

# AHCS

# Sanctions Policy

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## About the Policy

### Purpose of the Policy

1. This Sanctions Policy sets out the principles Fitness to Practise Panels should consider when deciding what, if any, sanction should be imposed in fitness to practise cases. It aims to ensure that decisions are fair, consistent and transparent.
2. Panels make independent decisions and must decide each case on its merits. The guidance is intended to be a handbook and not to provide fixed 'tariffs' or constrain a Panel's independence in any way. However, where a Panel deviates from the guidance, they must provide clear reasons for doing so.
3. This Policy covers the principles Panels should consider when determining what, if any, sanction should be imposed. It provides detail on the principles of proportionality, outlines key mitigating and aggravating factors, identifies serious cases and describes the sanctions available to the Panel and the approach to be taken in review hearings.

### Purpose of sanctions

4. Professionals registered with the Academy for Healthcare Science ('the Academy') must adhere to Academy's standards. Where serious concerns have been raised about a registrant's adherence to these standards, these concerns may be referred to a Fitness to Practise Panel ('the Panel').
5. In advance of their consideration of sanction, the Panel will hear evidence on the facts alleged as well as, where required, submissions on the ground/s of the allegation/s and the issue of impairment.
6. There are five grounds of impairment:
  - misconduct;
  - lack of competence;
  - physical or mental health;
  - a determination by another professional regulatory body; or
  - a conviction or caution in the United Kingdom for a criminal offence, or a conviction elsewhere for an offence which, if committed in England and Wales, would constitute a criminal offence;
7. It is not the role of the Panel to punish for past misdoings, but the Panel will take account of past acts or omissions in determining whether a registrant's fitness to practise is currently impaired. If a Panel finds that a registrant's fitness to practise is impaired, it will go on to consider whether it is appropriate to impose a sanction.

8. Sanctions should only be imposed in relation to the facts found proved, but should address all of those facts which have led to a finding of impairment.

9. The primary function of any sanction is to protect the public. The considerations in this regard include:

- any risks the registrant might pose to those who use or need their services;
- the deterrent effect on other registrants;
- public confidence in the profession concerned; and
- public confidence in the regulatory process.

10. In writing any decision on sanction, the Panel must provide clear and detailed reasoning to support its decision, explaining the issues it has considered and the impact any aggravating or mitigating factors have had on the outcome.

11. Any decision on sanction is published in accordance with the Academy's Policy on the Publication of Fitness to Practise Decisions.

### **Options available to the Panel**

12. The following sanctions are available to a Panel:

- no action;
- a caution order;
- a conditions of registration order;
- a suspension order;
- a removal order.

### **Equality, diversity and inclusion**

13. The Academy is committed to preventing discrimination, valuing diversity and promoting equality of opportunity in all that we do.

14. The Equality Act 2010 and equivalent legislation in Northern Ireland and all subsequent amendments to, prohibits discrimination, harassment or victimisation of people with protected characteristics. These are:

- age;
- disability;
- gender reassignment;
- marriage and civil partnership;
- pregnancy and maternity;
- race;
- religion or belief;
- sex; and
- sexual orientation.

15. Panels should be mindful of this when making their decisions. They should ensure that their decisions are fair, consistent and proportionate.

16. Panels should also be mindful that cultural differences may impact the way a registrant engages with the investigation into their conduct, and any hearing. For example, how they frame an apology.

### **Proportionality**

17. In making proportionate decisions on sanction, Panels need to strike a balance between the competing interests of the registrant and the Academy's overriding objective to protect the public (see paragraph 9). Therefore, decisions should deal with the concerns raised, but be fair, just and reasonable.

18. Sanctions are not intended to be punitive. Panels should only take the minimum action necessary to ensure the public is protected. This means considering the least restrictive sanction available to them first, and only moving on to a more restrictive sanction if it is necessary to protect the public.

19. The Panel's written decision should clearly explain why the sanction is necessary to protect the public having regard to the full facts of the case and associated risks. It should also make clear what process the Panel followed, by considering each available sanction in turn, in the same order in which the Panel has assessed their suitability. Panels should explain why they have rejected one sanction before moving on to a more severe sanction and outline why the less restrictive sanction is insufficient to protect the public. Where appropriate, they should also explain why the next more severe sanction is not required to protect the public, having regard to the specific circumstances of the case.

### **Interim Orders**

20. In deciding whether a substantive sanction is proportionate, Panels may wish to take into account any interim order and its effect on the registrant.

