

# **JOINT COUNCIL FOR COSMETIC PRACTITIONERS**

## **Fitness to Practise**

### **Indicative Sanctions Guidance**

#### **Introduction**

This guidance is intended to assist panels of our Fitness to Practise Panels when they consider what sanction to impose following a finding that a Registrant's fitness to practise is impaired. It also applies when a panel is reviewing a sanction imposed by a previous panel of the Fitness to Practise Hearing Panel.

The purpose of sanctions is to protect the public and at all times to work to promote the interests of the public. If the JCCP's Fitness to Practise Hearing Panel finds a Registrant's fitness to be currently impaired, the available sanction outcomes are:

- taking no further action
- a caution order
- a conditions of practice order
- a suspension order
- a removal order

The guidance sets out our approach to the various sanctions. It is not intended to be an alternative source of legal advice. When appropriate, the independent legal assessor will advise the panel on questions of law, including questions about the use of this guidance and the approach it should take. Panels must always have in mind that each case is different and should be decided on its own particular facts.

Our sanctions guidance gives members of the Fitness to Practise Hearing Panel guidance on the action to take when a Registrant has failed to comply with the standards of good practice, conduct and performance we have established under our Professional Guidelines and Code of Practice.

The guidance provided in this document assists in providing consistency and transparency in decision making and ensures that all parties, including the Registrant and the public, are aware of the approach that Fitness to Practise Hearing Panels will take when considering what sanction, if any, to impose on a Registrant whose fitness to practise is impaired. Fitness to Practise Hearing Panel's use this guidance as a way of ensuring that their decisions fit with our overarching objective of protecting the public. Nothing in this guidance restricts a Panel's discretion in any particular case. If panel members in a particular case consider they should depart from the guidance, they should always explain clearly why they need to do so when they give reasons for their decision.

# Decision making factors

## Proportionality

Fitness to Practise Hearing Panel are required to act proportionately when they impose sanctions. As such any interference with the Registrant's ability to practise must be no more than necessary to satisfy our overarching objective of public protection. It must strike a fair balance between the rights of the Registrant and the public interest.

Acting proportionately means that the Fitness to Practise Hearing Panel makes their decision by considering all the sanctions available to them. They assess the factors in the case which mean the Registrant's fitness to practise is currently impaired, and start by considering whether the least restrictive sanction would be sufficient to protect the public interest in light of those factors. If the least restrictive sanction is not sufficient, panel members work up through the available sanctions in ascending order of severity, until they find the order that is sufficient to protect the public interest. This is the case whether the finding of impairment was made because of a risk of harm to members of the public/patients, the maintenance of public confidence, or the need to declare and uphold proper standards.

Panel's reasons should explain why it is not necessary to impose a more severe sanction than the one they have chosen, and to refer to the next most severe sanction to satisfy themselves that the sanction they have chosen is proportionate and correct.

## Aggravating and mitigating factors

Fitness to Practise Hearing Panels always have careful regard to any evidence of mitigation when they are deciding which sanction, if any, to impose.

Mitigation can be considered in three categories:

- evidence of the Registrant's insight and understanding of the problem, and their attempts to address it. This may include early admission of the facts, apologies to the complainant or the person(s) affected, any efforts to prevent reoccurrence or any efforts to correct the difficulties.
- evidence of the Registrant's observance of the principles of good practice. This may include a demonstration of keeping up to date with their area of practice, or their previous good character or history.
- personal mitigation, such as periods of stress or illness, personal and financial hardship, level of experience at the time in question, level of support in the work place (the list is not exhaustive).

In fitness to practise proceedings, where the purpose of sanctions is to protect the public and not to punish Registrants, sanctions may have a punitive effect, but this is not their purpose.

Mitigation evidence may be presented by way of references and testimonials and may include also the extent to which the Registrant possesses insight and commits to remediation. Each case must be assessed on its individual merits and particular circumstances.

