
Information for employers and managers

The fitness to practise process

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The fitness to practise process

About this brochure

This brochure gives you information as an employer or manager of one of our registrants (professionals on our Register). It explains what you should do if you have concerns about a registrant's fitness to practise, and when you should make us aware of any concerns. We try to make our processes as open and clear as possible and we hope the information in this brochure helps you through the fitness to practise process.

About us

We are a regulator and were set up to protect the public. We keep a register of health and care professionals who meet our standards for their training, professional skills and behaviour. For more information about us and the professions we regulate, visit our website at www.hcpc-uk.org/aboutus

About fitness to practise

When we say that someone is 'fit to practise' we mean that they have the skills, knowledge and character needed to practise their profession safely and effectively. However, fitness to practise is not just about professional performance. It also includes acts by a registrant which may affect public protection, or confidence in the profession or the regulatory process. This may include matters not directly related to professional practice.

What is the purpose of our fitness to practise process?

Fitness to practise proceedings are about protecting the public. They are not a general complaints-resolution process. They are not designed to deal with disputes between registrants and service users or registrants and employers or managers.

Our fitness to practise process is not designed to punish registrants for past mistakes. It is designed to protect the public from those who are not fit to practise. If we decide that a registrant's fitness to practise is 'impaired', it means that there are concerns about their ability to practise safely and effectively. This may mean that they should not practise at all, or that they should be limited in what they are allowed to do. If this is the case, we will take appropriate action to make this happen.

Sometimes registrants make mistakes that are unlikely to be repeated. This means that the registrant's fitness to practise is unlikely to be impaired. People sometimes make mistakes or have a one-off instance of unprofessional conduct or behaviour. We will not pursue every isolated or minor mistake.

When will a registrant's fitness to practise be found to be impaired?

We consider every case individually. However, a registrant's fitness to practise is likely to be impaired if the evidence shows that they:

- were dishonest, committed fraud or abused someone's trust;
- exploited a vulnerable person;
- failed to respect service users' rights to make choices about their own care;
- have health problems which they have not dealt with, and which may affect the safety of service users;
- hid mistakes or tried to block our investigation;
- had an improper relationship with a service user;
- carried out reckless or deliberately harmful acts;
- seriously or persistently failed to meet standards;
- were involved in sexual misconduct or indecency (including any involvement in child pornography);
- have a substance abuse or misuse problem;
- have been violent or displayed threatening behaviour; or
- carried out other, equally serious, activities which affect public confidence in their profession.

For fitness to practise case studies visit our website at www.hcpc-uk.org/complaints/casestudies

Our standards

When considering fitness to practise cases, we take account of the standards we have published. The two sets of standards we use are the standards of proficiency (we publish a separate set of standards for each profession we regulate) and the standards of conduct, performance and ethics (which are the same for all professions). You can download these documents from www.hcpc-uk.org/publications/standards or phone us on 0845 300 6184 and we will send you a copy in the post.

You may find it helpful to refer to our standards when deciding whether to raise a concern with us about whether an employee is fit to practise.

Raising a fitness to practise concern

Who can raise a fitness to practise concern?

Anyone can contact us and raise a concern about a registrant. This includes members of the public, employers and managers, the police and other registrants.

We can still proceed with fitness to practise concerns even if they are raised in a more unusual way (for example, a newspaper article). This legal power also means we can take a case forward even if the person or organisation who has referred a concern to us wants to withdraw from the process.

What types of cases can we consider?

We can only consider cases about fitness to practise, which we have explained in more detail above. The types of cases we can consider are those that question whether a registrant's fitness to practise is 'impaired' (negatively affected) by the following factors.

<p>Misconduct</p> <p>Behaviour which falls short of what can reasonably be expected of a registrant. For example:</p> <ul style="list-style-type: none"> • failure to provide adequate care; • failure to maintain professional boundaries with a service user; • breach of patient confidentiality; • visiting inappropriate websites in the workplace; or • falsely claiming sick leave. 	<p>Lack of competence</p> <p>Lack of knowledge, skill or judgement (usually repeated and over a period of time) which means a registrant is unfit to practise. For example:</p> <ul style="list-style-type: none"> • poor record-keeping; • inadequate professional knowledge; • inadequate risk assessments; or • poor clinical reasoning.
<p>Caution or conviction</p> <p>For an offence in the UK (or somewhere else for an offence that would be a crime if committed in England and Wales). For example:</p> <ul style="list-style-type: none"> • theft; • fraud; • child pornography; • possession of a controlled drug; • assault by beating; or • harassment. 	<p>Physical or mental health</p> <p>Long-term, untreated or unacknowledged physical or mental-health condition. For example:</p> <ul style="list-style-type: none"> • unmanaged serious mental illness; • long-term, untreated alcohol or drug dependence; or • failure to make reasonable adjustments to make sure service users are safe in light of a physical or mental-health condition.
<p>A decision made by another regulator responsible for health and social care</p> <p>For example, a decision by a healthcare regulator in another country.</p>	