21. Panels should however be mindful that the criteria Panels use when considering whether to impose a substantive sanction on a registrant's registration is entirely different from the test for considering whether to impose interim orders, and that a Panel making an interim order makes no findings of fact.

### **Mitigating factors**

22. Mitigating factors are relevant at the earlier stages of the fitness to practise process, for example in determining whether the proven facts indicate that fitness to practise is impaired. This is distinct from the discussion below, which focuses on evidence that is exclusively relevant to sanction. Matters of mitigation are likely to be of considerably less significance in regulatory proceedings, where the overarching concern is the protection of the public, than to a court imposing retributive justice.

23. When considering the impact on sanction, Panels should properly evaluate any mitigating factors in the round and on a case by case basis. Panels must therefore give due consideration to all the information available to them about that particular case, including any wider contextual factors. These considerations should then form part of the Panel's wider balancing exercise to determine what action is necessary for public protection.

24. Whilst mitigating factors do not excuse or justify poor conduct or competence, they may be useful indicators of a reduced ongoing risk posed to service user safety. For this reason, mitigating information may reduce the severity of the sanction required or, in some cases, mean that a sanction is no longer required at all.

25. A key factor in determining what, if any, sanction is appropriate is likely to be the extent to which a registrant recognises their failings and is willing to address them. Where a registrant does recognise their failings and is willing to address them, the risk of repetition is reduced.

26. In taking account of any insight, remorse or apology offered by a registrant, Panels should be mindful that there may be cultural differences in the way these might be expressed, both verbally and non-verbally. This may be more pronounced where English is not the registrant's first language.

### **Insight, remorse and apology**

27. Where present, genuine insight and / or remorse or apology can indicate that:

- the registrant will comply with any training requirements;
- the registrant will comply with any restrictions imposed on their registration, either by the Academy or locally;
- the risk of repetition, and therefore the risk to service users, is significantly lower than cases where insight is not present; and
- the risk of damage to public confidence in the profession is reduced.



### **Insight**

28. Insight is a registrant's genuine understanding and acceptance of the concerns, which have been raised in relation to their conduct or competence. It is likely to be demonstrated by:

- a genuine recognition of the concerns raised;
- an understanding of the impact or potential impact of their actions; and
- demonstrable empathy for the service user(s) involved (if applicable).

29. Genuine insight is likely to be demonstrated by timely remorse, apology and remediation, exhibited ahead of any hearing. Whilst insight expressed during a hearing may be taken into account, insight expressed in advance is likely to carry more weight.

### **Remorse**

30. Expressing remorse involves a registrant taking responsibility and exhibiting regret for their actions, and may be demonstrated by one or more of the following:

- acknowledging wrongdoing;
- giving an apology; and
- undertaking appropriate remediation.

### **Apology**

31. Healthcare professionals have a duty of candour; a professional responsibility to be open and honest when things go wrong with the care, treatment or service that they have provided. The Academy's guidance on the duty of candour sets out the need to:

- inform patients and service users or, where appropriate, their carers, that something has gone wrong;
- apologise;
- take action to put matters right if possible; and
- make sure that patients and service users or, where appropriate, their carers, receive a full and prompt explanation of what has happened and any likely effects.

32. An apology does not mean the registrant is admitting legal liability.

33. In assessing the sincerity of an apology, the Panel should take account of the timing and level of remorse and insight the registrant has shown, and the presence and nature of any remediation they have undertaken.

### **Remediation**

34. Remediation involves a registrant taking steps to address any concerns that have been raised about their conduct, competence or health. Successful remediation is likely to:

- indicate the registrant has insight into the deficiencies of their conduct, competence or health;
- reduce the risk of repetition of the concerns; and
- reduce the risk to the public, including public confidence in the professions.

35. Whether or not remediation has been undertaken, and if any remediation can be considered successful, are important aspects of a Panel's assessment of what risk the registrant might pose to the public, and therefore what sanction, if any, is required to mitigate that risk.

36. There are a wide range of remediation activities available to a registrant, and the form of that remediation will depend upon the nature of the concerns raised. The decision as to the appropriateness of the remediation is ultimately for the Panel to make, however, remediation can include (but is not limited to):

- courses to address behavioural issues, such as an anger management course;
- training to address competence deficiencies;
- rehabilitation to support individuals with health concerns;
- coaching, mentoring and supervision to address competence and conduct issues; and
- personal reflection.