As well as considering the mitigating features of the case, the panel will need to consider any aggravating features of the case, such as:

- any previous regulatory or disciplinary findings
- abuse of a position of trust
- lack of insight into failings
- direct or indirect patient harm (or conduct that could foreseeably cause harm), which includes failures in safeguarding
- a pattern of misconduct over a period of time.

## **Previous interim orders and their effect on sanctions**

Registrants may also be subject to orders restricting or suspending their right to practise while their case is being investigated. When making their decision on sanction, panels of the Fitness to Practise Hearing Panel will often be made aware that an interim order was in place before the hearing, which may be a factor they need to take into account.

The fact that a Registrant has been under an interim order may show that their opportunity to remedy risks in their practice by working as a cosmetic practitioner has been limited.

Evidence of compliance with and good progress under an interim order may be relevant to an assessment of the Registrant's insight and the risk that they may present to the public in the future. Similarly, any evidence that the Registrant did not fully comply with an interim order may be relevant to the panel's assessment of the Registrant's insight and attitude, and whether the Registrant is likely to comply with any order made.

The fact that a Registrant was previously under an interim order, and for how long are relevant background factors in deciding on a proportionate length of sanction. However, it would not be appropriate simply to deduct or discount the length of time for which the Registrant was previously restricted or suspended under an interim order from a proposed sanction. Interim orders have a separate and distinct role from sanctions, in that their focus is on addressing risk on an interim basis before any finding of impairment of fitness to practise. If a panel identifies a current risk to public protection as part of that impairment decision, a risk of patient harm may follow if the 'time served' under an interim order was reflected in a shortened period of sanction.

This consideration is particularly strong where a sanction is being imposed because a Registrant presents a current risk to the public/patients. If the Fitness to Practise

Hearing Panel first identified the appropriate period of suspension or conditions of practice needed to protect patients, and then reduced that period by way of applying a 'discount', the order is likely to be insufficient to achieve its purpose of public protection.

## **The sanctions**

Fitness to Practise Hearing Panels will consider the full range of sanctions open to them. The proper approach is to start with the least severe sanction: the panel should decide whether the outcome is right for the fitness to practise concern in question after they have considered any less severe sanction. This means that panels must explain why they have chosen a particular sanction, and also say why they have rejected other sanctions. The following section of this guidance deals with each of the sanctions in turn, starting with the least serious first.

### **No further action**

Having made a finding of impairment of fitness to practise, the Fitness to Practise Hearing Panel may decide to take no further action. However, by finding that the Registrant's fitness to practise to be currently impaired, it will have decided that there is either a continuing risk to patients, or the Registrant's failures bring the JCCP and its associated 'professions' into disrepute, or they have breached one of the fundamental tenets of the JCCP's Code of Practice.

For this reason, the Fitness to Practise Hearing Panel will generally need to take action to secure patient safety, to secure public trust and confidence in cosmetic practitioners, or to declare and uphold proper standards of conduct and behaviour.

Before taking no further action, there would need to be cogent evidence for any factors taken into consideration. The Fitness to Practise Hearing Panel will set out very clearly the reasons why it considered it appropriate to take no further action (notwithstanding that the nurse or midwife's fitness to practise is currently impaired) and carefully identify the circumstances which would justify the decision.

### **Caution order**

A caution order is the least restrictive sanction that can be applied in a case where the Fitness to Practise Hearing Panel has concluded that a nurse or midwife's fitness to practise is impaired. It does not restrict the Registrant's ability to practise, but is recorded on the register and published on our website. It can be imposed for a period of between one and two years. It is disclosed to anyone enquiring about the Registrant's fitness to practise history.

Therefore, a caution may be appropriate where the case is at the lower end of the spectrum of impaired fitness to practise and the Fitness to Practise Hearing Panel wishes to mark that the behaviour was unacceptable and must not happen again.

When fitness to practise is impaired by reason of misconduct and the Fitness to Practise Hearing Panel is minded to impose a caution order, it will always be necessary to consider whether a caution is sufficient to protect the public, given that it does not restrict the registrant's rights. It would generally only be appropriate where the Fitness to Practise Hearing Panel is satisfied that there is no risk to the public or to patients which requires the Registrant's practice to be restricted.

