



Registration Council of Clinical Physiologists

Drafting Fitness to Practise Decisions

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

Introduction

Panels have a legal duty to explain their decisions and to provide adequate the reasons for them.¹ That duty arises:

- at common law, on the basis that a Panel must give adequate reasons for its decision in order to enable the registrant concerned to exercise the right of appeal. Without knowing the basis for the decision, that right of appeal may be rendered illusory and both the parties and the appellate court must be able to understand why the decision was reached;
- as part of the obligation to provide a fair hearing under Article 6 of the European Convention on Human Rights. In deciding whether the requirements of Article 6 are met, the whole of the proceedings, including the availability of an appeal to the courts, must be considered. Inevitably, the effectiveness of the right of appeal may depend on the Panel providing adequate reasons;
- as a practical consideration, in that Panels should give adequate reasons for their decisions where the Professional Standards Authority (PSA) maintain oversight of the RCCP FtP decision making process.

What a 'reasoned' decision should include

A decision must be recorded in a manner which explains what the Panel decided and, just as importantly, why it did so. The decision should enable readers, without the need to refer to any other materials, to understand the nature and seriousness of the issues before the Panel, its findings and decision and the reasons for them. The reasons for a decision are not simply the conclusions reached, but the reasons for those conclusions.

1. Threlfall v General Optical Council [2004] EWHC 2683 (Admin)

Every decision should be capable of a logical explanation. Reasons must provide readers with a logical explanation of how and why the Panel decision was reached.

The detail required will depend upon the nature and complexity of the case, but decisions should include:

- **the allegations or a description of them**

Where the allegations are lengthy, complex or concern technical matters with which readers may be unfamiliar, an overview may be helpful (“this case concerns the registrant’s conduct towards service users A and B who were receiving [service C] at [facility D] between [dates E and F]”);

- **the Panel’s findings on material questions of fact**

Allegations are based upon facts. The Panel should set out the undisputed facts, the facts in dispute and, in relation to latter, the findings of fact which it made and why. Where the credibility of witnesses is in issue, any factors which led to the evidence of one witness being preferred (consistency, opportunity for knowledge, etc.) should be included;

- **whether the facts found proved amount to the statutory ground(s) of the allegation and why**

The Panel’s judgement on this issue must be recorded in sufficient detail for readers to understand why the facts do or do not amount to the ground(s) alleged. This is particularly important where, for example, the decision is based upon accepted practice within a profession that others may not be familiar with or where the seriousness (or otherwise) of an allegation may not be apparent;

- **whether or not fitness to practise is impaired and why**

Readers may struggle to understand why, if facts were found proved that amounted to the statutory ground, a finding of impairment did not follow. This accept of a decision should address the forward-looking nature of the impairment test, any consideration of the wider public interest, any mitigating or aggravating evidence and the findings that the Panel made on basis of that evidence including the issues of insight, remediation and the risk of repetition.

- **any sanction that was imposed and why it was appropriate**

The Panel must explain what sanction was imposed and why, and how the sanction will protect the public. This should include an explanation of any sanction which was regarded as inappropriate and, if the sanction imposed deviates from the RCCP’s Sanctions Policy², why that deviation is appropriate.

2. failure to do so may lead to the Panel being accused of ignoring the policy

- **any relevant procedural issues**

A decision should record all significant procedural steps and how they were dealt with, including adjournment requests, Human Rights Act and other legal challenges and any advice given by the Legal Assessor. Any decision by a Panel to disregard the advice given by a Legal Assessor must be recorded in detail.

Drafting Style

The length and detail of decisions will vary according to nature and complexity of the case before the Panel and the decision it has reached. However, Panels should seek to establish a consistent approach to drafting decisions. So far as possible, decisions should be concise yet comprehensive, written in plain English and:

- be written in clear and unambiguous terms, using short sentences and short paragraphs;
- be written in plain English, avoiding jargon, technical or esoteric language (or explaining any that must be used);
- avoid complicated or unfamiliar words and use precise but everyday language (e.g. “start” instead of “commence”);
- be written for the target audience, so that the registrant concerned, any complainant and other interested parties can understand the decision reached and the reasons for it;
- be self-contained, so that without any other materials the reasonably intelligent and literate reader is able to understand the case before the Panel, the decision it reached and why it did so.

Drafting Orders

Where a Panel finds a registrant’s fitness to practise is impaired and imposes a sanction upon the registrant, its decision must clearly set out the order which it has made.

Reprimand Orders, Suspension Orders and Removal Orders should all be expressed in a form which is addressed to the Registrar who, in accordance with the Panel’s decision, must annotate or amend the Register from the date that the order takes effect (i.e. once any period for making an appeal has expired, or any appeal has concluded or been withdrawn). For example:

Reprimand Order

ORDER: That the Registrar is directed to annotate the register entry of [name] with a reprimand which is to remain on the register for a period of [one] year(s) from the date this order comes into effect.

Suspension Order

ORDER: That the Registrar is directed to suspend the registration of [name] for a period of [x] year(s) from the date this order comes into effect.

Removal Order

ORDER: That the Registrar is directed to remove the name of [Registrant] from the Register on the date this order comes into effect.