37. There are some concerns which are so serious, that activities intended to remediate the concern cannot sufficiently reduce the risk to the public or public confidence in the profession. Despite the steps the registrant has taken to attempt to remediate the concerns, the Panel is still likely to impose a serious sanction. These might include cases involving:

- dishonesty (see paragraphs 51 – 53)
- failure to raise concerns (see paragraphs 54 – 55)
- discrimination (see paragraphs 56 – 59)
- abuse of professional position, including vulnerability (see paragraphs 60 – 68)
- sexual misconduct (see paragraphs 69 – 70)
- sexual abuse of children or indecent images of children (see paragraphs 71 – 72 and 80 – 82)
- criminal convictions for serious offences (see paragraphs 73 - 85); and
- violence (see paragraph 86).



38. Where the Panel considers the steps taken to address the concerns are not sufficient to remediate the issues, it should clearly set out:

- the seriousness of the concerns;
- the risk posed to the public;
- the steps the registrant has taken to attempt to address the concerns; and
- the reasons the steps taken are not sufficient to protect the public.

### **Aggravating factors**

39. Like mitigating factors, aggravating factors are relevant at the earlier stages of the fitness to practise process, for example in determining whether the proven facts indicate that fitness to practise is impaired. This is distinct from the discussion below, which focuses on evidence which is exclusively relevant to sanction.

40. Aggravating factors are any features of a case which increase the seriousness of the concerns. Where present, they are likely to lead to stronger sanctions in order to protect the public.

41. As with mitigating factors, when considering the impact on sanction Panels should properly evaluate these factors in the round and on a case-by-case basis. Panels must therefore give due consideration to all the information available to them about that particular case, including any wider contextual factors. These considerations should then form part of the Panel's wider balancing exercise to determine what action is necessary for public protection.

### **Breach of trust**

42. Trust is a fundamental aspect of the relationship between a registrant and a service user or carer. Breaching this trust can have significant impacts on public protection. For example, a service user may not engage with a registrant because they are concerned they cannot trust them, delaying treatment or support.

43. Breaches of trust are of even greater seriousness where they involve a vulnerable service user or carer (see paragraphs 66–68).

44. Where there has been a breach of trust, Panels are likely to impose more serious sanctions, and should provide clear reasons if they choose not to.

### **Repetition of concerns / pattern of unacceptable behaviour**

45. A repetition of concerns, or a pattern of unacceptable behaviour, leads to greater potential risks to the public, for a number of reasons such as:

- the fact the conduct or behaviour has been repeated increases the likelihood it may happen again; and
- the repetition indicates the registrant may lack insight.

46. Repeated misconduct or unacceptable behaviour, particularly where previously addressed by employer or regulatory action, is likely to require more serious sanctions to address the risks outlined above.

### **Lack of insight, remorse or apology**

47. Where a registrant lacks insight, fails to express remorse and / or refuses to apologise in a timely manner, they may pose a higher risk to patients and service users.

48. Registrants who lack a genuine recognition of the concerns raised about their fitness to practise and fail to understand or take responsibility for the impact or potential impact of their actions, are unlikely to take the steps necessary to safeguard service user safety to address the concerns raised. For this reason, in these cases Panels are likely to take more serious action in order to protect the public.

### **Lack of remediation**

49. If a registrant chooses not to undertake remediation activities to address their deficiencies or fails to remediate when they have promised to do so, it could indicate a lack of insight. This might significantly increase the risk of repetition and therefore risk to the public. It is therefore likely that cases involving little or no remediation might require more serious sanctions, to protect the public.

### **Harm or potential harm to patients and service users**

50. In cases where a patient or service user has been harmed, or there was potential for harm to be caused, Panels should be particularly mindful of any ongoing risk to safety, and any impact on public confidence in the profession. Harm, or the potential for this, will be of particular importance in cases involving vulnerable patients or service users. In these cases, the public expect that more serious action is taken to address concerns around conduct or behaviour.

## **Serious cases**

### **Dishonesty**

51. Dishonesty undermines public confidence in the profession and can, in some cases, impact the public's safety.

52. Dishonesty, both in and outside the workplace, can have a significant impact on the trust placed in those who have been dishonest, and potentially on public safety. It is likely to lead to more serious sanctions. The following are illustrations of such dishonesty:

- putting false information in a service user's record (including in an attempt to cover up misconduct or a lack of competence);

- providing untruthful information in job applications (perhaps misleading the prospective employer about experience, training or skills gained);
- using medicines, devices or services meant for service users;
- fraud, theft or other financial crime.