## **Conditions of practice order**

A conditions of practice order requires the Registrant to comply with conditions for a period of up to three years. A conditions of practice order is usually reviewed before it expires. The key consideration is whether conditions will be sufficient to protect the public/patients and where necessary address any concerns about public confidence or proper professional standards and conduct.

Conditions may be appropriate when some or all of the following factors are apparent (this list is not exhaustive):

- no evidence of harmful deep-seated personality or attitudinal problems
- identifiable areas of the Registrant's practice in need of assessment and/or retraining
- no evidence of general incompetence
- potential and willingness to respond positively to retraining
- the Registrant has insight into any health problems and is prepared to agree to abide by conditions on medical condition, treatment and supervision
- members of the public/patients will not be put in danger either directly or indirectly as a result of conditional registration
- the conditions will protect the public/patients during the period they are in force
- it is possible to formulate conditions and to make provision as to how conditions will be monitored

## **Purpose of conditions**

The purpose of a conditions of practice order is to address the concerns which led to the finding of impairment of fitness to practise. In doing so, the aim of the order will be to protect the health, safety and wellbeing of members of the public, and where appropriate, maintain public confidence in the cosmetic practitioners that are registered with the JCCP, and proper professional standards and conduct. Conditions of practice orders enable the Registrant to continue to work following a finding that their fitness to practise is currently impaired, or, in the case of conditions as an interim order, while the allegations against them are being determined.

## **Effect of conditions**

Throughout the period that the conditions are in force, the Registrant must comply with them. Failure to do so may result in the conditions of practice order being replaced with a more serious sanction. It may also amount to misconduct.

Each Registrant has a single registration, although he or she may have entries related to one or more modalities cited on the Council's Register. All conditions will apply to all modalities within which the Registrant practises, unless the conditions of practice order states otherwise.

There is no power to impose a suspension order suspending part of a Registrant's registration. If a panel wishes to prevent a person who is registered as a Cosmetic Practitioner from practising in one or more modalities, it must do so using a conditions of practice order.

This would be appropriate when the panel identifies problems in one of the individual's 'registered' modalities which requires them to be prevented from working in that area but where a complete restriction on all areas of practice would not be necessary to protect the public.

Such an order does not amount to a complete restriction on the Registrant's ability to practise (and therefore is not equivalent to a suspension order) because it may allow the individual to work in defined modality areas of registered practice.

Sometimes there will be an overlap between modalities. Panels should therefore consider whether to impose specific conditions on their work in another modality to ensure that the public are properly protected from the risk of harm.

For example, where the allegation suggests that an individual has serious clinical/practice problems relating only to one modality and they also have problems with their communication, it may be appropriate to prevent the individual from working within any modality and to impose conditions on their practice as a Registrant to address, for example their record keeping/progress note errors.

Such an approach would achieve a proportionate response where the panel considers there is a need to prevent the individual from practising in one modality but they can safely practise with restrictions in another modality.

Conditions are published, and details of any conditions of practice order are made available to anyone enquiring about a Registrant's registration. Accordingly, it is important that panels specify any conditions that must not be published generally, for example, those relating to the Registrant's health

### **General principles**

Conditions of practice should be **relevant, proportionate, workable** and **measurable**:

**Relevant** means that the conditions should relate to, and address the matters giving rise to the finding of impairment of fitness to practise or, in the case of an interim conditions of practice order, to address the risks to the public, the public interest, and the Registrant's own interests raised by the allegations.

**Proportionate** means that the conditions must be no more than necessary to achieve the legitimate aims of protecting the public and upholding confidence in the 'profession'. They must strike a fair balance between the interests of the Registrant and the public interest, which includes public protection and public confidence. There is also a public interest in Registrants being allowed to practise their profession in a safe manner.

**Workable** means that it must be possible for the Registrant to comply with the conditions. Any conditions imposed should not be wholly impracticable, or have the effect of amounting to a complete restriction on the Registrant's ability to practise. It is inevitable that conditions may have the effect of making it more difficult to obtain employment, but this does not mean that the conditions are unworkable.

