

Health and Care Professions Tribunal Service

PRACTICE NOTE

Admissions

This Practice Note has been issued for the guidance of Panels and to assist those appearing before them.

Introduction

1. The purpose of this Practice Note is to provide guidance on how panels should approach admissions made by registrants at Conduct and Competence and Health Committee hearings to allegations regarding their fitness to practise.
2. A Registrant is under no obligation to make any admissions and should not do so, unless they accept that they did what is alleged against them.
3. This Practice Note is about admissions made to the HCPC in the course of its regulatory proceedings, and does not cover admissions made previously or outside those proceedings, for example, in employer disciplinary or employment proceedings. While such admissions may be admissible as evidence to prove that the registrant acted/failed to act in a particular way, they are not admissions for the purposes of this Practice Note.
4. Although the Health Professions Order 2001 and the Rules made pursuant to it do not expressly refer to panels accepting admissions by a registrant as proof of an alleged fact, there is authority for the proposition that if a procedure is not prohibited then, subject to it being fair, it can be adopted. The HCPC's approach is that, subject to the safeguards set out below, an admission of a fact is sufficient to prove that fact. In all adjudicatory contexts, including courts and tribunals, it is routine for findings of fact based on admissions to be accepted in order to focus on matters in dispute and streamline proceedings.

General principles

5. The burden of proving any alleged fact is on the HCPC and a panel considering a fitness to practise allegation at a final hearing can only find that an alleged fact is proved if it so satisfied on the balance of probabilities.

6. A registrant makes an admission when they accept or admit that they have done or failed to do what is alleged against them. It is therefore essential that a Registrant fully understands what the allegation is and the implications of admitting it. Registrants may admit all or some of the factual particulars which comprise the allegation.
7. If a Registrant admits only some of the facts, the HCPC will continue to pursue the remaining particulars, subject to there being sufficient evidence to do so and that it remains in the public interest. The HCPC will not cease to pursue some particulars of allegation purely because others have been admitted.
8. In some cases, a registrant may also indicate that they admit the ground(s) of impairment set out in the allegation and/or that their fitness to practise is impaired. Even if a registrant indicates that they admit the alleged ground of impairment (for example, that the admitted or proved facts amount to misconduct or lack of competence) it is a matter for the panel, in their judgement, to determine if that statutory ground and current impairment is or is not established.

Approach to admissions

9. It is of benefit to registrants, witnesses and panels that evidence is not called to prove a fact that the registrant admits, in circumstances where a panel can properly be satisfied that the registrant is in a position to make the admission and understands the implications of doing so. These benefits include:
 - a. not putting a witness through the impact of giving evidence where that evidence is not disputed;
 - b. reducing the impact of the proceedings on the registrant by narrowing the evidence for them to address, reducing the length of the hearing and enabling their hearing to be listed at the earliest opportunity as hearing utilisation is improved;
 - c. allowing panels to focus on the issues in dispute;
 - d. making the proceedings less adversarial for all stakeholders.
10. Subject to the need for the panel to ensure the overall fairness of the proceedings, they can treat an admission to an alleged fact as proof of that fact without the HCPC needing to prove it by calling witnesses and/or producing documentary evidence. It remains important that the Panel is provided, notwithstanding any admissions, with all relevant information to enable them to understand the context and seriousness of a case, so that even when facts are admitted, the Panel can make informed decisions regarding impairment and sanction. This may be achieved by agreeing with the Registrant or their representative Statements of Agreed Facts and/or including in the hearing bundle the evidence that would have been called to the hearing had the alleged facts not been admitted.
11. Therefore, a panel of the Conduct and Competence Committee or Health Committee can find a fact proved by virtue of that admission without receiving further evidence.

12. This approach is consistent with the overarching objective of the Council to protect the public and the obligation in Article 32(3) of the Health Professions Order 2001 to ensure that *'each stage in proceedings...shall be dealt with expeditiously'*.