53. Given the seriousness of dishonesty, cases are likely to result in more serious sanctions. However, Panels should bear in mind that there are different forms, and different degrees, of dishonesty, that need to be considered in an appropriately nuanced way. Factors that Panels should take into account in this regard include:

- whether the relevant behaviour took the form of a single act, or occurred on multiple occasions;
- the duration of any dishonesty;
- whether the registrant took a passive or active role in it;
- any early admission of dishonesty on the registrant's behalf; and
- any other relevant mitigating factors.

### **Failure to raise concerns**

54. The Academy's Guidance on Reporting and Escalating Concerns says that registrants must report any concerns about the safety or wellbeing of service users promptly and appropriately.

55. Where a registrant fails to raise concerns, this can place service users at particular risk and is likely to result in a more serious sanction. This will be appropriate particularly where a registrant has repeatedly failed to raise concerns, a failure to raise concerns has resulted in a serious risk to the safety or wellbeing of service users, or if the concern involved a child or vulnerable adult.

### **Discrimination**

56. It is unlawful to discriminate against someone because they have, or are perceived to have, a protected characteristic, or are associated with someone who has a protected characteristic. Those characteristics are:

- age;
- disability;
- gender reassignment;
- marriage and civil partnership;
- pregnancy and maternity;
- race;
- religion and belief;
- sex; and
- sexual orientation.

57. Unlawful discrimination is unacceptable in modern society.

58. There can be serious consequences for public safety and confidence in the profession where a registrant discriminates against individuals with a protected characteristic, for example where a registrant:

- treats a service user or carer differently and worse than others because of who they are, or because of someone they are connected to;
- refuses to provide a service user with a service or take them on as a client;
- behaves in a way which causes the service user or carer distress, or offends or intimidates them; or
- punishes a service user or carer for complaining about discrimination or helping someone else to complain.

59. For the reasons set out above, where a Panel finds a registrant impaired and this involves unlawful discrimination, it is more likely to impose a serious sanction.

### **Abuse of professional position**

60. The relationship between a registrant and service user or carer is based upon trust, confidence and professionalism. However, it is also a relationship in which there is an unequal balance of power, in favour of the registrant. Whilst registrants should endeavour to have positive relationships with service users and carers, it is essential that they remain aware of this dynamic and take care not to abuse their position.

61. Good Scientific Practice says that registrants must behave in 'ways that uphold the profession's reputation and reflect the trust that the public, patients, employers and colleagues place in the profession'. Where a registrant is found to have abused their professional status, this is highly likely to reduce the public's trust in them and their profession. The greater the alleged abuse of trust, the more serious the Panel should consider the concerns.

62. A registrant may abuse their professional position in a number of ways such as:

- **Financial:** A registrant may abuse their position of trust for their own financial gain, for example by influencing service users or carers in order to sell goods or services, or by misusing a service user or carer's money or possessions.
- **Inappropriate access of confidential information:** A registrant will be considered to have abused their professional position if they use it to gain access to confidential records about service users without authority or a good reason to do so.



- **Inappropriate relationships:** Where a registrant uses their professional status to pursue inappropriate relationships with service users or carers this may undermine the care or treatment provided and the public's trust in the profession. Registrants should take care to set clear boundaries, and avoid conduct which strays beyond that typically expected of a therapeutic / professional relationship.

When considering whether a relationship is inappropriate, the Panel should have particular regard for:

- evidence that the registrant's professional status was a coercive factor in the relationship's instigation;
- evidence of predatory behaviour (see paragraphs 64 – 65);
- evidence that the service user or carer is particularly vulnerable (see paragraphs 66 - 68);
- evidence that the relationship is of a sexual or otherwise inappropriate emotional nature.

### **Former service users**

63. If a registrant forms a personal relationship with a former service user or carer, this may still be inappropriate. In determining whether or not the registrant has abused their professional position, the Panel should consider:

- the nature of the previous professional relationship;
- the length of time since the professional relationship ended;
- if there is evidence that the registrant used their professional relationship to facilitate a personal relationship (actual or prospective) with a service user or carer and, having done so, ended the professional relationship with that person. The Panel may consider a failure in any such situation to secure appropriate alternative professional treatment, care or support for the service user or carer to be an aggravating factor;
- the vulnerability of the service user or carer (see paragraphs 66 – 68); and
- whether the registrant is involved in the care or treatment of other members of the family.