For fitness to practise case studies, visit our website at www.hcpc-uk.org/complaints/casestudies

We can also consider allegations about whether an entry to our Register has been made fraudulently or incorrectly. For example, the person may have given us false information when they applied to be registered.

Because our function is to protect the public, we can investigate concerns relating to events which happened at any time or which took place before the registrant was registered. However, we will not normally proceed with concerns that are made more than five years after the events giving rise to them. This is so we can get the best possible evidence about the concerns, for example, witnesses will be able to recall events more easily.

What we cannot do

We cannot:

- consider employment issues, such as hours of work, employment contracts, lateness or poor timekeeping (unless there has been a direct negative effect on service users), personality conflicts (unless there is evidence of bullying and harassment) or sickness absence (unless there is evidence of misconduct or the registrant is failing to manage their fitness to practise);
- consider consumer issues or business disputes;
- deal with customer-service issues;
- deal with disputes between registrants and service users or registrants and employers or managers;
- get involved in care or social-care arrangements;
- arrange refunds or compensation;
- fine a registrant;
- give legal advice;
- make a registrant apologise;
- consider cases about professionals who are not registered with us; or
- consider cases about organisations (we only deal with cases about individual registrants).

Resolving issues locally

We recognise that employers and managers deal with situations concerning the misconduct, lack of competence and ill health of their staff every day, and that this will include situations with our registrants. In most cases, these situations can be resolved quickly and proportionately through local procedures.

If issues are resolved satisfactorily at a local level, it is unlikely that there will be evidence to suggest that the registrant's fitness to practise is impaired. So if it is referred to us, we would normally close the case without taking any further action. We are unlikely to find evidence that a registrant's fitness to practise is impaired in cases:

- relating to relatively minor conduct, competence or health issues;
- where the registrant has acknowledged, and has insight into, any failings;
- where appropriate remedial action has been taken;
- where the behaviour is unlikely to be repeated; and
- which do not raise any wider public-protection issues, such as confidence in the profession or regulatory process or deterring other registrants.

The following are examples of where it is unlikely we would take any action because a concern has been satisfactorily resolved at a local level.

Example one

A paramedic in a rapid-response car was called to give support to a private ambulance crew who were treating an elderly patient. The paramedic administered morphine to the patient and instructed one of the crew members, an emergency-care assistant (ECA), to continue to administer morphine on the way to hospital if the patient's pain did not subside. The paramedic followed the crew to hospital in his car. During the journey the ECA administered the morphine to the patient as instructed by the paramedic. This was illegal as

a paramedic cannot authorise someone else to administer morphine. The ECA was not aware of this and just followed the instructions given by the paramedic. The patient was not harmed.

When the paramedic's employer (an NHS ambulance service) was made aware of the incident, they investigated the matter. No interim restrictions were imposed on the paramedic's practice while the incident was investigated. The employer had no other concerns about the paramedic's fitness to practise.

During the investigation the paramedic showed insight and was open and honest about his actions. He said he thought the ECA was more senior and that he had travelled behind the crew and left the patient in their care as they had already established a rapport with the patient. He acknowledged that he was not clear about whether ambulance clinicians (other than paramedics) could give morphine.

The employer considered the case and decided that the paramedic needed to address some learning gaps in relation to managing medicines and what other ambulance clinicians can and cannot do. The employer did not feel that disciplinary action was necessary and that a 12-week action plan should be put in place to support the paramedic's learning in the areas identified.

The paramedic successfully completed the action plan and received a positive appraisal. The employer closed their investigation and the paramedic continued with his normal duties.

Example two

A social worker accessed and viewed parts of her mother-in-law's (a service user) electronic social-work records on two occasions. The social worker had no professional reason to access and view the records.

