

Sanctions Guidance

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1. Introduction

1.1 The Complementary and Natural Healthcare Council (CNHC) was established with government support in 2008 to protect the public, by registering and regulating a wide range of complementary therapists. Registration with CNHC is entirely voluntary and there is no UK law that prevents anyone from calling themselves a complementary therapist.

1.2 As far as practicable, CNHC seeks to mirror the disciplinary procedures of the UK statutory health regulators. It is important, though, to note that removal from the CNHC Register does not deprive a practitioner of their livelihood, since they can continue to practise outside the auspices of CNHC. The same is true in respect of any restrictions on their practice.

1.3 The CNHC registers practitioners from sixteen distinct disciplines which are all covered by this guidance. The disciplines are as follows:

- a) Alexander Teaching Technique
- b) Aromatherapy
- c) Bowen Therapy
- d) Craniosacral Therapy
- e) Colon Hydrotherapy
- f) Healing
- g) Hypnotherapy
- h) Massage Therapy
- i) Microsystems Acupuncture
- j) Naturopathy
- k) Nutritional Therapy
- l) Reflexology
- m) Reiki
- n) Shiatsu
- o) Sports Therapy
- p) Yoga Therapy

1.4 Since 2013, CHNC has been the holder of a Register accredited by the Professional Standards Authority for Health and Social Care.

2. Purpose of this guidance

2.1 The aim of this guidance is to assist the CNHC Conduct and Competence Panel and the Health Panel in the exercise of their powers, when dealing with cases referred to them for the purpose of a hearing; specifically, when making decisions regarding sanctions.

2.2 It provides detail on the principles of proportionality, sets out key mitigating and aggravating factors, and describes the sanctions available to the Panel, and the approach to be taken in review hearings.

2.3 Whilst this document seeks to provide guidance and consistency when making decisions, Panels are within their power to exercise their own discretion, providing that decisions are fair, consistent, transparent, objective, and free from discrimination. Any deviation from the guidance requires a full written explanation of its reasons.

2.4 Panels are required to consider how the practitioner has deviated from the professional standards and behaviour expected during their practice. Whilst every breach of the CNHC Code of Conduct, Ethics and Performance 2018 (the Code) is not sufficiently serious to require the imposition of a sanction, the Panel must first consider ways in which the practitioner has departed from it.

2.5 This guidance is not legally binding but must be used as a resource to assist Panels during the decision-making process on determining the imposition of sanctions, if any; ensuring that each case must be decided on its own facts. Legal advice on questions of law and the application of the guidance will be given by the Legal Adviser.

2.6 This guidance must be used in conjunction with the CNHC Detailed procedures for dealing with complaints 2017 and the CNHC Code of Conduct, Ethics and Performance 2018 (the Code).

2.7 Key steps for Panels when making decisions on sanctions

2.7.1 Before the Panel makes a decision on sanction, they must follow a three -stage process to decide in order:

- a) Whether the facts alleged have been found proved (by way of the Panel`s findings or the Registrant`s admission), and if so;
- b) Whether the proven or admitted allegations amount to a breach(es) of CNHC Code, and if so;
- c) Whether the breach(es) is/are such that it is not appropriate for the Registrant to remain on CNHC`s Register without any restrictions

2.7.2 In the exercise of fairness, the Panel should invite representations from CNHC and the Registrant at each stage of the above process.

2.7.3 Upon imposition of any sanction, a full explanation with reasons must be given to the Registrant by the Panel Chair, in the presence of all parties, to ensure a full understanding of the decision by the Registrant. A copy of the decision and reasons should also be given the Registrant at the hearing.

3. Purpose of Sanctions

3.1 The purpose of sanctions is not to be punitive, although they may have this effect.

3.2 Sanctions are only imposed following a finding that the Registrant has breached one or more components of the CNHC Code and the Panel has decided that the breach(es) is/are serious.

3.3 The Panels are required to apply the principle of proportionality in exercising their powers, when considering the imposition of any sanction (See 4.2).