**Measurable** means that it must be possible to assess objectively whether or not the Registrant has complied with each condition. The condition must be clear and unambiguous. The question of whether the Registrant has complied with the condition should be capable of being answered 'yes' or 'no'. If the question is capable of being answered 'It depends...', the condition is not measurable because it is not specific enough. The conditions should also ensure that, where necessary, the registrant is under an obligation to provide the JCCP with sufficient information, in sufficient time, to enable the panel at a review hearing to assess whether the nurse or midwife has complied with the condition.

### **Use of language in conditions**

A conditions of practice order should be capable of being read and understood as a stand-alone document, without reference to any other document. When drafting conditions, panels should:

**Use plain English:** Avoid complicated words when simple ones are available. For example, use 'before', not 'prior to', 'start', not 'commence'.

**Avoid jargon or technical terms:** If it is necessary to use clinical terms, these should be defined clearly in a way that can be understood by a lay person.

**Use unambiguous language:** If a term is used that is capable of being interpreted in different ways by different panels, the panel must provide a clear definition of what it means by that term. For example, 'supervision' is a term that is capable of being interpreted differently by different people. Among other things, it could mean:

- having regular meetings with a supervisor to discuss clinical issues
- working with a supervisor at the other end of a telephone if required
- working with a supervisor who is physically present some, but not all of the time
- being observed at all times by a supervisor.

Accordingly, if a panel considers that there should be a degree of supervision or oversight of the Registrant's practice, it must specify precisely the extent of that oversight.

**Be consistent:** Panels should provide consistency in the conditions of practice that are imposed.

### **Conditions of practice and timing**

It is important that panels understand when conditions take effect, and that this is reflected in the order.

Interim conditions of practice orders take effect immediately.

Conditions of practice made after a finding of impairment of fitness to practise take effect on the expiry of the period the Registrant has to appeal against the order, or when the appeal is withdrawn or otherwise finally disposed of.

Conditions of practice made on a standard review before the expiry of an order will take effect immediately on the expiry of the original order

A conditions of practice order made at a review hearing at the request of one of the parties during the life of an order will take effect either:

- immediately the decision has been made by the Panel to impose a conditions of practice, if it is a decision to replace the original order with a conditions of practice order, or
- from the expiry date of the original order, if it is a decision to extend a conditions of practice order.

Times and periods for actions to take place, specified in the order must be specified, for example 'weekly', 'on the first day of each month', or 'once every three months' instead of 'regularly', and 'within x days' instead of 'promptly'.

A case where the panel considers an order is required should never be adjourned to another day simply because it has not been possible to obtain the comments of a third party. This would leave the public unprotected in the meantime. Instead, the panel must make an order that is relevant, proportionate, workable and measurable based on the evidence it has. Either party can seek an early review of the order, should further evidence become available.

Where the panel is satisfied that it is possible to create conditions that ensure public protection, but which require some degree of third party support, it may impose such conditions, despite the absence of evidence identifying a third party who is available and willing to provide the necessary support. This will be appropriate where the conditions are generic in nature, and do not require the input of a specific third party. The practical effect of this will be that the Registrant is unable to practise until finding a third party willing to support them.

It should be noted from this that an employer or other third party cannot be placed under an obligation to support the conditions.

Conditions should always put the obligation on the Registrant, not a third party. For instance, instead of saying “Your GP must provide a report to the JCCP....” the condition should say “You must provide the JCCP with a report from your GP”.

## **Suspension order**

A suspension order directs the Registrar to suspend the Registrant’s registration for a period of up to one year. They may not practise as a registered Cosmetic Practitioner during the period that the order is in force. A suspension order is usually reviewed before it expires. Key considerations are:

- does the seriousness of the case require temporary removal from the register?
- will a period of suspension be sufficient to protect patients and the public interest?

When considering seriousness, the Fitness to Practise Hearing Panel will take into account the extent of the departure from the standards to be expected and the risk of harm to the public/patient interest caused by that departure, along with any particular factors it considers relevant on each case.