When the social worker's employer (a local council) found out, they investigated under their disciplinary procedure. The council

held an initial meeting with the social worker who admitted to accessing the records and said she did so to see what the assessment situation was in relation to her mother-in-law as she had been unable to speak to the social worker involved. She took full responsibility for her actions. Due to this meeting, and as the council had no other concerns about the social worker's fitness to practise, she was not suspended or restricted from her usual duties during the investigation. However, they did restrict access to her mother-in-law's records.

Following the investigation, a disciplinary hearing considered the case and found that the social worker's actions constituted misconduct and went against the council's code of conduct and data-handling policies and procedures. They also found that while at the time of the incidents the social worker did not appear to consider the seriousness or possible consequences of her actions, since then she acknowledged that her actions were wrong and she had shown insight and reflected on her conduct and apologised. They also decided her motivation was to help her mother-in-law. The hearing decided that the social worker should be given a 12-month warning. It was also recommended that a development plan around work and personal boundaries should be drawn up and that the social worker's use of the electronic record system be monitored for six months.

Example three

A biomedical scientist has had a history of depression and 10 years ago was diagnosed with bipolar disorder. Throughout this time, the biomedical scientist has had numerous occupational health assessments and five years ago, following a suicide attempt, appeared before his employer's capability panel who recommended a phased return to work. The employer has had no concerns about the biomedical scientist's standard of practice and his mental-health condition has not had a negative effect on service users.

The biomedical scientist attempted suicide again more recently and was sectioned under the Mental Health Act. When he was released from hospital he was on medication, being monitored by his GP and a psychiatrist and under the care of the local community mental health team who visited him at home twice a week. His employer arranged for an occupational health assessment which found that he was not fit to work. Because of this he was on long-term sick leave.

At an occupational health assessment five months after the biomedical scientist was discharged from hospital, he was found fit to return to work. A phased return with reduced hours (gradually building up to full hours) with regular management contact and caseload reviews was arranged.

What concerns should I tell you about?

Whether or not you need to tell us about a concern will depend on the circumstances and its seriousness. The information above will help you make this decision. However, we should be told if:

- ✓ the behaviour or actions of a registrant have raised concerns about their fitness to practise;
- ✓ you have dismissed or suspended a registrant; or
- ✓ you have taken the decision to downgrade the status of a registrant (for example, you restrict the work they can do, you place them under supervision, or you move them to a lower-skilled or lower-paid job).

It is up to you as the employer or manager to decide whether you refer a concern to us. As a result, as well as recording your evidence and reason for making a referral, you should also record your evidence and reason for deciding not to make a referral, in case this is needed in the future. You do not need to tell us when you decide not to make a referral.

If you or anyone in your organisation is in any doubt about whether we need to be told, you should contact us. We will work with you wherever possible and we are always willing to discuss

matters on a case-by-case basis. If you have any questions, you should phone us on 0800 328 4218 and speak to a case manager.

Remember that issues that cause you to take disciplinary action may not result in us placing any sanction on the registrant. In other cases, we may take more serious action than you. This may mean that the registrant cannot work in their profession or has restrictions placed on their practice. Fitness to practise and employment processes are different and can result in different outcomes.

When should I refer a concern to you?

You should refer a concern to us immediately if:

- ✓ your concerns are serious, for example, they involve dishonesty, violence or detriment or harm to service users;
- ✓ you have dismissed, suspended or downgraded a registrant's status while you are investigating a fitness to practise concern about them or as a result of your investigation;
- ✓ a registrant resigns while you are investigating a fitness to practise concern about them or as a result of your investigation; or
- ✓ a registrant has been charged with, cautioned for or convicted of a criminal offence.

Otherwise, you should normally refer a concern to us when you know the outcome of your disciplinary process.

Letting us know about a matter does not necessarily mean we will begin fitness to practise proceedings immediately, or ask you to suspend or end your own procedures. In many instances it will be more appropriate for us to wait until you have finished your procedures.

Even if we do not immediately pursue a concern, once we have been told about it, we are better placed to protect the public. For example, once we are made aware of a concern, the registrant involved cannot avoid the consequences by removing themselves

from the Register or allow their registration to end. We can also place interim restrictions on a registrant's right to practise, if that proves to be appropriate. You can find more information about interim orders below.