### **Predatory behaviour**

64. A registrant's behaviour should be considered predatory where they are seen to take advantage of others, motivated by a desire to establish a sexual or otherwise inappropriate relationship with a service user or carer. The Panel should take predatory behaviour particularly seriously, as there will often be significant risk to the targeted service user or carer.

65. Predatory behaviour might include attempts to contact service users or carers using information accessed through confidential records (for example, visiting a service user's home address without authority or good reason to do so), or inappropriate use of social media to pursue a service user or carer. Any evidence of predatory behaviour is likely to lead to more serious sanctions.

### **Vulnerability**

66. Registrants must not abuse a service user or carer's trust. This is especially so where they might already be particularly vulnerable to such abuse.

67. Given the unequal balance of power between registrants and service users or carers, any service user or carer accessing treatment is vulnerable to some extent. However, a service user or carer is considered particularly vulnerable if they are unable to take care of themselves, or are unable to protect themselves from significant harm or exploitation. This might include factors such as:

- mental illness (including dementia);
- age (for example, children under 18 or the elderly);
- disability;
- lack of capacity;
- history of abuse or neglect;
- bereavement.

68. Where a registrant has pursued a sexual or otherwise inappropriate emotional relationship with a particularly vulnerable service user or carer, panels should consider this an aggravating factor which is likely to lead to a more serious sanction.

### **Sexual misconduct**

69. Sexual misconduct is a very serious matter which has a significant impact on the public and public confidence in the profession. It includes, but is not limited to, sexual harassment, sexual assault, and any other conduct of a sexual nature that is without consent, or has the effect of threatening or intimidating someone. The misconduct can be directed towards:

- service users, carers and family members;
- colleagues; and
- members of the public.

70. Because of the gravity of these types of cases, where a Panel finds a registrant impaired because of sexual misconduct, it is likely to impose a more serious sanction. Where it deviates from this approach, it should provide clear reasoning.



### **Sexual abuse of children**

71. Sexual abuse of children involves forcing or persuading them to take part in sexual activities and includes both physical contact and online activity. Each of the four countries has legislation which protects children from sexual abuse.
72. Sexual abuse of children, whether physical or online, is intolerable, seriously damages public safety and undermines public confidence in the profession. Any professional found to have participated in sexual abuse of children in any capacity should not be allowed to remain in unrestricted practice.

### **Criminal convictions and cautions**

73. A conviction or police caution should only lead to further action being taken against a registrant by the Academy if, as a consequence of that conviction or caution, the registrant's fitness to practise is found to be impaired.
74. The Panel's role is not to punish the registrant, but to protect the public, which includes maintaining high standards among registrants and public confidence in the profession concerned.
75. Where a registrant has been convicted of a serious criminal offence, and is still serving a sentence at the time the matter comes before a Panel, normally the Panel should not allow the registrant to resume unrestricted practice under Academy registration until that sentence has been satisfactorily completed.
76. Likewise, if a registrant has a conviction or caution for a less serious offence which nevertheless had an impact on fitness to practise, typically Panels should not permit the registrant to resume unrestricted practice under Academy registration.
77. Where the Panel deviates from the approach outlined above, it should provide clear reasoning.

### **Sex offender**

78. Although inclusion on the sex offenders' database is not a punishment, it does serve to protect the public from those who have committed certain types of offences. A Panel should normally regard it as incompatible with the Academy's obligation to protect the public to allow a registrant to remain in or return to unrestricted practice under Academy registration while they are on the sex offenders' database.
79. Where the Panel deviates from this approach, it should provide clear reasoning.

### **Offences related to indecent images of children**

80. Under the Protection of Children Act 1978 it is illegal to take, make, distribute, show or advertise indecent images of children.

81. The courts categorise offences relating to indecent images of children based on the nature of the images and the offender's degree of involvement in their production.

82. Any offence relating to indecent images of children involves some degree of exploitation of a child, and so a conviction for such an offence is a very serious matter. In particular, it undermines the public's trust in registrants and public confidence in the profession concerned and is likely to lead to a more serious sanction.

