



Registration Council of Clinical Physiologists

Health Concerns

This guidance has been issued by the RCCP for FtP Panels and to assist those appearing before them.

1. Introduction

The RCCP complaints Procedure (2019) provides that one of the grounds upon which an allegation may be made is that a registrant's fitness to practise is impaired by reason of his or her physical or mental health¹.

If an Assessment Committee Panel concludes that there is a 'case to answer' in respect of a health allegation, it may refer that allegation to the Health Review Panel. In addition, if the Professional Conduct Committee is considering an allegation based upon another ground (e.g. misconduct) but considers that the matter would be better dealt with by the Health Review Panel, it may suspend its consideration of that allegation and cross-refer it to the Health Review Panel.

2. What constitutes a health allegation?

Most registrants whose health may impair their ability to practise understand the situation, seek appropriate advice and treatment and, where necessary, modify or restrict their practise. Health concerns that require formal intervention by the RCCP arise where the registrant fails to demonstrate that they are managing their health issues appropriately and effectively.

Deciding that a health concern needs to be treated formally as an allegation will often be quite straightforward. This is likely to occur in cases where:

- fitness to practise concerns arise as a direct consequence of the registrant's physical or mental health;
- there is evidence to suggest that the registrant is not managing their health appropriately and lacks insight into its potential impact upon service users, the wider public or themselves; and

1. RCCP Complaints Procedure (2019)

- there is no evidence to suggest that other material factors relating to the registrant's conduct or competence are involved.

The decision is less straightforward in cases where health is only one facet of broader or more serious concerns about the registrant's fitness to practise, which also relate to their conduct or competence. Equally, there may be cases where, at the outset, the evidence may not suggest that the registrant has an underlying health issue, but where a health issue becomes known as the case progresses.

In deciding whether to refer an allegation to the Health Review Panel, the factors which should be taken into account include:

- the extent to which physical or mental health is the cause of allegation;
- the overall seriousness of the allegation; and
- the sanctions which are available to the Health Review Panel, including, in particular, that removal is not an option.

3. Relevant case law

In *Crabbie v GMC*² the Privy Council held that:

"The power to refer [to the Health Committee] is a discretionary one... in considering whether or not to exercise the power, the [decision maker], should take into account all the circumstances of the case including the scope of the powers available to the Health Committee.

...the Health Committee has no power to direct erasure... if the case is one in which erasure is a serious possibility, neither [decision maker] should refer the case to the Health Committee notwithstanding that it may be one where the fitness to practise of the practitioner in question appears to be seriously impaired by reason of his or her physical or mental condition."

Similarly, in *R (Toth) v GMC*³, a case which concerned the cross referral of an allegation to the Health Committee, the court held that:

"whilst the possibility of erasure remains, the [Committee] cannot lawfully refer the case to the Health Committee. That Committee cannot impose a sanction of erasure and it is one that the [Committee] may have to impose in the public interest. Whilst that remains a possibility, [it] should retain jurisdiction."

I would only add that even where the [Committee] does conclude that erasure is not a possible sanction, it may still be inappropriate to refer a case to the Health Committee because the public interest in complaints being determined in public

2. [2002] UKPC 45. In that case a registrant imprisoned for causing death by dangerous driving argued that, because of her alcohol dependency, the case should have been heard by the GMC's Health Committee.

3. (2003) EWHC 1675 (Admin).

and the need to maintain professional standards may outweigh the advantages of referring the matter to the Health Committee. However, once erasure has been discounted as a possible sanction, the power to transfer arises and it is for the [Committee] to weigh the considerations for and against exercising that power."

4. Conducting hearings in private

Most fitness to practise hearings are held in public, but panels have the discretion to exclude the press or public from all or part of a hearing in appropriate cases. Health cases will usually require panels to consider personal and sensitive details of a registrant's physical or mental health condition. A panel is justified in hearing such cases in private in order to protect the registrant's privacy, unless there are compelling public interest grounds for not doing so. The decision to hear such a case in private is unlikely to be contentious but, nonetheless, is one which the Panel should make formally and after giving the parties the opportunity to make representations. The guidance on Conducting Hearings in Private explains in more detail the issues that need to be considered when deciding whether a hearing should be held in private.

5. Vulnerable registrants

The fitness to practise process can be a stressful and anxious time for all registrants, but this may be exacerbated for registrants who are particularly vulnerable due to their physical or mental health and especially if they are unrepresented. The guidance on Unrepresented Registrants sets out how such registrants may be supported through the hearing process. The RCCP website also provides guidance and assistance for vulnerable parties attending a hearing, including registrants.

6. Cross-referral

The RCCP Complaints Procedure⁴ enable allegations to be cross-referred between the Health Review Panel and the Professional Conduct Committee where the Panel considering an allegation on behalf of one of those committees considers that it would be better dealt with by the other committee.