Under our standards of conduct, performance and ethics, registrants have a responsibility to tell us important information about their conduct and competence. This is particularly the case when a registrant has:

- accepted a caution from the police;
- been found guilty of a criminal offence;
- had any restriction placed on their practice; or
- been suspended or dismissed by an employer, manager or similar organisation because of concerns about their conduct or competence.

However, registrants do not always do this, so you should let us know about any concerns you may have about a registrant's fitness to practise.

What are interim orders?

If an allegation is serious enough to suggest that the registrant may be a risk to themselves or to others, or there are other reasons in the public interest, we may apply for an interim order. An interim order prevents a registrant from practising, or places limits on their practice, until the case is heard. If an interim order is imposed, it will apply immediately.

Examples of cases where we may apply for an interim order include sexual misconduct, serious mistakes or self-administering controlled drugs in the workplace. These are not the only examples where we may ask for an interim order. We consider each case on its own merits. In most cases we will not ask for an interim order and that means the registrant can continue to work without restriction. If we know that you are their employer or manager, we will let you know if an interim order is imposed against your employee.

You can find more information about interim orders on our website at www.hcpc-uk.org/complaints/registrants/interimorders or in our Interim Orders practice note. You can download this practice note from www.hcpc-uk.org/publications/practicenotes or phone us on 0800 328 4218 and we will send you a copy in the post.

For fitness to practise case studies, visit our website at www.hcpc-uk.org/complaints/casestudies

How do I raise a concern?

If you need to tell us about concerns you have, you should fill in an employer referral form. You can download a referral form from www.hcpc-uk.org/complaints/employers/raiseaconcern or contact us on 0800 328 4218 and we will send you a copy in the post. There are two ways to send your filled-in form to us.

1. By post

Securely seal the signed form in an envelope, along with copies of the supporting documents, and send it to:

Fitness to Practise Department
The Health and Care Professions Council
184 Kennington Park Road
London
SE11 4BU

You may want to consider using recorded post.

2. By email

Attach a scanned copy of the signed form along with electronic copies of the supporting documents, and email them to ftp@hcpc-uk.org

If you decide not to use the employer referral form, we need the following information from you when you raise a concern. You can send this information to the postal or email address above.

<p>Information about you (and our point of contact for the case, if this is not going to be you)</p>	<ul style="list-style-type: none"> - Name - Role - Organisation - Correspondence address, phone number and email address
<p>Information about the registrant</p>	<ul style="list-style-type: none"> - Name - Profession - Registration number - Work address and home address (if you know it) - How long they have been employed by your organisation and in what roles - If they are registered with any other body
<p>Information about your concern</p>	<ul style="list-style-type: none"> - A brief summary of what happened and the circumstances leading to it - Where the event (or events) took place - The date and time period (or both) that the event (or events) took place
<p>Information about witnesses</p>	<ul style="list-style-type: none"> - Details of any witnesses and copies of their statements
<p>Information about the action you have taken</p>	<ul style="list-style-type: none"> - A brief summary of any internal investigation you have carried out - Details of any other organisation you have contacted about the matter (for example, another regulator or the police)

<p>Supporting documents (this will depend on the nature of the concern but we are likely to need everything you have considered when making the referral to us)</p>	<ul style="list-style-type: none"> – Internal investigation reports, disciplinary and appeal documents – Correspondence between your organisation and the registrant – Relevant service-user records – If you are reporting that a registrant has been charged, the contact details of the relevant police force – If you are reporting a conviction or caution, a copy of a CRB check or a certificate of conviction or caution
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Anything you send to us will be copied to the registrant you are referring to us so they can respond. If there is anything you would prefer we did not send to the registrant, you should tell us. However, if it is an important piece of evidence, we may have to send it to the registrant anyway. We will not share any information that might compromise a criminal investigation.

Any information you provide will be used as evidence in proceedings against the registrant. If the case goes as far as a hearing, the details may become public as hearings are usually held in public and the press regularly attend.

Compromise agreements

If you have entered a compromise agreement with the registrant you are referring, you should tell us. We do not need the details of the agreement, but just need to know that one exists. If you have a confidentiality clause in the compromise agreement, it will not prevent us from investigating the concerns about the registrant, nor does it prevent you or any witnesses from passing information about the registrant to us. When drafting the agreement you should make clear to the registrant that any confidentiality clause does not apply to information being passed to us.