The opening paragraph of any Conditions Orders should similarly be addressed to the Registrar but making appropriate reference to the registrant. The detailed conditions should be written in the second person (“you”, “your”) so that they are clearly addressed to the registrant concerned. For example:

Conditions Order

ORDER: The Registrar is directed to annotate the Register to show that, [for a period of [time]] from the date that this Order comes into effect (“the Operative Date”), you, [name of registrant], must comply with the following conditions order:

1. Within [time period] of the Operative Date you must etc

Drafting Conditions Order

From the above examples it is clear that the drafting a Conditions Order is the more difficult task. This is especially so given that Orders do not take effect on a fixed date, but only when the relevant appeal period has expired or any appeal has been disposed of or withdrawn.

For the other Orders, which simply run for a fixed period of years, this does not cause much difficulty. However, conditions orders inevitably involve periodic compliance arrangements. If conditions order is to work, then the dates on which evidence of compliance is to be sent to the RCCP must be clear and certain, so that prompt follow up action can be taken in respect of those who fail to comply. The simplest means of overcoming this difficulty is to define the date on which the Order finally takes effect as its “Operative Date” and then to relate all other dates and time limits to that Operative Date.

In drafting Conditions Order, Panels also needs to consider the following three issues:

- **are the conditions realistic?**

Will the registrant be able to comply with these conditions; are they proportionate; do they provide the necessary level of public protection; and will they work if the registrant changes jobs?

For example, if the conditions require the registrant to improve treatment premises, facilities or equipment, they should only be set at the standard reasonably required of a typical practitioner from the profession or specialism concerned. In setting conditions of this kind, Panels should take account of any relevant guidance issued by professional bodies or similar organisations.

Equally, if conditions have been prepared with the support of the registrant's employer and are thus job-related, it may be necessary to include a condition requiring the registrant to inform the RCCP if the registrant changes jobs.

- **are the conditions verifiable?**

Do they impose obligations that require straightforward 'yes' or 'no' compliance decisions; do they simply require the registrant to do something or must they also prove it has been done; can the due dates be clearly determined?

For example, conditions requiring a registrant not to deal with certain types of case or service user may not need ongoing proof of compliance but many other conditions will need to be supported by evidence, such as periodic written confirmation that the registrant is continuing to undergo alcohol dependency treatment. Where evidence is required it should be in a form which allows 'yes' or 'no' decisions to be made. Conditions requiring registrants to submit documents or records to the RCCP for assessment or audit will not meet this requirement.

In cases where compliance with conditions may need to be verified by the RCCP by means of inspection - for example, conditions to improve premises or facilities, record keeping systems or chaperoning arrangements - the Panel's order should include a specific requirement that the registrant must allow and co-operate with inspection by RCCP upon reasonable notice.

- **are the conditions directed at the right person?**

Do the conditions clearly impose obligations on the registrant; are any conditions mistakenly directed at someone else?

It is for the registrant to comply with the conditions which have been imposed and, in drafting orders, care must be taken not to inadvertently impose a condition on a third party, such as an employer or GP. There is a significant difference between "you must submit to the Committee evidence from the doctor treating you that..." and "your GP must submit to the Committee evidence that..."

Conditions Bank

Example conditions orders are provided in the 'Conditions Bank' set out in the Annex to this guidance note. Those conditions are not intended to be either prescriptive or definitive but are intended to assist Panels in the drafting of Conditions Orders.

Advice from the Legal Assessor

Panels are reminded that Legal Assessors may assist a Panel in the drafting of its decision. Panels should take advantage of the expertise Legal Assessors can offer, especially in relation to decisions which include conditions of practice orders.

The Legal Assessor's role is to assist in the drafting of the decision, not in the making of that decision.

It is important for Panels to ensure that no confusion arises on the part of the registrant or any other party about the role the Legal Assessor. Before retiring to make its decision, a Panel should invite the Legal Assessor to explain this aspect of their role to the parties. Alternatively, the Panel should retire alone to make its decision, return from its deliberations and explain to the parties that it has reached a decision and that the Legal Assessor is now being asked to assist the Panel in the drafting of that decision.

22nd March 2017

Annex

CONDITIONS BANK

A. Introductory paragraph

ORDER: The Registrar is directed to annotate the RCCP Register to show that, [*for a period of [time]*] from the date that this Order takes effect (“the Operative Date”), you, [*name of registrant*], must comply with the following conditions of practice:

1. [*set out conditions as numbered paragraphs*]

B. Education and training requirements

1. Within [*time period*] of the Operative Date you must:
 - A. satisfactorily complete [*name of course, etc.*]; and
 - B. forward a copy of your results to the RCCP.
2. Within [*time period*] of the Operative Date you must:
 - A. take and pass [*name of examination, etc.*]; and
 - B. forward a copy of your results to the RCCP.
3. Before undertaking [*type of practice, work or procedure*] you must:
 - A. satisfactorily complete [*a period of supervised practice/refresher training/examination, etc.*]; and
 - B. forward a copy of your results to the RCCP.