This sanction may be appropriate where the misconduct is not fundamentally incompatible with continuing to be a JCCP Registrant in that the public interest can be satisfied by a less severe outcome than permanent removal from the register. This is more likely to be the case when some or all of the following factors are apparent (this list is not exhaustive):

- a single instance of misconduct but where a lesser sanction is not sufficient
- no evidence of harmful deep-seated personality or attitudinal problems
- no evidence of repetition of behaviour since the incident
- the Panel is satisfied that the nurse or midwife has insight and does not pose a significant risk of repeating behaviour
- in cases where the only issue relates to the Registrant’s health, there is a risk to public/patient safety if they were allowed to continue to practise even with conditions
- in cases where the only issue relates to the Registrant’s lack of competence, there is a risk to public/patient safety if they were allowed to continue to practise even with conditions

When imposing a suspension order the Fitness to Practise Hearing Panel may wish to consider setting out clearly expectations it has or actions the Registrant could take that would assist a future panel with reviewing the order before its expiry.

## **Removal order**

A removal order results in the removal of the Registrant’s name from the register, thus preventing them from using the title JCCP Registered Cosmetic Practitioner. An

application for restoration will not be granted unless a panel of the Fitness to Practise Hearing Panel is satisfied that the applicant meets the requirements for admission to the register and in addition, is a fit and proper person to be registered with the JCCP. Key considerations are:

- can public confidence in the professions and the JCCP be maintained if the Registrant is not removed from the register?
- is a removal order the only sanction which will be sufficient to protect the public interest?
- is the seriousness of the case incompatible with ongoing registration (see above for the factors to take into account when considering seriousness)?

This sanction is likely to be appropriate when the behaviour is fundamentally incompatible with being a registered professional, which may involve any of the following factors.

- A serious departure from the relevant professional standards as set out in key standards, guidance and advice.
- Doing harm to others or behaving in such a way that could foreseeably result in harm to others, particularly members of the public/patients or other people the Cosmetic Practitioner comes into contact with in a practitioner capacity. Harm is relevant to this question whether it was caused deliberately, recklessly, negligently or through incompetence, particularly where there is a continuing risk to members of the public/patients. Harm may include physical, emotional and financial harm. The seriousness of the harm should always be considered.
- Abuse of position, abuse of trust, or violation of the rights of members of the public/patients, particularly in relation to vulnerable patients.
- Any serious misconduct of a sexual nature, including involvement in child pornography.
- Any violent conduct, whether towards members of the public or patients, where the conduct is such that the public interest can only be satisfied by removal.
- Dishonesty, especially where persistent or concealed.
- Persistent lack of insight into seriousness of actions or consequences.
- Convictions or cautions involving any of the conduct or behaviour in the above examples.

Removal orders have been used amongst the Professional Statutory Healthcare Regulators to strike off healthcare professionals where there has been lack of probity, honesty or trustworthiness, notwithstanding that in other regards there were no concerns around the practitioner's clinical skills or any risk of harm to the public. Removal orders have been upheld on the basis that they have been justified for reasons of maintaining trust and confidence in the 'professions' or in the Register's practitioner community for whom they have 'due regard'. The JCCP has determined to adopt a similar position.

# Cases with particular risks for public confidence

## Dishonesty

Dishonesty, even where it does not result in direct harm to members of the public/patients but is related to matters outside of a Registrant's professional practice can undermine the trust the public place in the cosmetic practitioner profession. Honesty, integrity and trustworthiness are to be considered as central tenets any cosmetic practitioner's practice.

The Fitness to Practise Hearing Panel should not be left with an arbitrary choice between suspension or a removal order, or that in the absence of special circumstances a removal order is to be seen as a 'default' outcome. Rather, the JCCP considers that honesty is so integral to the standing of its Registrant community that any departure from it will always risk a removal order as a possible outcome.

It is nevertheless important that all Fitness to Practise Hearing Panels continue to start with the least restrictive sanction, and work upwards in order of restrictiveness. A finding of dishonesty does not remove this responsibility.