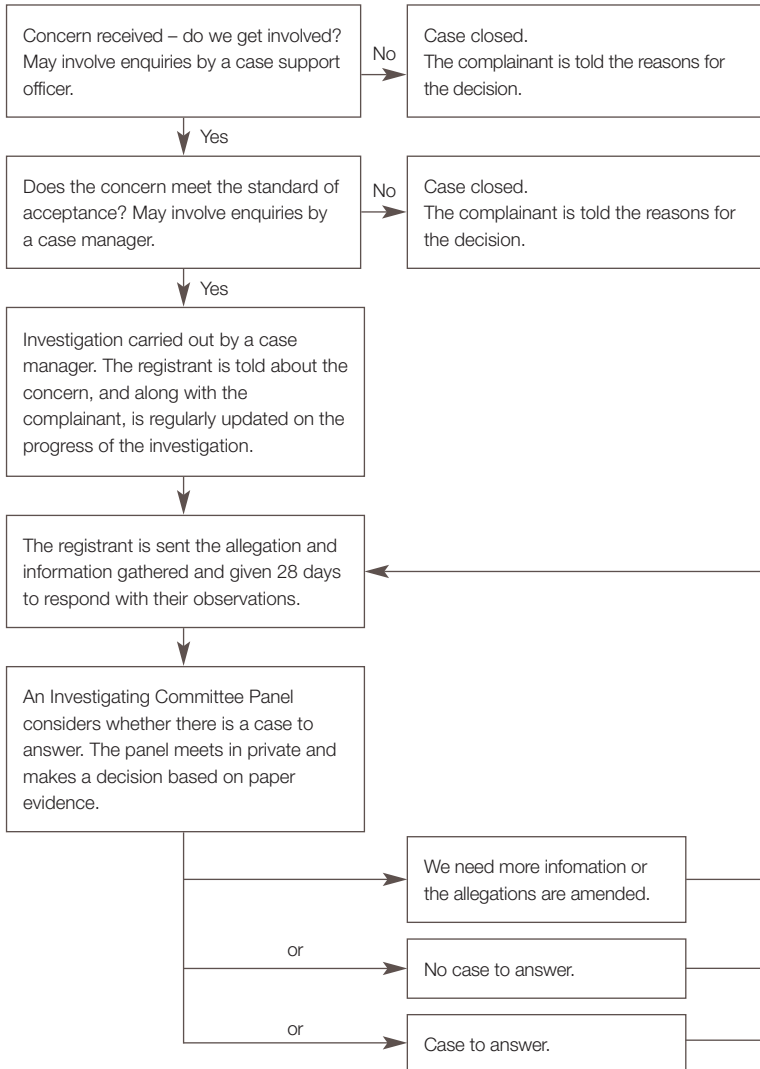
How much of my time do you need?

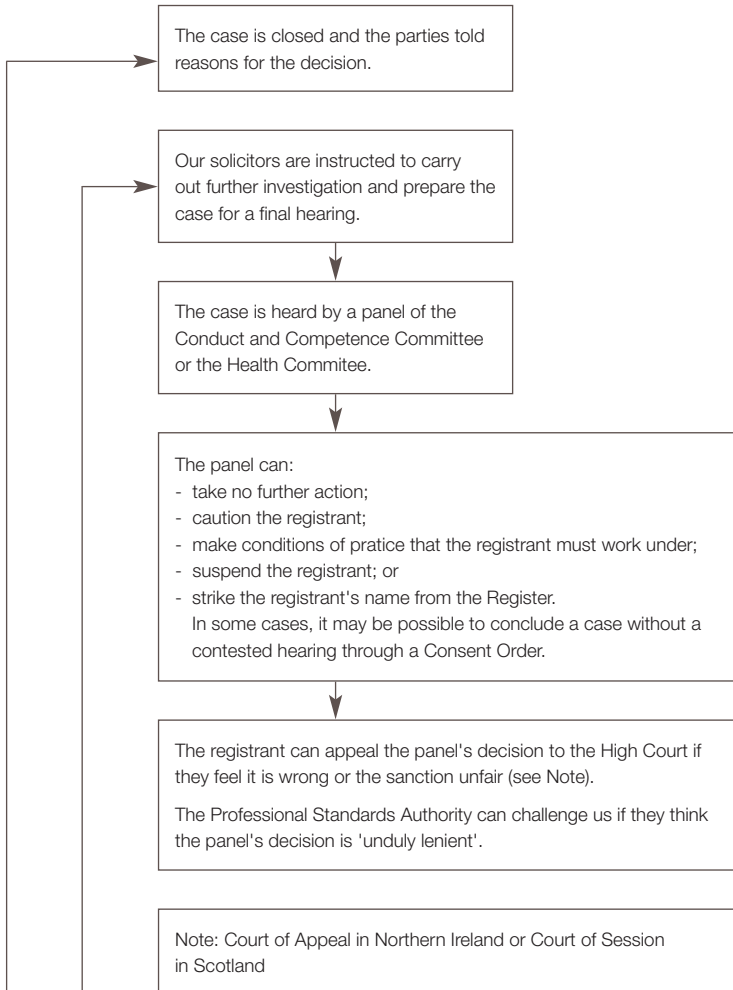
The amount of time we will need from you if you raise a concern will depend on how complicated the case is. We are likely to need to ask for more information from you during the course of our investigation.

