professional standards authority
for Health and Social Care

PSA response to consultation on GCC sanctions guidance

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. Answers to questions

10. How much do you agree or disagree with the following statements about the proposed GCC Guidance on Sanctions? (Strong agree, Agree, Neither agree nor disagree, Disagree, Strongly disagree)

Statement	Response
The guidance supports fair decisions on sanctions.	Neither agree nor disagree
The guidance supports consistent decisions across similar cases.	Neither agree nor disagree
The guidance supports proportionate decisions on sanctions.	Neither agree nor disagree
The guidance clearly explains the factors relevant to deciding the appropriate sanction.	Neither agree nor disagree

The guidance helps decision-makers balance public protection, proportionality and fairness.	Neither agree nor disagree
The guidance sets out the sanctions decision-making process in a logical order.	Neither agree nor disagree
The guidance is easy to understand.	Neither agree nor disagree

11. Are there any key areas that you think should be amended or removed in the proposed GCC Guidance on Sanctions?

2.1. Yes.

12. Please explain any areas that you consider should be amended or removed in the proposed GCC Guidance on Sanctions?

2.2. We do not suggest that any major areas should be removed. Overall, the proposed guidance appears to set out a helpful and logical framework for decision-makers. However, we consider that some sections could be amended or expanded to provide more effective support to committees in cases involving serious safeguarding concerns, abuse of trust, discrimination, workplace and systemic issues and the assessment of insight. To avoid duplication, we have covered these areas in our answer to question 14.

13. Are there any key areas that you think are missing from the proposed GCC Guidance on Sanctions?

2.3. Yes

14. Please explain any areas that you consider are missing from the proposed GCC Guidance on Sanctions?

2.4. We consider that the following areas could usefully be added or expanded.

Vulnerable patients and service users

2.5. The guidance would benefit from more explicit discussion of vulnerability and how it should be taken into account when determining sanction. Vulnerability may be relevant to seriousness, culpability, harm, risk of repetition, public confidence and whether a particular sanction is sufficient to protect the public. It may also be relevant where a registrant has exploited, failed to recognise, or failed to respond appropriately to a patient's circumstances.

2.6. We suggest that the guidance should make clear that vulnerability is not limited to fixed personal characteristics. It may arise or be increased because of the patient's health, the nature of care being provided, barriers to raising concerns, dependency on the practitioner, communication needs, previous experiences of harm, or the stress of participating in a fitness to practise process.

Serious safeguarding and boundary-related misconduct

2.7. The previous version of the guidance contained more detailed reference to serious child safeguarding concerns including child sexual exploitation, while the revised version appears to contain only brief mention. Given the seriousness of such conduct for public protection and public confidence, the guidance should support panels to identify where this type of behaviour may require a more restrictive

sanction and to give clear reasons for any sanction imposed.

2.8. We suggest the guidance should address inappropriate relationships that are not necessarily sexual in nature. This has been an issue that the PSA has previously raised in learning points arising from our review of the Richardson case under our section 29 powers in relation to the distinction drawn by a panel between romantic and other boundary-related conduct, and noted that the GCC's guidance could be strengthened in this area. The guidance also doesn't touch on how sexual harassment might differ from other kinds of sexual misconduct.

2.9. We are aware that the GCC has since issued professional boundaries guidance addressing these types of relationships or breaches, but in our view that the sanctions guidance should also address them.

2.10. The sanctions guidance should make clear that inappropriate emotional, romantic or otherwise exploitative relationships with patients or service users may be serious even where the conduct does not fall into another more specific category. This would help committees to focus on the abuse of trust, power imbalance, impact on the patient, and wider implications for public confidence.

Discrimination

2.11. We welcome the proposed inclusion of discrimination in the sanctions guidance. However, we consider that more detail is needed to support committees in addressing this type of misconduct as is provided for dishonesty and sexual misconduct. The PSA has previously flagged in our assessment against Standard 3 that the GCC's previous guidance did not sufficiently address allegations of racism or discrimination.[1]

2.12. We suggest that the guidance should explain why discriminatory conduct may be particularly serious in a healthcare context, including because of its potential impact on patients, colleagues, public confidence and confidence among groups who may already experience barriers to accessing care. The guidance could also explain how discriminatory conduct may be relevant to insight, remediation, attitudinal concerns and risk of repetition. This would help avoid discrimination being treated only as a generic aggravating factor, without sufficient analysis of its nature, impact and seriousness.

2.13. This is particularly important in the context of the Lord Mann Review and the findings from recent maternity reviews such as the Nottingham Independent Review and the Independent investigation into maternity and neonatal services in England (the Amos Review) which identified the patient safety implications of discrimination.[2] [3]

Workplace and systemic factors

2.14. The Guidance identifies as potential mitigation "any evidence of wider systemic issues in the workplace" (paragraph 110 (e), page 21). However, there is little practical guidance for Panels on how workplace factors should be assessed.