Health Review Panels can consider only allegations which are based upon the statutory ground of physical or mental health. Professional Conduct Panels can consider only allegations which are based upon one of the other grounds.⁵ Consequently, in any cross-referral, the first issue which must be addressed is how the allegation is to be re-drafted so that it can be considered on the basis of the correct statutory ground.

Making a cross-referral will normally require the consent of the registrant concerned who, unless the amendments are minor, may argue that the revised allegation is one in respect of which they have not had the opportunity to submit representations to an

4. RCCP Complaints Procedure (2019)

5. misconduct, lack of competence, criminal conviction or caution or a determination by another regulatory body.

Assessment Panel, and upon which such a Panel had not decided that the registrant had a case to answer. The views of the RCCP must also be taken into account, not least to identify any concerns which the RCCP may have about whether a revised allegation may amount to under-prosecution. That is where the allegation does not reflect all of the fitness to practise matters identified in the evidence.

If cross-referral is being considered at the request of the registrant or the RCCP, the Panel is entitled to expect the requesting party to set out a clear and cogent case as to why cross-referral is appropriate. The Panel must take full account of the submissions from both parties before reaching a decision.

Where an allegation is cross-referred – whether of the Panel’s own motion or at the request of one or both of the parties – the Panel must provide clear reasons for its decision, in sufficient detail to enable the receiving Panel to understand the rationale for the decision, to issue directions and to consider the revised allegation.

In respect of an allegation which is cross-referred, the receiving Panel’s disposal options are to certify to the referring Panel that:

- the fitness to practise of the registrant is not impaired by reason of the substituted ground (leaving the referring Panel to resume and conclude its consideration of the allegation); or
- it has dealt with the allegation and that the referring Panel is not required to take any further action in relation to the allegation.

Where a receiving panel decides that a registrant is not impaired in relation to the allegation it has considered, the panel should refer the suspended allegations back to the original referring panel in order that they can be disposed of. For example, where a Professional Conduct Committee has suspended their consideration of the allegations to refer a matter to the Health Review Panel, but the latter has found no impairment on the grounds of health, the Health Review Panel should refer the matter back to the Professional Conduct Committee for consideration of the suspended allegations.

There may be instances when the Professional Conduct Committee considers allegations that a registrant has committed misconduct, and that misconduct was a result of the registrant’s health condition. In some cases, the misconduct may lead to removal. However, where it becomes clear that a removal order is not likely, the panel should ensure it addresses the health condition before reaching a final decision on sanction, for example by referring the allegation to the Health Review Panel or seeking up to date information about the registrant’s health. This is to ensure that there are no outstanding questions about the registrant’s fitness to practise on any relevant grounds of impairment.

7. Expert evidence as to health

In cases where health issues arise, Panels will often be able to draw appropriate inferences and conclusions from the evidence about a registrant's health without the need for expert evidence. Whether evidence from medical or other experts is required is a matter for the Panel, based upon the well-established principle in *R v Turner*⁶ that:

“an expert’s opinion is admissible to furnish information which is likely to be outside the [Panel’s] experience and knowledge. If on the proven facts the [Panel] can form their own conclusions without help, then the opinion of an expert is unnecessary.”

Panels should not go beyond the bounds of their own expertise, for example by seeking to make diagnoses. However, in many cases Panels will be able to understand and assess the available evidence and reach conclusions as to how the registrant's health is affecting their fitness to practise.

In considering medical or other expert reports which form part of the evidence, to the extent that it is relevant to do so, Panels should take account of:

- the expert's professional qualifications and area of specialisation;
- the extent of the expert's knowledge of the case, for example whether the expert has been involved in the registrant's care over a sustained period;
- the nature of any assessment undertaken by the expert, such as whether a report is based on a recent physical examination or simply a review of notes made by others;
- how closely in time the expert's report was prepared to the matters in issue.

Panels must also recognise that there can be logical reasons for seemingly conflicting expert evidence. For example, a GP's view of a relatively rare condition, based on symptoms present at its onset, may differ from the view of a specialist who may be more familiar with the condition and may generally see patients at a later stage when symptoms become acute. Where there is a conflict in the expert evidence, panels should ensure they provide clear reasons for why they have preferred the advice of one expert to that of another expert.

8. Medical Assessors

In cases where Panels need the assistance of an expert, they have the option of seeking the advice of a suitably qualified medical assessor. The role of medical assessor is set out in detail in the [Procedure Note on Opinion Evidence, Experts and Assessors](#). It is open to both parties to request that a medical assessor be appointed, but the decision as to whether a medical assessor is required is a matter for the Panel, in line with the principle set out in *R v Turner*⁷.

6. [1975] QB 834

7. [1975] QB 834

9. Reasonable adjustments

The Registration Council of Clinical Physiologists Complaints Committees will endeavour to accommodate any reasonable adjustments which registrants, or other parties attending proceedings, may require. The RCCP should be notified in advance to allow time for any such adjustments to be made.

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