

Response to the General Chiropractic Council's consultation on hearings and sanctions guidance

March 2018

1. Introduction

- 1.1 The Professional Standards Authority for Health and Social Care promotes the health, safety and wellbeing of patients, service users and the public by raising standards of regulation and voluntary registration of people working in health and care. We are an independent body, accountable to the UK Parliament. More information about our work and the approach we take is available at www.professionalstandards.org.uk
- 1.2 As part of our work we:
- Oversee the nine health and care professional regulators and report annually to Parliament on their performance
 - Conduct research and advise the four UK governments on improvements in regulation
 - Promote right-touch regulation and publish papers on regulatory policy and practice.
- 1.3 We welcome the opportunity to respond to the General Chiropractic Council's (GCC) consultation on its hearings and sanctions guidance. Please find the Authority's response to the consultation questions below.

2. Consultation response

Name

Professional Standards Authority for Health and Social Care

1. Do you consider that the section headed "why are sanctions imposed" is sufficiently clear in its explanation of the GCC's over-arching objective?

Yes

No

If no, please provide any suggestions for improvement in clarity.

N/A

2. Do you consider that the section on “the committee decision-making process” sets out the way in which decisions are to [be] in different scenarios in enough detail for it to assist anyone reading the sanctions guidance to understand the process?

Yes

No

If no, please comment on how this section of the document could be improved.

N/A

3. Do you think the section on “Conditions of Practice Orders” provides sufficient information about the circumstances in which conditions may be imposed, and about the process to be followed by the committee?

Yes

No

If no, please comment on the areas that could be strengthened.

N/A

4. Is the introduction of a “bank” of conditions something you feel will help committees to impose consistent and workable conditions?

Yes

No

If no, please explain why you think the bank of conditions will not assist with consistency and ensuring conditions are workable.

N/A

5. Is the additional information contained in the revised section about review hearings helpful in clarifying the different committees’ options at review hearings?

Yes

No

If no, please suggest further information it might be helpful to include.

N/A

6. Do you have any concerns about the wording of any of the specific template conditions with the proposed conditions bank?

If so, please identify which condition(s) and the concern you have identified about it/them.

No

7. Are there any additional conditions you think we should add to the proposed bank?

If so please set out what conditions you consider would be useful

No

8. Do you have any further feedback in relation to the clarity of particular sections of the ISG or conditions bank? If so please provide details here.

In paragraphs 16 and 17 the document points out that the committee must follow a 'sequential approach' of stages A, B and C before considering a sanction. However, a reader may consider this conflicting with paragraph 18, where the guidance describes that the first two decisions by a committee are 'taken together'. We agree with the GCC's wording of a 'sequential approach' because decisions should not be taken at the same time. Therefore, we suggest that it may be helpful to panels if paragraph 18 was amended to more clearly demonstrate that panels should take a sequential approach to considering a sanction.

Paragraph 25 describes that although the GCC has the ability to make submissions to a panel about the appropriate sanctions to impose on a registrant, it generally does not. On this subject, we highlight the case of *Bevan*¹ where Mr Justice Collins held that there was nothing wrong in principle with the regulator (GMC in this case) suggesting an appropriate sanction for a registrant to a panel. We are supportive of a regulator giving an indication of a recommended sanction, as is the case in many of the GMC's submissions.

In relation to paragraphs 27 and 48 it may be useful for the guidance to more clearly direct panels to test a chosen sanction by considering a more restrictive sanction. This should be accompanied by reasons why that alternative sanction was not considered proportionate.

In the list of mitigating factors, it may be helpful for panels if the guidance more explicitly stated that absence of harm is not a mitigating factor. The importance of this was demonstrated in the case of *Judge*² where Mr Justice Garnham noted that the absence of harm was not a mitigating factor but in fact, the absence of what would have been an aggravating factor.

In the section on 'Considering references and testimonials', panels and parties may be assisted if the guidance more clearly detailed the appropriate stage of a case at which testimonials may be submitted. Personal mitigation testimonials about a registrant are appropriate only at sanction stage only, whilst testimonials about competence or honesty may be appropriate at other points.

¹ *Bevan v General Medical Council* [2005] EWHC 174 (Admin)

² *PSA v NMC & Judge* [2017] EWHC 817 (Admin)

The Authority welcomes the GCC's inclusion of the professional duty of candour in its sanctions guidance (paragraphs 42 and 69). In our view there are immense benefits for patients' care and treatment if professionals are open, transparent and honest with patients and their families when things go wrong. However, we consider that the guidance could offer further explanation of the importance of professionals being candid. Although the sanctions guidance refers to the GCC's standard B7 which relates to the professional duty of candour, it may be useful for the sanctions guidance to also refer to the GCC's guidance for registrants on candour and the regulators' joint statement on candour.^{3,4} It is important that regulators' fitness to practise materials, such as the indicative sanctions guidance, draw committee members' attention to issues of candour. We note from our reviews of fitness to practise decisions made by the nine regulators, that there is generally little mention of candour in charges or decision determinations.

3. Further information

- 3.1 Please get in touch if you would like to discuss any aspect of this response in further detail. You can contact us at:

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³ General Chiropractic Council, 2016, *Guidance on Candour*. Available at: <http://www.gcc-uk.org/UserFiles/Docs/Guidance/GCC-Guidance-Candour-FINAL.pdf> [Accessed 05/03/2018]

⁴ General Chiropractic Council, 2016, *Joint statement from the Chief Executives of statutory regulators of healthcare professionals Openness and honesty - the professional duty of candour*. Available at: <http://www.gcc-uk.org/UserFiles/Docs/Joint%20statement%20on%20the%20professional%20duty%20of%20candour%20FINAL.pdf> [Accessed 05/03/2018]