

Professional Standards Authority response to HCPC consultation on updates to sanctions policy

1. About us

- 1.1. The Professional Standards Authority for Health and Social Care (PSA) is the UK's oversight body for the regulation of people working in health and social care. Our statutory remit, independence and expertise underpin our commitment to the safety of patients and service-users, and to the protection of the public.
- 1.2. There are 10 organisations that regulate health professionals in the UK and social workers in England by law. We audit their performance and review their decisions on practitioners' fitness to practise. We also accredit and set standards for organisations holding registers of health and care practitioners not regulated by law.
- 1.3. We collaborate with all of these organisations to improve standards. We share good practice, knowledge and our right-touch regulation expertise. We also conduct and promote research on regulation. We monitor policy developments in the UK and internationally, providing guidance to governments and stakeholders. Through our UK and international consultancy, we share our expertise and broaden our regulatory insights.
- 1.4. Our core values of integrity, transparency, respect, fairness, and teamwork, guide our work. We are accountable to the UK Parliament. More information about our activities and approach is available at www.professionalstandards.org.uk

2. Key points

- The Professional Standards Authority (PSA) welcomes the opportunity to comment on the Health and Care Professions Council's (HCPC's) updated sanctions policy. Through its oversight of the ten health and care regulators including the HCPC, the PSA is uniquely placed to comment on sanctions guidance and policies and help to ensure a robust and where possible consistent approach.
- We are supportive of HCPC proposals to update the sanctions policy for practice committee panels. It is positive to see the HCPC updating the policy to take account of recent case law, learnings from operation of their fitness to practise process, feedback from stakeholders and to ensure alignment with regulatory best practice.

-
- In particular, we welcome the additions to strengthen the guidance on discriminatory behaviours and sexually motivated conduct.
 - We are also pleased to see the additions to the guidance on when panels should consider strike-off in cases where behaviour may be fundamentally incompatible with continued registration.
 - We have provided some further comments and suggestions to help improve the clarity and usability of the guidance outlined in our detailed answers to the questions below.

3. Detailed comments

Question 1 - To what extent do you agree or disagree with the proposed changes on suspension orders?

- 3.1. Agree – but some suggestions on potential further improvements to clarity.
- 3.2. Paragraph 145 opens by saying that panels considering suspension orders should always consider whether the conduct is fundamentally incompatible with continued registration. We welcome this clarification, however, it may be helpful if the HCPC cross reference to paragraph 155 which indicates when a striking off order may be appropriate. This paragraph outlines the types of misconduct which may mean that the conduct is fundamentally incompatible with continued registration.
- 3.3. It would be helpful if the guidance provided greater clarity on the reasoning at paragraph 147 that short-term suspensions are likely to be appropriate where a staged return to practise is required.
- 3.4. At paragraph 148 it may be helpful to replace the wording ‘further action’ with ‘a more severe sanction’ as this is likely to more accurately reflect the step of imposing a short-term suspension over, for example, conditions, in order to maintain public confidence and uphold standards.
- 3.5. With regard to the reference that the guidance has been updated to reflect recent case law it would be helpful if, where relevant, case law references could be included in a footnote, so it is clear which principles the HCPC are referring to. This is an approach taken by other regulators in their sanctions guidance, including the Nursing and Midwifery Council (NMC).

Question 2 - To what extent do you agree or disagree with the proposed changes on interim orders?

- 3.6. Agree.
- 3.7. It is helpful that the guidance states that the panel should consider whether an interim order is necessary. This should remind panels to consider an interim order in every case where a restrictive sanction has been imposed.

Question 3 - To what extent do you agree or disagree with the proposed changes on apologies?

- 3.8. Agree.
- 3.9. We welcome the proposal to bring the sanctions policy in line with the HCPC’s updated Standards of Conduct Performance and Ethics (SCPE) regarding the treatment of apologies and the fact that an apology doesn’t imply legal liability.
- 3.10. Apologies are important to patients and families when care has gone wrong as part

of a commitment to honesty and candour. Updating the sanctions policy is an important part of reassuring registrants that they can apologise without fearing that this will be held against them in subsequent regulatory proceedings.

