Health and Care Professions Tribunal Service

PRACTICE NOTE

Professional Boundaries

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

Introduction

1. Registrants are under a professional duty to maintain professional boundaries[1], and to avoid doing anything that could put the health and safety of a service user, carer or colleague at unacceptable risk[2]. Breaches of professional boundaries may put others at risk of harm, as well as undermining the public's trust and confidence in registrants and the professions.

2. The purpose of this practice note is to support panels considering matters involving professional boundaries, and ensure a consistent and fair approach to their decision making.

3. Its contents may be relevant to panels considering:

    a. Whether to impose an interim order as a result of concerns relating to professional boundaries.

    b. Whether there is a case to answer on an allegation of breach of professional boundaries.

    c. Whether the facts of an allegation of breach of professional boundaries are proved.

    d. Whether a registrant's fitness to practise is impaired as a result of a breach of professional boundaries.

    e. What sanction to impose following a finding of impairment involving a breach of professional boundaries.

Ways in which professional boundaries may be breached

[1] Standards 1.8 – 1.12 of the HCPC Standards of Conduct, Performance and Ethics
[2] Standard 6.2 of the HCPC Standards of Conduct, Performance and Ethics

4. Registrants have wide-reaching interactions with people using their services (and their carers) and their colleagues[3]. As a result, there are numerous different ways in which professional boundaries may be breached. The following is a non-exhaustive list, which is not intended to be in order of seriousness:

    a. The commission of criminal sexual acts (including rape and other sexual assault, whether resulting in a conviction or not) towards service users, carers and colleagues.

    b. Professionals entering or attempting to enter into inappropriate personal relationships with service users and/or their carers (including sexual and/or financial relationships, and relationships over social media).

    c. Professionals entering or attempting to enter into personal relationships with colleagues which are exploitative and/or abusive because of power imbalances.

    d. Sexual conduct towards service users, carers and colleagues. This may include conduct via social media.

    e. Sexually motivated behaviour – this may include conduct which is done for the purpose of sexual gratification or in pursuit of a sexual relationship[4], and may include conduct via social media[5].

    f. Sharing personal information with service users or their carers (particularly where this puts the needs of the registrant ahead of those of the service user or their carer).

    g. Seeking and/or using confidential information about service users, their carers or colleagues for purposes other than providing care to them.

    h. Improperly using or taking advantage of the power and trust that health and care professionals hold when in social or personal settings.

Risks of breaching professional boundaries

5. Professional boundaries are important for the health, safety and wellbeing of service users, carers, registrants and their colleagues. When professional

[3] We define colleagues as "Other health and care professionals, students and trainees, support workers, professional carers and others involved in providing care, treatment or other services to service users"

[4] *Basson v General Medical Council* [2018] EWHC 505 (Admin), *General Medical Council v Haris* [2020] EWHC 2518, *Haris v General Medical Council* [2021] EWCA Civ 763

[5] For more information about assessing sexual motivation, please refer to the Practice Note on Making decisions on a registrant's state of mind

boundaries are breached, people may be harmed or exposed to risk of harm, whether it be physical, emotional or financial.

6. Where a Registrant has breached professional boundaries with a service user, this may impair their professional judgement and adversely influence their decisions about future treatment and care. This may result in people not receiving the care they need, which in turn may cause harm.

7. Members of the public place great trust and confidence in healthcare professionals. Breaches of professional boundaries risk seriously undermining that trust and confidence, which can make it less likely that members of the public will seek treatment in future, or increase the risk that they will be suspicious of advice and treatment offered and less likely to engage with it effectively.

8. Within healthcare, effective team working is vital for the health and safety of service users and their carers. As well as causing or risking harm to the team members affected, breaches of professional boundaries between colleagues can undermine effective team working, risking harm to the people that the team exists to serve.

9. Registrants often work in demanding and stressful roles. Effective team support is essential to help them perform well in that environment. Anything which undermines that team support can adversely affect their performance, and/or cause them to leave the profession altogether.

Factors affecting the seriousness of boundary breaches

10. There are a number of factors that may aggravate the seriousness of a boundary breach. The non-exhaustive list below includes aggravating factors which may apply whether the boundary breached is with a service user, carer or colleague:
    a. Seriousness of harm/risk of harm caused

    b. Abuse of professional position, for instance by exploiting confidential information available only to someone by virtue of their professional position, or by exploiting the power to make a professional decision about another person, in order to pursue a personal relationship that breaches professional boundaries.

    c. Power imbalance between the registrant and the other person, whether it be because the person is a patient or carer, or a colleague who is in a junior position or is dependent on support from the registrant

    d. Vulnerability of service user, carer or colleague

    e. Predatory behaviour, including deliberate targeting/grooming

f. Covering up boundary breaches, including asking another person to give incorrect information if asked and/or to conceal or destroy evidence of the boundary breach.