The nature of the dishonest conduct must be carefully assessed. Not all dishonesty is equally serious. Generally, the forms of dishonesty which are most likely to call into question whether a nurse or midwife should be allowed to remain on the register will involve:

- deliberate dishonesty to conceal practice/clinical issues, particularly those causing harm to the public/patients
- misuse of power
- vulnerable victims
- personal financial gain from a breach of trust
- direct risk to patients
- premeditated, systematic or longstanding deception

Dishonest conduct will generally be less serious in cases of:

- one-off incidents
- opportunistic or spontaneous conduct
- no direct personal gain
- no risk to the public/patients
- incidents in the private life of a registrant

## Sexual misconduct

This covers a wide range of conduct, from criminal convictions for sexual offences through to sexual misconduct with patients, colleagues or client/patients' relatives. Guidance on sexual boundaries has been produced by the Professional Standards

Authority, which includes aggravating and mitigating features which are specific to this kind of case.

The misconduct will be particularly serious where there is an abuse of the special position of trust which the nurse or midwife holds, or where the Registrant is required to register as a sex offender. Although the level of risk to the public/patients will need to be given careful consideration, sexual misconduct seriously undermines public trust in the professions.

Sexual offences include accessing, viewing, or other involvement in child pornography, which involves the abuse or exploitation of a child. These types of offences gravely undermine patients' and the public's trust in the profession and seriously impact on the reputation of the professions.

It will be a relevant factor that any conviction relating to child pornography will lead to registration as a sex offender and possible disqualification from working with children.

The criminal courts identify degrees of seriousness in relation to child pornography offences. However, in the fitness to practise context, any conviction for child pornography is a matter of serious concern because it involves such a fundamental breach of trust and damages the reputation of the professions.

In all cases of serious sexual misconduct, it will often be the case that the only proportionate sanction will be a removal order. Decisions to impose sanctions other than a removal order, will need to be particularly carefully explained, so that the reasons can be understood by those who have not heard all of the evidence in the case.

### **Criminal convictions**

The purpose of the sanction is not to punish the Registrant for a second time in relation to a criminal conviction or caution.

Sentences previously imposed by the criminal courts are not necessarily a reliable or definitive guide to the seriousness of the conviction as far as voluntary regulation is concerned. There may have been specific personal mitigation which led the court to its decision on sentence, which carries less weight in the regulatory context because of the different public interest considerations that apply.

## **Directing reviews of substantive orders**

When imposing conditions of practice or suspension orders, panels of the Fitness to Practise Hearing Panel will always need to decide whether a review is necessary. Where no review is ordered, the order will expire at the end of its period. As conditions of practice orders are usually imposed to protect the public from a risk to patients, it would be unlikely that the order should be allowed to expire without review by a panel.

If a finding of impairment is made to promote and maintain public confidence in the professions or proper professional standards and conduct, and the Registrant does not present a current risk to patients, the panel may conclude that a review would serve no purpose, and therefore decide not to require a review.

Panels should always give reasons for their decision.

## **Interim orders after a sanction is imposed**

Any previous interim order in place will lapse upon determination of the allegation, that is, at the point when the panel announces its decision on sanction.

Sanctions cannot take effect until the end of the appeal period or, if an appeal has been lodged, before the appeal has been finally determined. The Fitness to Practise Hearing Panel has the power to impose an interim order for up to 18 months to cover the period in question.

Whenever it makes a conditions of practice order, suspension order or removal order, the Panel will consider whether or not to impose an interim order. The Panel has the power to impose an interim order of suspension where a removal order or an order suspending the Registrant's registration has been made, pursuant to Rule 54.7 pending expiry of the 28 day period allowed for bringing an appeal, or the determination of any appeal brought pursuant to Rule 62. Where an order of conditions has been imposed the Panel can impose an immediate order of conditions, pending expiry of the 28 day period allowed for bringing an appeal or the determination of any appeal brought pursuant to Rule 62. The power to impose an interim order after the decision on sanction involves the exercise of discretion. It is not an automatic decision in every case.