4. Key Considerations

4.1 Public Interest

4.1.1 In reaching a decision on ensuring public safety as its primary function, Panels must consider the wider public interest. This include:

- a) Protection of clients and others (wider public)
- b) Maintenance of public confidence in the complementary therapy disciplines and CNHC as their regulatory body
- c) Declaring and upholding proper standards of conduct and behaviour

4.2 Proportionality

- 4.2.1 All Panels have a duty to exercise proportionality when making a decision on sanction. This demonstrates fairness in achieving the right balance between the practitioner's right to practise under the auspices of the CNHC and maintaining the public interest which includes public protection.
- 4.2.2 In doing so, Panels must give regard to all the available sanctions starting with the least serious. In Order to ensure proportionality, the Panels must take into account; the seriousness of the breach(es) of the Code and provide cogent reasons for deciding on the type of sanction.

4.3 Aggravating factors

- 4.3.1 Factors which renders the case more serious are called aggravating factors and this may require the Panels to consider the imposition of a more severe sanction.
- 4.3.2 A Registrant's breach(es) of the Code either through conduct or practice is considered more serious if they deliberately chose to take an unreasonable risk with the safety of clients in their care.
- 4.3.3 Some aggravating factors include;
- a) any history of regulatory or disciplinary findings following investigation
 - b) abuse of a Registrant's position of trust
 - c) lack of insight into breach(es) of the Code
 - d) a pattern of misconduct over a period of time
 - e) conduct which puts clients at risk of suffering harm (potential or actual)

4.4 Mitigating Factors

4.4.1 In addition to considering the aggravating factors in each case, Panels must give due regard to evidence submitted as mitigation.

4.4.2 Categories of mitigation:

- a) Evidence that the Registrant has demonstrated insight which is an understanding of the breach(es) of the Code and the impact on clients, the actual or potential impact on clients and the public. This could be through early admission of the breach(es) of the Code, an apology to the client, demonstration of remorse, testimonials and references
- b) Evidence that the Registrant has taken appropriate steps to address the breach(es) which may include training as appropriate
- c) Evidence of keeping up to date with their area of practice
- d) time elapsed since the behaviours occurred

4.4.3 Panels must give careful regard to references and testimonials (that they must be signed and dated, that they must address the matters of concerned).

5. Interim Orders

- 5.1 Panels must exercise a degree of caution when making decisions on the appropriate sanctions, to avoid placing undue weight on an Interim Order made by the CNHC Registrar, the Investigating Committee or the Panel prior to the hearing. The previous Interim Order should have no bearing on the making of the substantive Order. However, when deciding on sanction, any breach(es) of an Interim Order made prior

to the hearing may be relevant in the Panel's assessment of the Registrant's insight and attitude and whether they would be likely to comply with the given sanction.

5.2 The Conduct and Competence Panel and the Health Panel shall consider any application by the Council at the hearing, for an Interim Suspension or Interim Restriction of Practice Order, following the imposition of a substantive sanction.

6. Factors to be considered for Serious Cases

(The relationship between the Registrant and the client is one based on trust).

6.1 Dishonesty

6.1.1 Dishonesty is usually considered serious, owing to the position of trust which Complementary Therapists hold in relation to the public (section C1 of the CNHC Code). The public expects the exercise of honesty and integrity by every practitioner. Dishonesty is considered even more serious when it is a deliberate act of failing to be open and honest.

6.1.2 When deciding cases of dishonesty, Panels must apply the following questions;

- a) Having considered the facts or circumstances, what did the Registrant know or believe at the time? (based on limb 1 of **Gosh test in R v Ghosh [1982] QB 1053¹**; paragraph 74 overruled the 'second leg' of **R v Ghosh [1982] QB 1053²**).
- b) Were the Registrant's actions dishonest? (based on **Ivey v Genting Casinos (UK) Ltd [2017] UKSC 67³**).

6.1.3 When determining this issue of sanction, Panels must determine the question, by applying its understanding of the standards of ordinary, decent people.

6.1.4 Consideration must be given to any evidence suggesting a possible alternative and innocent explanation for the Registrant's conduct and determine whether this was an innocent or careless mistake.

6.1.5 The burden of proof rests on CNHC to prove the case against the Registrant. The standard of proof means that; for an allegation to be proved, the Panels must apply the appropriate civil standard proof: that; it is more likely than not, that breach(es) indeed occurred.