g. Breach of trust, including misuse of confidential information gained for professional purposes

h. A pattern of behaviour, whether directed towards a single person or several different people

i. Registrants failing to set clear boundaries with service user

j. Failure to recognise warning signs (e.g. a service user developing an attraction towards a treating professional) and seek support

k. Deliberately ending a therapeutic relationship in order to pursue a personal relationship with a service user or carer where this leaves the service user without alternative professional treatment, care or support.

l. Overlap between the personal relationship and provision of treatment

11. In *PSA v GMC and Hanson* [2021] EWHC 588 (Admin), the High Court, examining the seriousness of an instance of sexual misconduct of a junior colleague, said:

    a. *First, although the Tribunal recognised that the misconduct found proven by the Tribunal was serious, it failed to recognise how serious. Dr Hanson, a doctor of many years' experience, was in a position of authority vis-à-vis Ms A, a relatively newly qualified nurse. He was a tall man; she was a small woman. He was many years her senior. He approached her at night, when he knew she would be alone. He deliberately guided her into a room away from others. His conduct on the way to the room and inside it was not limited to inappropriate remarks. It involved persistent and repeated touching, which was sexually motivated, and continued after she had made clear she considered it inappropriate and pushed him away. The experience caused her significant distress: she was off work for several weeks. If found proved to the criminal standard in a court, these facts would have constituted the offence of sexual assault contrary to s. 3 of the Sexual Offences Act 2003.*

    b. *Second, this was a calculated and deliberate abuse of power which foreseeably caused real harm to a fellow healthcare professional.*

12. As the High Court did in *Hanson,* Panels need to ensure that they conduct a thorough analysis of the conduct that they have found proved and clearly specify the aggravating factors.

13. Some factors (this is not an exhaustive list) which are unlikely to be relevant to the seriousness of a breach of professional boundary are:

a. The sex or gender identity of the registrant and/or the other person/people involved

b. The fact that the registrant and service user/carer continue to be in a settled personal relationship, or that the relationship lasted for a period of time (see factors to be aware of when assessing evidence about boundary breaches).

c. In a case involving a relationship with service user/carer or any other vulnerable person, the fact that the relationship was initiated by that person, or that they consented to it – but panels must explore these issues, which are potentially complex and unique in each case, very carefully.

14. Mitigating factors may include an absence of the aggravating factors listed above. They may also include the registrant's own health and/or vulnerability. When assessing this, panels should explore:

    a. The extent to which the registrant's health condition or vulnerability affected how they behaved

    b. The extent to which the registrant did, or should have recognised that they had a health condition or vulnerability that may have affected how they behaved, and took steps to address it.

15. For further information about general mitigating features, such as insight and remediation, please see the HCPTS's sanctions policy.

Factors to be aware of when assessing evidence about boundary breaches

16. The mere fact that a personal or sexual relationship between a registrant and a service user or carer began after the registrant had stopped treating the service user in question does not necessarily mean that there is no breach of professional boundaries. Panels should consider:

    a. The nature of the previous professional relationship

    b. The length of time since the registrant stopped treating the service user

    c. Whether any of the aggravating factors listed above are present

    along with any other factors which appear to be relevant on the particular facts of the case.

17. Witnesses who have been the victim of sexual abuse or other professional boundary breaches may find it very difficult to give evidence. The process may require them to give evidence about highly sensitive and distressing experiences. Panels must ensure that appropriate measures are put in place to

support witnesses and enable them to give the best possible evidence. Any witness where the allegation is of a sexual nature and the witness was the alleged victim may be treated by the panel as a vulnerable witness, for whom particular measures can be put in place to ensure that their evidence is not adversely affected.

18. In some cases involving allegations of boundary breaches, the only available evidence comes from the complainant and the Registrant. Panels must ensure that when they are assessing the evidence, they do not take account of irrelevant considerations or make any assumptions which are not supported by evidence. For instance, where a witness suffers from a health problem, and it is suggested that this might impact on the reliability of their evidence, the Panel must explore the evidence carefully, and only make such a finding if there is specific evidence to justify it.

19. Panels should be aware that having been a victim of sexual abuse, and having had previous experience of making complaints of sexual abuse, can impact on how a person presents when giving evidence. Further, there are various reasons why people who have been abused may not report immediately. Panels must be careful to avoid stereotypical assumptions that are not supported by evidence about how people are likely to behave after being abused or while giving evidence about abuse.

20. In other cases, the complaint may come from someone other than the service user, carer or colleague towards whom the Registrant breached professional boundaries. In these cases, Panels should not speculate about what that person might have said, and should assess the case on the evidence before them.