Question 4 - To what extent do you agree or disagree with the proposed changes on strike-off where concerns are so serious, they are incompatible with continued registration?

- 3.11. Agree – with some suggestions to improve clarity further.
- 3.12. It's helpful that the HCPC have included examples of where a strike off may be appropriate at paragraph 155 of this section of the guidance. This brings the guidance in line with other regulators, including the General Medical Council (GMC).
- 3.13. A few possible areas where clarity could be improved in this section include:
- Sexual offenders database – it would be clearer if this read 'inclusion on a sexual offenders database'. This is clear within the relevant section in the guidance but not where it is referred to within the section on striking off.
 - Criminal convictions, cautions and community sentences for serious offences – it may be helpful to include a line here which states 'or which otherwise adversely affects public confidence in the profession'. This may be helpful to allow for the panel to take account of convictions which are not for serious offences in the criminal space (i.e. common assault), yet have serious consequences on public confidence in the regulatory space. An example of this is the Bramhall case. Mr Bramhall received two convictions for common assault, which would typically be considered low level criminal offences. However, as the assaults took place against two unconscious patients in the context of surgery, it was extremely serious in the regulatory space and ultimately was held to be conduct that was fundamentally incompatible with continued registration.
 - It would also be helpful to include a paragraph in this section, or the section on reasons for decision to issue a sanction to remind panels to provide clear, case specific justification. This is partially covered by paragraph 157, but this could be strengthened to make clearer that a generalised assertion that erasure or strike off would be disproportionate will be inadequate and may justify a conclusion that the tribunal is not properly understood the gravity of the case before it. This reflects the case law, namely *PSA v NMC v Jollah* at 23(7))¹ on why a panel has imposed a suspension over erasure in cases where factors for erasure are engaged. It is also a common theme from the PSA's learning points for regulators from its Section 29 function.

Question 5 - To what extent do you agree or disagree with the proposed changes on assessing seriousness and culpability?

- 3.14. Agree – with some suggestions to strengthen the section on seriousness.
- 3.15. Seriousness
- Paragraph 31 – it may be helpful to expressly state at which stages of the decision-making process seriousness needs to be assessed - i.e. misconduct, sanction.

¹ *PSA v NMC v Jollah* [2023] EWHC 3331 (Admin)

- Paragraph 33 – it may be helpful to refer the reader to paragraph 155 which lists the type of conduct which may be considered fundamentally incompatible with continued registration.
- Paragraph 34 – it is helpful to see reference to the need for the aggravating and mitigating factors need to be identified and recorded in the determination. However, it will also be important for these factors to be appropriately weighed against each other and to avoid a situation where, for example, mitigating factors have been given too much weight and aggravating factors too little. This paragraph could benefit from a reference to the principles in *Bolton v The Law Society* at 518,² that the reputation of the profession is more important than the fortunes of any individual member, especially for serious misconduct which strongly engage the public interest.

3.16. With regard to the section on culpability it is helpful to see that the guidance makes the distinction between adverse effects on physical or mental health and that harm may include a breakdown of trust within a wider team which may affect patient safety.

Question 6 - To what extent do you agree or disagree with the proposed changes on concerns about discrimination?

- 3.17. Strongly agree.
- 3.18. The PSA recommended in *Safer care for all* that: ‘Regulators and registers review how their fitness to practise processes, including their indicative sanctions guidance and other fitness to practise guidance address allegations of racist and other discriminatory behaviour.’³
- 3.19. Research we carried out in 2023 looking at public perceptions of discriminatory behaviour in health and care highlighted that such behaviour can cause significant harm to patients and shake confidence in both individuals and the employer organisations.⁴
- 3.20. Following the changes made to the HCPC’s SCPE to strengthen provisions in this area, we welcome the changes made to strengthen this section of the sanctions guidance. This should support panels in taking a robust approach to discriminatory behaviour through the fitness to practise process.

Question 7 - To what extent do you agree or disagree with the proposed changes on dishonesty?