If the case goes forward to a final hearing, you or members of staff may need to meet with our solicitors to provide a witness statement. You may also have to come to the hearing and give evidence. This can sometimes involve an overnight stay if the hearing takes place away from your home town. You can find more information about this in our brochure called Information for witnesses. You can download this brochure from www.hcpc-uk.org/complaints/witnesses or phone us on 0800 328 4218 and we will send you a copy in the post.

The investigation process – what happens next?

At all stages of the process, we can apply for an interim order to prevent the registrant from practising, or to place conditions on their practice, until the case has been closed by a panel.





For more information about the investigation process, visit our website at www.hcpc-uk.org/complaints/employers/investigations

The Standard of acceptance explained

There is a modest and proportionate threshold that all concerns must meet before we can investigate them as a concern about a registrant's fitness to practise. This threshold is known as the 'Standard of acceptance'.

We consider each concern on its merits as to whether it meets the Standard of acceptance or not. We may make further enquiries to help us make this decision, for example, we may ask you or someone else for more information.

A concern meets the Standard of acceptance if:

- it is made in the **appropriate form**; and
- it provides **credible evidence** which suggests that the registrant's **fitness to practise is impaired**.

Appropriate form

A concern is in the appropriate form if it:

- is received in writing;
- provides enough information to identify the registrant it is made about; and
- sets out the nature of the concern and the circumstances giving rise to it in enough detail for the registrant to be able to understand the concern and respond to it.

Our employer referral form and the information on pages 12–14 will help you in referring your concern in a form which will meet this requirement.

Credible evidence that the registrant's fitness to practise is impaired

This requirement does not mean that you must prove your concern from the outset, rather that the concern must be enough to cause a reasonable and objective person to consider it worthy of belief. The concern must also suggest that the registrant's fitness to practise is impaired. This is a current test, meaning that there are concerns about a registrant's current ability to practise safely and effectively.

This requirement is why we may not take any further action in relation to a concern you have satisfactorily dealt with at a local level or which relates to events which happened more than five years ago.

If we find that a concern does not meet the Standard of acceptance, the case is closed. It does not form part of the registrant's formal HCPC record but is information which we may take into account if further concerns are raised about the registrant.

Our Standard of acceptance policy is a public document and you can download it from www.hcpc-uk.org/publications/policy or phone us on 0800 328 4218 and we will send you a copy in the post.

What can I expect from you?

If you raise a concern with us about a registrant, you can expect us to treat everyone involved fairly and explain what will happen at each stage. We will give you the details of a case manager who you can contact if you have any questions and who will keep you up to date with the progress of our investigation.

Role of the case manager

We allocate a case manager to each case. The allocated case manager may change during the course of the investigation. If this happens, we will tell you and you will always have a named contact. They are neutral and do not take the side of either the registrant or the person or organisation who makes us aware of the concerns. Their role is to manage the progress of the case through the process and to gather relevant information. They act as a contact for everyone involved in the case.

They cannot give legal advice but they can explain how the process works and what panels consider when making their decision.

How long will it take?

We understand that the investigation process can be stressful for the employer or manager who has raised the concern and the registrant involved, so we try to consider cases as quickly as we can.