C. Practice restrictions

1. You must confine your professional practice to [*set out restriction*].
2. You must not carry out [*type of work or procedure*][*unless directly supervised by a [type of person]*].
2. You must maintain a record of every case where you have undertaken [*type of work or procedure*] [*which must be signed by [supervisor]*] and you must:
 - A. provide a copy of these records to the RCCP on a [*monthly etc.*] basis, the first report to be provided within [*time*] of the Operative Date, or confirm that there have been no such cases during that period; and
 - B. make those records available for inspection at all reasonable times by any person authorised to act on behalf of the RCCP.

4. You must not undertake [*work/consultations*] with [*type(s) of service user*].
5. You must not undertake intimate examinations of service users.
6. You must not undertake any out-of-hours work or on-call duties [*other than at [location]*]
7. You must not [*prescribe*][*administer*][*supply*][*possess*][*any [type of] prescription medicines*]
8. You must not prescribe [*any or type of prescription medicines*] for [*yourself/a member of your family/etc.*].
9. You must not act as a supplementary prescriber.

D Chaperones

1. Except in life threatening emergencies, you must not be involved in the direct provision of services to [*female service users/male services users/service users under the age of X etc.*] without a chaperone being present.
2. You must maintain a record of:
 - A. every case where you have be involved in the direct provision of services to [*female service users etc.*], in each case signed by the chaperone; and
 - B. every case where you have be involved in the direct provision of services to such service users in a life-threatening emergency and without a chaperone being present.
3. You must provide a copy of these records to the RCCP on a [*monthly etc.*] basis, the first report to be provided within [*time*] of the Operative Date or, alternatively, confirm that there have been no such cases during that period and must make those records available for inspection at all reasonable times by any person authorised to act on behalf of the RCCP.

E. Supervision requirements

1. You must place yourself and remain under the supervision of [*workplace supervisor, medical supervisor etc.*] registered by the RCCP or other appropriate statutory regulator and supply details of your supervisor to the RCCP within [*time period*] of the Operative Date. You must attend upon that supervisor as required and follow their advice and recommendations.

F. Treatment requirements

1. You must register with and remain under the care of a [*general practitioner/occupational health specialist etc.*] and inform him or her that you are subject to these conditions.

2. You must inform your [*general practitioner/occupational health specialist etc.*] about these conditions of practice and authorise that person to provide the RCCP with information about your health and any treatment you are receiving.
3. You must keep your professional commitments under review and limit your professional practice in accordance with the advice of your [*general practitioner/occupational health specialist/therapist*].
4. You must cease practising immediately if you are advised to do so by your [*general practitioner/occupational health specialist/therapist*].

G Substance dependency

1. You must make arrangements for the testing of your [*breath, blood, urine, saliva, hair*] for the [*recent and/or long-term*] ingestion of alcohol and other drugs every [*insert frequency*]. You must provide to the RCCP details of the testing arrangements and forward copies of the test results to the RCCP within [*insert frequency*] of them being received by you.
2. You must attend regular meetings of [*Alcoholics Anonymous/Narcotics Anonymous*] or any other recognised support group and must provide the RCCP with evidence of your attendance at such meetings.
3. You must [*limit your*][*abstain absolutely from the*] consumption of alcohol.
4. You must refrain from self-medication [, [*including*][*apart from*] *over the counter medicines [containing [active ingredient] and] which do not require a prescription,*] and only take medicines as prescribed for you by a healthcare practitioner who is responsible for your care.

H. Informing the RCCP and others

1. You must promptly inform the RCCP if you cease to be employed by your current employer or take up any other or further employment.
2. You must promptly inform the RCCP of any disciplinary proceedings taken against you by your employer.
3. You must inform the following parties that your registration is subject to these conditions:
 - A. any organisation or person employing or contracting with you to undertake professional work;
 - B. any agency you are registered with or apply to be registered with (at the time of application); and
 - C. any prospective employer (at the time of your application).

I. Personal development

1. You must work with [*supervisor etc.*] to formulate a Personal Development Plan designed to address the deficiencies in the following areas of your practice:

[*List areas found to be unacceptable or a cause for concern, or which the Panel have determined to be of concern*]

2. Within three months of the Operative Date you must forward a copy of your Personal Development Plan to the RCCP.

3. You must meet with [*supervisor etc.*] on a [*monthly etc.*] basis to consider your progress towards achieving the aims set out in your Personal Development Plan.

4. You must allow [*supervisor etc.*] to provide information to the RCCP about your progress towards achieving the aims set out in your Personal Development Plan.

5. You must maintain a reflective practice profile detailing every occasion when you [*specify activity etc.*] and must provide a copy of that profile to the RCCP on a [*monthly etc.*] basis or confirm that there have been no such occasions in that period, the first profile or confirmation to be provided within [*time*] of the Operative Date.

J. Costs, approvals etc.

1. You will be responsible for meeting any and all costs associated with complying with these conditions.

2. Any condition requiring you to [*provide any information to*] [*obtain the approval of*] the RCCP is to be met by you [*sending the information to the offices of the RCCP, marked for the attention of*] [*obtaining written approval from*] the Complaints Administrator).

Documentation Version Control

Version	Date	Author
1	06.01.2020	Kelly St. Pier