### **Community sentences**

83. Community sentences are non-custodial sentences aimed at punishing offenders' behaviour so they don't commit crime in the future, and are used to address different aspects of an individual's offending behaviour. Therefore they may not simply be an order to undertake unpaid community work but may also include other orders such as:

- compliance with a curfew;
- exclusion from certain areas; or
- participation in mental health, drug or alcohol treatment.

84. Panels need to give careful consideration to the specific terms of any community sentence but, generally, it will be inappropriate to allow a registrant to remain in, or return to, unrestricted practice under Academy registration whilst they are subject to such a sentence.

85. Should the Panel wish to depart from this approach, it should provide clear reasoning.

### **Violence**

86. Registrants have a duty to ensure that they behave in ways which uphold the profession's reputation and public trust. Where a registrant has exhibited violent behaviour, this is highly likely to affect the public's confidence in their profession and pose a risk to the public. In these cases, a more serious sanction may be warranted.

## Sanctions

### Determining what sanction is appropriate

87. If a Panel finds a registrant's fitness to practise to be impaired, it can:

- take no action;
- impose a caution order
- impose a conditions of registration order;
- impose a suspension order; or
- impose a removal order.

88. In determining what sanction, if any, is appropriate, the Panel should start by considering the least restrictive sanction first, working upwards only where necessary. The final sanction should be a proportionate approach and will therefore be the minimum action required to protect the public.

### No action

89. A finding of impaired fitness to practise means that the Panel has concerns about a registrant's current ability to practise safely and effectively. It is therefore unlikely that the Panel would take no action following a finding of impairment.

90. However, in the cases the Panel considers taking no action to be the appropriate and proportionate outcome, it should provide clear reasons to explain this decision and its conclusion that there is no risk to the public, or to public confidence in the profession, in taking no action. It is likely to only be appropriate in cases where the registrant's impairment is minor, is isolated in nature and unlikely to recur, and where the registrant has displayed sound insight and has undertaken significant remediation.

### Caution

#### What is a caution order?

91. A caution order can be imposed for a period of up to 5 years. It will appear on the Register for the duration of the order but will not restrict a registrant's ability to practise. An order of this sort may be taken into account if a further allegation is made against the registrant although, in doing so, the Panel should take into account all relevant factors including:

- the length of time since the caution order was imposed;
- the relevance of that order to the further allegation made against the registrant; and
- whether any promised remedial steps that led to the imposition of a caution order originally, rather than an alternative sanction, have been fulfilled.

### **When is a caution order appropriate?**

92. Where a Panel finds that a registrant's fitness to practise is impaired, the least restrictive sanction that can be applied is a caution order.
93. A caution order is likely to be an appropriate sanction for cases in which:
- the issue is isolated, limited, or relatively minor in nature;
  - there is a low risk of repetition;
  - the registrant has shown good insight; and
  - the registrant has undertaken appropriate remediation.
94. A caution order should be considered in cases where the nature of the allegations mean that meaningful registration restrictions cannot be imposed, but a suspension of registration order would be disproportionate. In these cases, panels should provide a clear explanation of why it has chosen a non-restrictive sanction, even though the Panel may have found there to be a risk of repetition (albeit low).

### **How long should a caution order be imposed for?**

95. The Panel can impose a caution order for any period up to five years. As discussed earlier, the Panel should take the minimum action required to protect the public and public confidence in the profession, so should begin by considering whether or not a caution order of one year would be sufficient to achieve this. It should only consider imposing the caution order for a longer period where one year is insufficient.
96. Each case should be considered on an individual basis, and the Panel's decision should clearly state the length of sanction it considers to be appropriate and proportionate, and the reasons for that decision.

## **Conditions of Registration**

### **What is a conditions of registration order?**

97. A conditions of registration order allows a registrant to remain in practice under Academy registration subject to restrictions, which reflect the Panel's finding as to their fitness to practise. It requires the registrant to undertake certain actions or restrict their practice in certain ways to retain their registration. In some cases it may be appropriate to impose a single condition for a short period, for example to undertake specific training. However, in most cases, a combination of conditions will be necessary.

### **When is a conditions of registration order appropriate?**

98. A conditions of registration order is likely to be appropriate in cases where:

- the registrant has insight;
- the failure or deficiency is capable of being remedied;
- there are no persistent or general failures which would prevent the registrant from remediating;
- appropriate, proportionate, realistic and verifiable conditions can be formulated;
- the Panel is confident the registrant will comply with the conditions;
- a reviewing Panel will be able to determine whether or not those conditions have or are being met; and
- the registrant does not pose a risk of harm by being under restricted conditions of registration.