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[1] **Monitoring Report - General Chiropractic Council 2024/25 | PSA**

[2] **Ockenden review into maternity services at Nottingham University Hospitals NHS Trust: final report - GOV.UK**

[3] **Final Reports - National Maternity and Neonatal Investigation**

2.15. While systemic factors will not excuse unacceptable conduct, they may assist committees in understanding how concerns arose and in assessing risk of repetition, remediation and proportionality. This is also an area that has received increased focus in the context of understanding the causes of major failures of care. It may therefore it may be helpful to provide more guidance for committees on how to identify and account for factors such as inadequate supervision, staffing pressures, organisational failures, ineffective governance arrangements, poor workplace culture or deficient training arrangements.

Prevention, learning and remediation

2.16. The Guidance discusses insight and remediation in paragraphs 84-97 (pages 17-19) with the emphasis largely on retrospective assessment including understanding wrongdoing, remediation and reduction of repetition rather than future risk reduction. It may be helpful to expand the guidance to include examples that demonstrate reduction of future risk and contribute to safer professional practice such as reflective learning, demonstration of sustained behavioural change, participation in quality improvement activity, mentoring and supervision.

Assessing insight and reflective material

2.17. Insight and remediation are addressed in general terms in the guidance but in terms of its application to specific types of cases, only dishonesty is addressed specifically in this regard (Para 136). Some misconduct, such as sexual misconduct, is also hard to remediate, as it is behavioural by nature and as such insight and remediation are fundamental. It is important that panels are given some guidance to assist them in assessing genuine insight and remediation in light of such cases which is an area of concern that we see in reviews of decisions.

2.18. The guidance could be strengthened by recognising the limitations of written reflections when assessing insight. The PSA's guidance on accepted outcomes, highlights the challenges in assessing insight on written evidence alone in difficult or complex cases, particularly where there may be serious or fundamental attitudinal issues, or where registrants may have received significant support producing reflective statements or used AI.[4]

2.19. We suggest that the sanctions guidance should encourage committees to consider the quality, authenticity and depth of insight, rather than the existence of a reflective statement alone. Where insight is central to the decision on sanction, and particularly where the case involves serious misconduct, attitudinal concerns, discrimination, exploitation or abuse of trust, the committee may need to test insight through oral evidence or other reliable evidence.

Impact on complainants, patients and witnesses

2.20. We note the concern that has been raised by the Witness to Harm research and others about imbalance between the opportunities available to registrants to provide reflective statements, references and testimonials, and opportunities for

[4] **Using accepted outcomes in fitness to practise: guidance for regulators | PSA**

complainants, patients or witnesses to explain the personal impact of the events.[5]

2.21. We recognise that fitness to practise proceedings have a different purpose from criminal proceedings, and that care would be needed to avoid placing additional burdens on potentially vulnerable witnesses. However, we suggest the GCC could consider whether the guidance should say more about how panels may take account of evidence about impact where it is available and relevant, while ensuring that witnesses are not placed under inappropriate pressure to provide such information. This could support a more balanced and rounded understanding of harm, vulnerability and public protection.

References to case law

2.22. We suggest that the guidance may benefit from some additional references to caselaw. This is specific to areas where there is a clear steer from the courts on the correct way to approach certain issues. The specific areas we identified where this may be helpful were in relation to interim orders at Para 29 (where the GCC may wish to refer to Adil in the Court of Appeal ([2023] EWCA Civ 2161) at Para 96 - 103 and at Para 123 when addressing convictions (specifically Fleischmann [2005] EWHC 87 (Admin) and Patel [2024] EWHC 243 (Admin)).

Use of Interim Orders

2.23. The guidance states that a panel will consider an interim order after imposing a removal order. In our view it should be clear that in most cases this will happen, as if the decision has been taken to remove it is illogical to allow them to return to practise for a period (which may be lengthy in the case of an appeal). This is a concern we have previously identified through our oversight.

15.Do you think that the Equality and Welsh Language Impact Assessment (E&WLIA) accurately describes how the proposed guidance could impact (positively or negatively) individuals or groups with one or more of the protected characteristics defined in the Equality Act 2010?

2.24. Don't know / not sure

Please add any further comments or observations on how the proposed guidance could impact those with one or more protected characteristics.

2.25. We welcome the GCC's consideration of how the proposed guidance may impact on those with one or more protected characteristics through the EIA. We suggest that the following areas within the EIA could be strengthened:

- More detailed consideration of the intersectional nature of impacts
- Further consideration and commitment to monitoring of the overrepresentation of certain groups within and at particular stages within the FtP process
- More detail on how bias mitigation within the FtP process will be achieved, whether committee training supports this and how consistency of decision-making will be monitored

[5] **Witness to Harm-Holding to Account. Improving patient, family and colleague experiences of Fitness to Practise proceedings: A mixed-methods study | NIHR Journals Library**

- Incorporation of any planned consultation engagement with patient groups and any resulting evidence within the final EIA to address the currently relatively brief analysis of patient impacts
- Include further detail on how the revised sanctions framework supports decision-making in safeguarding cases more broadly, not solely sexual misconduct cases
- Reference to how the GCC will monitor whether access to representation may affect engagement with fitness to practise proceedings and consider whether further support, guidance or communication materials could assist registrants participating without representation
- More detail on how Welsh-language services are accessed during FTP proceedings, how decision-makers accommodate Welsh-language participants and whether any consultation responses from Welsh-speaking stakeholders were received.