Procedural safeguards

13. In considering its approach to admissions, particularly admissions from registrants who are not represented, a panel must ensure that the overall fairness of the proceedings is secured. Panels will therefore want to ensure that, by way of example:
 - a. a registrant's admission is 'unequivocal' and that they are not making an admission for reasons of expediency or on some other inappropriate basis;
 - b. if a registrant admits an inference to be drawn from facts (for example, dishonesty or sexual motivation) the panel is satisfied that the registrant understands the legal test to be applied to that alleged fact;
 - c. a registrant understands that an allegation framed in terms of a *'failure'* to do something requires proof by the HCPC, or acceptance by the registrant, of a corresponding duty.
14. Legal Assessors can assist Panels by speaking to the Registrant before the hearing starts, in the presence of the Presenting Officer, and then sharing with Panels the Registrant's position on the admissions. Such a conversation should be confirmed once the hearing starts so that there is a record of it.
15. If a panel, having accepted an admission and having found proved a fact based on it, subsequently hears evidence which suggests that the admission was equivocal or for some other reason determines that it is not safe to rely on it, it can require the HCPC to prove that fact, irrespective of the admission. This may mean that the Presenting Officer will seek an adjournment to allow that evidence to be called.

Procedure before the hearing

16. After the HCPC has served the evidence upon which it intends to rely at a hearing, the registrant will be invited to indicate what particulars of the allegation, if any, are admitted.
17. If the Registrant indicates that any facts are admitted, the HCPC will liaise with the Registrant, particularly if the Registrant is unrepresented, to ensure that the admissions are unequivocal.
18. In preparing for the hearing, the HCPC will make use of its Standard Directions which allow Notices to Admit facts and evidence to be served and will work with the Registrant and their representative, if any, to define and narrow the issues

which the panel will need to determine at the final hearing. This may be done in an Agreed Statement of Facts.

19. The HCPC is committed to ensuring that its procedures are fair. If it appears to the HCPC that it would not be fair to rely on an admission from a Registrant, the HCPC will proceed as though the admission had not been made. This may arise when, for example, the admission appears equivocal or the HCPC cannot be satisfied that the Registrant has demonstrated an understanding of what they have admitted and the implications of doing so.
20. A preliminary hearing may be held where any matter regarding admissions needs to be resolved before the final hearing.
21. In the HCPC's skeleton argument or case summary, reference will be made to any admissions that have been communicated to the HCPC so that the panel is aware of the registrant's response to the allegation. If no response has been received, this will also be made clear. Any written confirmation from the Registrant that a fact is admitted may be included in the Panel's bundle, unless it would be prejudicial to the Registrant to do so.

Procedure at the hearing

22. At the start of the hearing, after any other preliminary matters have been dealt with, the Hearings Officer will read out the allegation and its particulars. The Panel Chair will ask the Registrant or their representative whether any of the particulars of the allegation are admitted.
23. If the Panel is satisfied that they can properly accept the admission, having received advice from the Legal Assessor, the Panel Chair will announce and record the admitted particulars of allegation proven by virtue of that admission, without the need for further evidence to be adduced by the HCPC to prove that fact.
24. If the panel determines that it cannot fairly and properly accept an admission, it should set out its reasons for not accepting the admission and the HCPC should be able to adduce evidence in support of that particular along with any other particulars that remain in dispute. The Presenting Officer may then need to make an application for an adjournment, if they are unable to proceed on the basis of the written and oral evidence that is available to the Panel.
25. A registrant may make no admissions at the start of the hearing but indicate at a later stage (for example after the HCPC has called its evidence) that some or all of the particulars are now admitted. In such circumstances, the Panel should proceed to consider and, if appropriate, record the admission as they would have done had it been given at the outset of the proceedings.
26. A registrant may admit an alleged fact but on a different factual basis to the one alleged by the HCPC. The HCPC will consider whether the basis upon which a

fact is admitted is acceptable and consistent with the evidence and its statutory objectives. If it is, then the panel will be invited to accept the admission and record it as above. If it is not, then the panel should hear evidence regarding any disputed parts of a particular of allegation and make determinations as it would in any case where alleged facts were disputed. It shall be open to the HCPC to make an application to amend the particulars of allegation to reflect the admission if it considers it to be consistent with the evidence and its statutory objectives. The panel should invite submissions from the registrant in response to any such application and give reasons for its decision whether or not to grant the application.

27. If a registrant, having admitted some or all of the factual particulars, then seeks to withdraw that admission at a later stage of the hearing, the panel will hear submissions from the parties before directing how to proceed. If the panel determines not to accept the admission as proof of the relevant fact it shall give reasons for that decision and allow the HCPC to call evidence to prove the fact as if the admission had not been made.