### **When might a conditions of registration order not be appropriate?**

99. Conditions will only be effective in cases where the registrant is genuinely committed to resolving the concerns raised and the Panel is confident they will do so. Therefore, conditions are unlikely to be suitable in cases in which the registrant has failed to engage with the fitness to practise process or where there are serious or persistent failings.

100. Conditions are also less likely to be appropriate in more serious cases, for example those involving:

- dishonesty (see paragraphs 51 - 53);
- failure to raise concerns (see paragraphs 54 - 55);
- discrimination (see paragraphs 56 - 59);
- abuse of professional position, including vulnerability (see paragraphs 60 - 68);
- sexual misconduct (see paragraphs 69 - 70);
- sexual abuse of children or indecent images of children (see paragraphs 71 - 72 and 80 - 82);
- criminal convictions for serious offences (see paragraph 75); and
- violence (see paragraph 86).

101. There may be circumstances in which a Panel considers it appropriate to impose conditions of registration in the above cases. However, it should only do so when it is satisfied that the registrant's conduct was minor, out of character, capable of remediation and unlikely to be repeated. The Panel should take care to provide robust reasoning in these cases.



### **What considerations should be given when formulating conditions?**

102. Conditions typically cover the following areas (this list is not exhaustive):

- education and training requirements;
- practice restrictions;
- chaperones;
- supervision;
- treatment;
- substance dependency;
- informing the Academy and others; and
- personal development.

103. Conditions should be appropriate to remedy the concerns raised, and the Panel should be assured that they mitigate any risk posed by the registrant remaining in unrestricted conditions of registration.

104. A Panel must, in an appropriate case, impose a reasonable time limit for compliance with a condition, so as to avoid placing the relevant registrant in a position of uncertainty for an unnecessary length of time.

105. While conditions of registration may be imposed on a registrant who is currently not practising, before doing so, Panels should consider whether there are equally effective conditions which could be imposed and which are not dependent on the registrant returning to practise. For example, not all training, reflection or development requires a registrant to be in practice or have a workplace-based mentor.

106. Conditions of registration must also be workable and reasonable, taking into account the registrant's practice setting, and not imposing a condition, or combination of conditions, which effectively suspend the registrant's practice under Academy registration.

107. Where a Panel believes that stringent conditions of registration are required, and it has concerns these effectively suspend the registrant's practice under Academy registration, it should consider whether or not conditions are an appropriate sanction. The Panel's primary concern should be to protect the public and public confidence in the profession. If it is not able to draft workable conditions of registration that achieve this, it may need to consider imposing a suspension order.

### **How long should a conditions of registration order be imposed for?**

108. Conditions of registration orders can be imposed for a specified period not exceeding three years. In determining the appropriate length of a conditions order, the Panel should consider all the information available to it to come to an appropriate and proportionate decision. It should provide clear written reasons for deciding on the particular length of the order.



109. Panels may specify a minimum period for which a conditions of registration order is to have effect before the registrant can apply to vary, replace or revoke it. Panels should only exercise that power in cases where it is clear from the evidence that earlier review is unlikely to be of value or where the nature of the conditions imposed make an early review inappropriate.

## **Suspension order**

### **What is a suspension order?**

110. A suspension order prohibits a registrant from practising their profession under Academy registration.

111. However, whilst a registrant who is suspended cannot practise under Academy registration, they can be subject to further fitness to practise proceedings for events which occur whilst they are suspended.

112. Suspension orders cannot be made subject to conditions of registration, but where the Panel expects the registrant to address specific issues or take specific action before the suspension order is reviewed (for example, to undergo substance abuse treatment) clear guidance should be given setting out what is expected of the registrant and the evidence that may be helpful to any future review Panel. However, Panels should avoid being unduly prescriptive and must not bind or fetter the discretion of a future review panel.

### **When is a suspension order appropriate?**

113. A suspension order is likely to be appropriate where there are serious concerns which cannot be reasonably addressed by a conditions order, but which do not require the registrant to be removed from the Register. These types of cases will typically exhibit the following factors:

- the concerns represent a serious breach of required standards;
- the registrant has insight;
- the issues are unlikely to be repeated; and
- there is evidence to suggest the registrant is likely to be able to resolve or remedy their failings.