- 3.21. Agree.

Question 8 - To what extent do you agree or disagree with the proposed changes on sexually motivated misconduct?

- 3.22. Strongly agree.
- 3.23. We are very supportive of the additional of a reference to sexually motivated conduct. It has been a long-standing concern of the PSA’s that behaviour with a sexual motivation is treated with appropriate seriousness by panels and it is helpful

² *Bolton v The Law Society* [1994] WLR 512

³ ***Safer care for all - solutions from professional regulation and beyond | PSA***

⁴ ***Perspectives on discriminatory behaviours in health and care | PSA***

that the HCPC has now addressed this within its sanctions guidance.

- 3.24. A couple of areas where this section of the guidance could potentially be strengthened include:
- For the guidance to state explicitly that sexual misconduct towards colleagues should not be viewed any less seriously than sexual misconduct towards service users/the public.
 - Clarity on what is meant by sexual motivation – i.e. conduct undertaken either in pursuit of sexual gratification or pursuit of a future sexual relationship (see *Basson v GMC* at 14).⁵
 - Whether this section could link to other sections of the guidance which speak to predatory behaviour and vulnerability.
- 3.25. We are currently undertaking **a series of webinars focused on tackling sexual misconduct** within health and care to facilitate learning and robust discussion amongst stakeholders. Following the conclusion of these events we will be producing a report including recommendations which we hope will inform further actions by regulators to help address this issue in the future.⁶

Question 9 - To what extent do you agree or disagree with the proposed changes on professional boundaries?

- 3.26. Strongly agree.
- 3.27. We welcome the addition of this section on professional boundaries to bring this policy in line with wider HCPC practice notes and standards. It is helpful to recognise that there are a range of ways in which professional boundaries may be breached and to ensure panels are equipped to deal with such cases appropriately.

Question 10 - To what extent do you agree or disagree that the structural and editorial improvements are clear?

- 3.28. Agree
- 3.29. Overall, the structural and editorial improvements seem clear and help to make the document accessible and navigable. As highlighted in our response to question 1, we think that, where the guidance has been strengthened to respond to developments in the case law, it would be helpful to include references as appropriate to make it clearer which principles are being incorporated.
- 3.30. It would also be helpful for the guidance to take a consistent approach to signposting/hyperlinking to other sections within the guidance – this is helpful where it is done as a number of sections within the guidance are interlinked and it will be important for them to be read and understood together.

Question 11 - To what extent do you agree or disagree with the proposed changes to our sanctions policy in general?

- 3.31. Agree.
- 3.32. Overall, we are very supportive of the changes which we think will significantly

⁵ *Basson v GMC* [2018 EWHC 505 (Admin)]

⁶ **Webinar series on tackling sexual misconduct in healthcare: new 2025 dates in September | PSA**

strengthen the sanctions policy.

Question 12 - Are there any further changes we should consider to the sanctions policy?

3.33. No further comments.

Question 13 - Do you think the proposed changes have any positive or negative impacts on groups or individuals who share one or more of the protected characteristics under the Equality Act 2010 and equivalent Northern Ireland legislation?

- 3.34. We cannot anticipate any immediate effects of the proposed changes on protected groups aside from those outlined in the draft Equality Impact Assessment (EIA) published alongside the consultation. As the EIA notes, there are likely to be some positive impacts on members of the public with protected characteristics due to the improved clarity and accessibility of the guidance.
- 3.35. In addition, the strengthening of public protection through enhanced guidance on approach to behaviours such as discrimination, sexually motivated misconduct and breach of professional boundaries is likely to have a positive impact on members of the public and professionals with protected characteristics who may be more likely to be the victims of such misconduct.
- 3.36. Alongside completion of the EIA on the changes to the guidance once finalised, we would expect the HCPC to continue to monitor the impact of the guidance as part of its monitoring of the impacts of its fitness to practise processes on protected groups.

Question 14 - Are there any additional steps we should take to ensure the proposed changes do not unintentionally disadvantage any groups?

3.37. No comments.