professional standards authority

Learning points

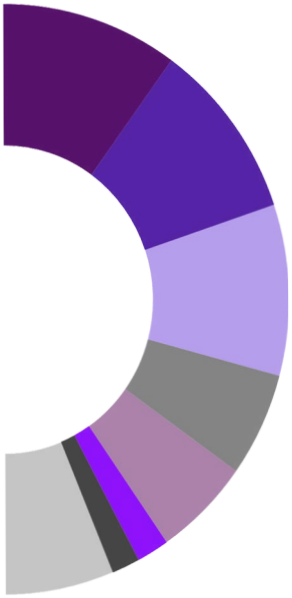
Digest October 2016-June 2017

3,355
Determinations received

219
Learning points fed back

Most common sanctions we have fed back on:

Suspension	44
Conditions	43
Not impaired/ no misconduct/ case closed	41
Caution	25
No further sanction	24
Further conditions	8
Erasure	7
Other	27



Welcome to the first edition of the new, twice yearly learning points digest – the first in a series designed to assist fitness to practise panels in their consideration of future cases, and help improve the regulators' processes and procedures.

Our hope is that the number of learning points will start to reduce and we will see, through our scrutiny of Fitness to Practise decisions, that the learning points are being reflected upon and incorporated into determinations.

We trust that this document provides you with a helpful overview and is useful in terms of seeing the volume of learning points being sent in relation to the specific themes identified. Whilst the learning points we raise relate to a number of wide ranging issues, we have tried to capture these issues as themes and will focus each digest on a particular theme. This theme will reflect the key learning points we have identified and will include relevant case law.

We would encourage regulators to share this digest with their panellists. This digest will concentrate on the **quality and level of detail** in **determinations**.

ELEMENTS OF A GOOD DETERMINATION

PHIPPS V GMC
[2006] EWCA CIV 397

Panels should give reasons for their findings of fact. The need to give reasons for findings of fact will vary from case to case and will depend on the matter under consideration. The principles in English v Emery Reimbold [2002] 1 WLR 2409, that "justice will not be done if it is not apparent to the parties why one had won and the other has lost" are universal and apply to any tribunal charged with the duty to reach a judicial or quasi-judicial conclusion.

CHRP V GDC AND MARSHALL
[2006] EWHC 1870 (ADMIN)

The protection of the public is a core factor in the decision-making process. Therefore, where a panel has found that a registrant's fitness to practise is impaired on public protection grounds, it needs to explain why it is satisfied that any sanction it has imposed will adequately protect the public. Failure to do so, may amount to a procedural irregularity.

OUR KEY CONCERNS:

1 **Determinations not acting as stand-alone documents** – We highlighted a number of learning points across all regulators where we felt that information was missing from determinations that would have provided a member of the public with a full view of the case. Examples included:

- A failure to include the previous conditions of practice that the registrant was subject to. Without this information, the reader is essentially left in the dark as to what exact conditions the registrant was subject to. Whilst the Authority has access to previous determination and can refer back to previous conditions, to include conditions in a review determination significantly strengthens the determination.

- A failure to go through each specific condition and explain whether the registrant has or has not complied with it. Too often we are seeing determinations where the panel states that a registrant has complied with conditions, without explaining how. Did they provide a Personal Development Plan (PDP)? How detailed was the PDP? What specific training did they undertake? How have the deficiencies been addressed? Whilst we have fed back some instances of good practice where we have seen panels taking this approach, these are few and far between and we would expect greater consistency.

2 **Failure to explain whether a registrant's behaviour was fundamentally incompatible with registration** – Across all regulators, we find that in cases where removal from the register is a serious possibility, the level of detail in the reasons as to why erasure or removal from the register was not deemed appropriate is confined to a cursory recital of the principle of proportionality. It is rare that panels go on to fully explain why, in the circumstances of the case before them, it is considered that erasure would not be a proportionate outcome. In a number of cases, we are also seeing panels failing to address the issues of whether a registrant's behaviour was fundamentally incompatible with continued registration.

3 **Amending of charges/withdrawing charges** – We are seeing a significant volume of cases where regulators are making applications at the start of hearings to amend charges. Whilst there are occasions when these amendments are made for typographical reasons, there are a significant number of cases where regulators are applying to significantly change the wording of the charge, which may alter the nature of the case against the registrant. This not only adds to avoidable delay at the beginning of the hearing, but creates potential unfairness to the registrant. We would expect regulators to have drafted their charges appropriately and in good time prior to the matters being heard before a committee/tribunal.

We are also noting an increasing volume of cases where regulators are withdrawing charges. Should withdrawals need to be made we would encourage regulators and panels to provide full reasons for all such applications.

4 **Failure to consider interim/immediate suspension orders/review hearings** – There have been a number of instances across all regulators where panels are failing to consider whether the registrant should be subject to any kind of interim suspension order. Panels should ensure they give reasons for not imposing interim suspensions if there are no public protection concerns.

IN SUMMARY, DETERMINATIONS, SHOULD CLEARLY SET OUT:

- What the registrant has done and what is being alleged
- What evidence the panel considered
- Why allegations were found proved/not proved and the reasons for this
- The panel's judgment on misconduct/impairment of fitness to practise with reasons
- Why the particular sanction was imposed and how it protects the public
- Whether a review hearing is necessary and, if so, what sort of evidence might assist a reviewing panel.

ARIYANAYAGAM V GMC (2015)

A model determination would be one in which the panel:
☑sets out its conclusions on each of the paragraphs of the charge sheet;
☑provides an adequate summary of the background to the allegations;
☑summarises its view of the witnesses' evidence;
☑comments on the quality of the evidence provided by the registrant; and then
☑explains in some detail why some allegations were found not proved and others proved.

We would welcome any feedback on this publication. If you would like more information, please get in touch with Georgina Devoy by emailing: **Georgina.Devoy@professionalstandards.org.uk**

Key statistics and trends for Fitness to Practise from 2016/17*

4,285 Final fitness to practise panel decisions checked

Case meetings held **55**

13 Final fitness to practise decisions appealed

2 **Party to two GMC Appeals**

FITNESS TO PRACTISE

0.5% Trend for referring cases continues

15% Increase in the number of final fitness to practise decisions notified to us

85% Of the cases (3,644) were closed with no requirement for more information

9 The number of cases (out of 13) in which the regulators agreed with our concerns and the panel decision was quashed by Consent Order (1 case was upheld by the Court; 1 case dismissed; and 2 withdrawn)

Useful links:

- Latest issue of our e-newsletter
- 2016/17 Highlights report
- Review of Professional Regulation and Registration 2016/17

* Statistics taken from *Professional Standards Authority Review of Professional Regulation and Registration (with Annual Report and Accounts) 2016/17*