We aim to:

- prepare the case, so that the registrant may respond to the allegations against them, within five months of the decision that the concern meets the Standard of acceptance; and
- hold a final hearing within seven months of the Investigating Committee Panel's decision that there is a case to answer.

While these are our aims, the time a case takes to reach the end of the process can vary depending on the nature of the investigation we need to carry out and how complicated the issues are. As a result of this, each stage of the process may take either a shorter or longer period of time.

Your case manager will keep you informed of the progress of the case, but if you have any questions about what is happening, or why it may be taking longer than our aims, you can contact them for an update.

What happens if someone else raises a concern about one of my employees?

We may receive information from members of the public or another source about one of your employees which may mean we need to ask you for information as their employer or manager. This may include the service-user records of the person who has complained or more information about a particular incident.

If you are a registrant yourself, you should co-operate with any investigation about the conduct or competence of others, or the care, treatment or other services provided to service users.

Article 25(1) of the Health and Social Work Professions Order 2001 gives us the power to make a person or organisation give us information or produce documents which appear relevant to fitness to practise allegations. There are some exceptions to

this power, listed in the Article from paragraph (3) – (5). You can find a copy of the Order at www.hcpc-uk.org/aboutus/legislation/orders

This power overrides the General Data Protection Regulation 2018 and other data-protection safeguards, such as Caldicott Guardian arrangements.

If you have any concerns about providing information to us, you should speak to your case manager. They cannot give you legal advice but they will be able to explain why we are making the request. Or, you can arrange your own legal advice.

What can you tell me?

Fitness to practise investigations are private and we do not publicise the fact that we are investigating a registrant. However, if the Investigating Committee Panel decide there is a case to answer, we will tell you about the investigation as you are the registrant's employer or manager. We may also contact you about the investigation before this point if it is appropriate.

We issue an alerts list every month giving details of case outcomes and registrants who have had interim orders made against them. To receive these alerts, please email us at ftp@hcpc-uk.org

We also publish details of forthcoming hearings, four weeks before the date of the hearing, on www.hcpc-uk.org/complaints/hearings

What can an employee do during an investigation?

Registrants can continue to practise while we investigate a case unless we have imposed an interim order preventing them from practising or placing restrictions on their practice. Registrants cannot remove themselves from our Register while there are fitness to practise proceedings outstanding against them.

Supporting your employee

We understand that employers and managers often want to provide guidance and support to employees when they are the

subject of a fitness to practise investigation. It may be helpful to suggest that the registrant gets advice from their union or professional body (if they are a member of either) or Citizens Advice, or to get independent legal advice. Other organisations that may be helpful are listed on our website at www.hcpc-uk.org/complaints/links

Employing a registrant who is the subject of a current fitness to practise investigation

Being the subject of a fitness to practise investigation does not automatically make a registrant unsuitable for employment as registrants can continue to practise unless we have imposed an interim order preventing them from practising or placing restrictions on their practice. You can find out if a registrant has an interim order made against them by searching our online register at www.hcpc-uk.org/check

What happens if previous concerns have been raised about an employee?

If a registrant has been suspended, they cannot work until that suspension order has been removed. If we have placed conditions on a registrant's registration, they can work but under restriction. In these cases, as their employer or manager, a registrant may ask for your help with their conditions. For example, they may only be able to work under supervision or with a chaperone, or they may need to provide a review hearing with references from senior colleagues.

Taking previous concerns into account

When considering whether there is a case to answer in relation to a concern about a registrant, the Investigating Committee Panel has the legal power to take into account any other similar concerns made against the registrant within the previous three years.

The purpose of this power is to make sure that a concern which has been dismissed, because a case to answer could not be established, can still be taken into account if another similar

concern is made against a registrant, and it is relevant to do so. The previous concern will be taken into account as similar-fact evidence and will not be re-opened as a new investigation.

Useful information

You can find more information on our website or through the following methods.

Practice notes

We have published a number of practice notes which explain various parts of our fitness to practise process. You may find it useful to look at these documents. You can download our practice notes from www.hcpc-uk.org/publications/practicenotes or phone us on 0800 328 4218 and we will send you copies in the post.

Other documents

We publish a brochure for registrants who have a fitness to practise concern raised against them, called What happens if a concern is raised about me? You can download this brochure from www.hcpc-uk.org/registrants/ftp/concern or phone us on 0800 328 4218 and we will send you a copy in the post.

Notes

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