### **How long should a suspension order be imposed for?**

114. A suspension order should be imposed for a specified period not exceeding one year. When determining how long a suspension order should be imposed for, Panels must ensure that their primary consideration is what is necessary and proportionate in order to ensure that the public is protected (see paragraph 19).

115. Whilst short-term suspensions can have long-term consequences for a registrant (including being dismissed from their current employment), they are likely to be appropriate where a staged return to practice is required. For example, where the registrant has previously engaged in the process but is currently unable to respond to and comply with a conditions of registration order but may be capable of doing so in the future.

116. Short-term suspensions can also be appropriate in cases where there is no ongoing risk of harm, but where further action is required in order to maintain public confidence in our professions.

117. A staged return to practice is likely to be appropriate in cases involving substance dependency, where at the time of the hearing the registrant is seeking or undergoing treatment (and the Panel has received medical evidence confirming this to be the case) but has not reached the stage where they are safe to return to practice, even if that registrant is subject to a conditions order. In these cases, the Panel should clearly explain the purpose of the sanction and the expectations it has of the registrant.

118. Panels may specify a minimum period (of up to ten months) for which a suspension order is to have effect before the registrant can apply to vary, replace or revoke it. Panels should only exercise that power in cases where it is clear from the evidence that earlier review is unlikely to be of value.

## **Removal order**

### **What is a removal order?**

119. A removal order removes a registrant's name from the Register and prohibits the registrant from practising their profession under Academy registration.

120. Removal is a long-term sanction, unless new evidence comes to light, a person may not apply for restoration to the Register within five years of the date of a removal order being made, and Panels do not have the power to vary that restriction.

### **When is a removal order appropriate?**

121. A removal order is a sanction of last resort for serious, persistent, deliberate or reckless acts involving (this list is not exhaustive):

- dishonesty (see paragraphs 51 - 53);
- failure to raise concerns (see paragraphs 54 - 55);
- discrimination (see paragraphs 56 - 59);
- abuse of professional position, including vulnerability (see paragraphs 60 - 68);
- sexual misconduct (see paragraphs 69 - 70);

- sexual abuse of children or indecent images of children (see paragraphs 71 – 72 and 80 - 82);
- criminal convictions for serious offences (see paragraphs 75); and
- violence (see paragraph 86).

122. A removal order is likely to be appropriate where the nature and gravity of the concerns are such that any lesser sanction would be insufficient to protect the public, public confidence in the profession, and public confidence in the regulatory process. In particular, where the registrant:

- lacks insight;
- continues to repeat the misconduct or fails to address a lack of competence; or
- is unwilling to resolve matters.

123. A removal order has a significant impact on a registrant, and so when a Panel imposes a removal order, it should provide clear and detailed reasoning in its decision on sanction.

### **Review hearings**

124. Where the Fitness to Practise Panel imposes a conditions of registration order, a review hearing will take place before its expiry. Where a Panel imposes a suspension order, it may, at its discretion, determine in its decision that a review hearing should take place prior to its expiration.

125. Where the original Panel imposed conditions the reviewing Panel will hear evidence of compliance of those conditions. The Registrant should compile a report to demonstrate compliance with the conditions.

126. Where the original Panel imposed a sanction of suspension and determined that a review should take place, the Registrant should show evidence of any steps they have taken to address the issues that led to the original suspension – for example, further reflection and education and training.

127. At a review hearing, any finding of impairment made by the Panel must be based on the original allegation. The Panel will need to consider whether the Registrant's fitness to practise remains impaired after considering all the information available to them. The Registrant is expected to provide evidence that any past impairment has been addressed.

128. The reviewing Panel has the discretion to continue the suspension/conditions or vary as they see fit or alternatively take no further action.

129. The review process is not a mechanism for appealing against or ‘going behind’ the original finding that the registrant’s fitness to practise is impaired. The purpose of review is to consider:

- whether the registrant’s fitness to practise remains impaired; and
- if so, whether the existing order or another order needs to be in place to protect the public.

130. When reviewing sanctions, a Panel may vary, extend, replace or revoke an existing sanction, but cannot impose a second, additional sanction for the same allegation. Therefore, where there are multiple sanctions against a registrant, review Panels must consider each sanction separately.

131. In making its decision the Panel should take account of the wider public interest, which includes:

- the deterrent effect to other registrants;
- public confidence in the profession concerned; and
- public confidence in the regulatory process.

132. No registrant should resume unrestricted practice under Academy registration until it is safe and appropriate for them to do so.