS and Disclosure Scotland decisions

The existence of a DBS barring or Disclosure Scotland listing decision must be taken into account when deciding on the appropriate sanction and the panel must explain in its reasoning how it has taken the barring or listing decision int account when determining the appropriate sanction.

Other types of higher risk cases

Some concerns are higher risk because it is harder for the professional to put the matter right. Examples of this type of concern include (but are not limited to):

- breaching the professional duty of candour to be open and honest when things go wrong. This includes actions that are not necessarily dishonest, such as:
  - hindering someone who wants to raise a concern
  - encouraging others not to tell the truth
  - otherwise contributing to a culture which suppresses openness about the safety of care
- conduct that was discriminatory
- abusing their position as a professional or other position of power to exploit, coerce or obtain a benefit (including sexual or financial) from people receiving care, colleagues or students
- being directly responsible for exposing people receiving care to harm or neglect. Examples might be through management of a service or setting. This is especially the case where the professional put their own priorities, or those of their organisation, before ensuring the safety and dignity of people receiving care.

1 Lusinga v Nursing and Midwifery Council [2017] EWHC 1458 (Admin)
2 Sawati v GMC [2022] EWHC 283 (Admin)
3 GMC v Donadio [2021] EWHC 562 (Admin)
4 Professional Standards Authority for Health and Social Care v General Medical Council and Onyekpe [2023] EWHC 2391 (Admin)
5 Arunchalam v General Medical Council [2018] EWHC 758 (Admin)

6 Council for the Regulation of Healthcare Professionals v General Dental Council and Fleischmann [2005] EWHC 87 (Admin)
7 PSA v GDC & Patel [2024] EWHC 243 (Admin)
8 Professional Standards Authority for Health and Social Care v General Medical Council and Onyekpe [2023] EWHC 2391 (Admin)
9 Rule 31(2)(b) of the Fitness to Practise Rules
10 Council for the Regulation of Health Care Professionals v (1) General Dental Council and (2) Fleischmann [2005] EWHC 87 (QB)
11 Chandrasekera v Nursing and Midwifery Council [2009] EWHC 144 (Admin)