



Registration Council of Clinical Physiologists

Review of Sanction Orders

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

Introduction

The RCCP Complaints Procedure (2019) requires all conditions orders and suspension orders to be reviewed before they expire.

In addition to this mandatory review, the Complaints Procedure (2019) provides Panels with a discretionary power to review reprimand orders, conditions orders and suspension orders at any time.

The Professional Standards Authority (PSA) as part of their regulatory oversight of the RCCP governance and adherence to their Standards, may also seek to view sanction orders.

Sanctions reviews

The RCCP Complaints Procedure (2019) provides that a conditions order or suspension order must be reviewed before it expires and that the reviewing Panel may:

- extend, or further extend the period for which the order has effect;
- make an order which could have been made when the order being reviewed was made; or
- replace a suspension order with a conditions of practice order.

Any order made following a sanction review only takes effect from the date on which the order under review expires, so the registrant must continue to comply with the expiring order until then.¹

Discretionary reviews

The RCCP Complaints Procedure (2019) provides that, on the application of the person concerned or otherwise, a reprimand order, conditions order or suspension order may be reviewed at any time it is in force and that the reviewing Panel may:

- confirm the order;
- extend, or further extend, the duration of the order;
- reduce the duration of the order (but a reprimand order cannot be reduced to less than one year);
- replace the order with any other order which the Panel could have made (to run for the remaining term of the original order); or
- revoke the order or revoke or vary any condition imposed by it.

This discretionary power does not specify the circumstances in which it may be exercised. Consequently, reviews are not limited to cases in which new evidence has come to light but may encompass any case where a significant and material change in circumstances has occurred since the original order was made, including breaches of that order by the registrant. Panels should expect the RCCP to present credible evidence of any alleged breach.

Any review of sanctions order has immediate effect but, where an order is confirmed or replaced by another kind of order, it will only have effect for the remaining period of the order under review.

Extending Orders

The power to extend, or further extend, the duration of an order is subject to the following limitations:

- a suspension order cannot be extended by more than one year at a time; and
- a conditions order cannot be extended by more than three years at a time.

¹ The power to impose interim orders does not apply to sanctions reviews. A Panel should only replace a suspension order with a conditions order where it is satisfied that the registrant will continue to comply with the existing order. An interim order cannot be imposed to ensure that the registrant does so.

Procedure

The review of sanctions order provides that, before a Panel exercises its powers, the registrant concerned must be given the opportunity to appear before and be heard by the Panel, in accordance with the relevant Panel rules.²

The procedure to be followed by a Panel when conducting a review will generally be the same as for other fitness to practise proceedings. However, on the application of the registrant concerned, the Panel rules provides for the registrant (who has the burden of persuasion) to present his or her case first and for the RCCP to respond.

The issues to be addressed

The review process is not a mechanism for appealing against or 'going behind' the original finding that the registrant's fitness to practise is impaired. The purpose of review is to consider:

- whether the registrant's fitness to practise remains impaired; and
- if so, whether the existing order or another order needs to be in place to protect the public.

The key issue which needs to be addressed is what, if anything, has changed since the the current order was imposed or last reviewed. The factors to be taken into account include:

- the steps which the registrant has taken to address any specific failings or other issues identified in the previous decision;
- the degree of insight shown and whether this has changed;³
- the steps which the registrant has taken to maintain or improve his or her professional knowledge and skills;
- whether any other fitness to practise issue have arisen;
- whether the registrant has complied with the existing order and, if it is a condition of practice order, has practised safely and effectively within the terms of that order.

2. RCCP Complaints Procedure (2019).

3. A registrant who denied allegations which were held to be well founded and maintains that denial on review is entitled to do so and continuing refusal to accept the original findings should not be characterised as a lack of insight. However, that continuing denial is a relevant factor which the reviewing Panel may take into account: *Yusuff v GMC* [2018] EWHC 13 (Admin).

The reviewing Panel’s task “is to consider whether all the concerns raised in the original finding of impairment...[have] been sufficiently addressed”.⁴ As the decision in *Abraheam* indicates, in practical terms this places a “persuasive burden” on the registrant to demonstrate at a review hearing that he or she has fully acknowledged the deficiencies which led to the original finding and has addressed that impairment sufficiently “through insight, application, education, supervision or other achievement...”.

The decision reached must be proportionate, striking a fair balance between interfering with the registrant’s ability to practise under RCCP registration and the overarching objective of public protection.⁵

RCCP review applications

Where a review application is made by the RCCP, Panels should expect the RCCP to explain at the outset why the application is appropriate.

In cases where new information becomes available or circumstances have changed, that explanation should be straightforward and, in many cases, the appropriateness of the application will be self-evident. This will be the case where, for example, the registrant is breaching the terms of an existing order or is complying with an order which is ineffective.

In cases where there is no new evidence or change in circumstances, the Panel should expect the RCCP to provide a compelling explanation as to why it is appropriate for the original order to be reviewed. That explanation must go beyond mere disagreement with the original order and should be, for example, that the order:

- is clearly impractical (for example, by requiring a registrant to undertake a training course which does not exist);
- is improper (for example, by imposing conditions which, in effect, amount to suspension from the practice of the relevant profession under RCCP registration); or
- exceeds the Panel’s jurisdiction (for example, by purporting to impose obligations on a person other than the registrant - “your employer must...”).

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4. *Abrahaem v GMC* [2008] EWHC 183 (Admin).

5. which includes protecting service users, declaring and upholding proper standards of behaviour and maintaining public confidence in the profession: *Cohen v GMC* [2008] EWHC 581 (Admin).