6.1.6 Whilst removal from the Register is not automatic, this sanction is invariably a possible outcome.

6.2 Sexual Misconduct

6.2.1 Section C3 of the Code makes it clear that Registrants must establish and maintain clear sexual boundaries with clients. Breaches of the Code ranging from criminal convictions for sexual offences to sexual misconduct with clients, colleagues or clients' relatives have the potential to undermine a practitioner's credibility as a CNHC Registrant.

¹ Test in R v Ghosh [1982] QB 1053

² R v Ghosh [1982] QB 1053

³ Ivey v Genting Casinos (UK) Ltd [2017] UKSC 67)

- 6.2.2 Sexual misconduct will be particularly serious if the practitioner abused a special position of trust they hold and will also be particularly serious, if they are required to Register as a sex offender. Whilst the level of risk to clients is an important factor, the Panels should also consider that sexual misconduct will be likely to seriously undermine public trust in the profession/discipline.
- 6.2.3 Sexual offences include accessing, viewing, or other involvement in child pornography, which involves the abuse or exploitation of a child; seriously undermine clients' and the public's trust in complementary therapists. Any conviction for child pornography is likely to be considered a fundamental breach of the public's trust.
- 6.2.4 When making decisions on sanctions, Panels should consider the guidance on sexual boundaries produced by the Professional Standards Authority (previously known as Council for Healthcare Regulatory Excellence (CHRE)⁴ (<https://www.professionalstandards.org.uk/docs/default-source/publications/policy-advice/clear-sexual-boundaries-guidance-for-fitness->)
- 6.2.5 Panels making decisions on sanction must apply the same principle of starting with the least restrictive and working upwards until they arrive at the most appropriate outcome. They will very often find that in cases of this kind, the only proportionate sanction will be to remove the Registrant from the Register. In the event of the imposition of a lesser sanction, they will need to ensure a carefully worded and clear explanation for their decision.
- 6.2.6 In cases where the sexual relationship was with a former client, the Panel must consider how much time has passed since they were a client of the Registrant; whether they would be considered vulnerable at the time the relationship commenced; whether the relationship has been detrimental to their mental health and well-being; the source of the complaint; and whether the Registrant abused their position by entering into a relationship with their former client.
- 6.2.7 The CNHC Code does not state how long is an appropriate passage of time before it would be considered appropriate for a Registrant to commence a personal relationship with a former client. This is a matter for the Panel to decide based upon the submissions of both parties and the evidence before it. However, the general rule is that; the longer the therapeutic relationship, the longer passage of time is necessary to ensure proper closure between parties.

Sexual relationships with any former patient, or the carer of a former patient, will often be inappropriate however long ago the professional relationship ended. This is because the sexual relationship may be influenced by the previous professional relationship, which will often have involved an imbalance of power as described above (PSA 2008, page 4)⁵.

- 6.2.8 In deciding whether a suspension or termination is the appropriate sanction, a Panel must consider:
- a) The vulnerability of the person concerned;
 - b) Whether the sexual contact was consensual;
 - c) Whether the misconduct was a one- off incident or prolonged over a period of time;

⁴ Professional Standards Authority (previously CHRE), (2008), Clear sexual boundaries between healthcare professionals and patients: responsibilities of healthcare professionals.

⁵ Professional Standards Authority (previously CHRE), (2008). Clear sexual boundaries between healthcare professionals and patients: responsibilities of healthcare professionals, page 4.

- e) Whether the misconduct was part of a course of deliberate action;
- f) The likelihood of repetition;
- g) Whether the Registrant has insight to their failings and has taken steps to address these failings; and
- h) The danger to the public posed by the Registrant if they were permitted to recommence practicing.

6.3 Criminal Convictions

6.3.1 Convictions relate to a decision by a criminal court in the United Kingdom, or the equivalent overseas which would constitute a criminal offence, if committed in the UK. Cautions refer to offences committed in the UK or the equivalent overseas and no court proceedings was deemed necessary, as the Registrant admitted the offence.

6.3.2 The purpose of the Panels when deciding on sanctions is to ensure the protection of the public. When doing so, the Panel must give due regard to promoting and maintaining the health, safety and wellbeing of the public, public confidence in Complementary Therapists and the professional standards.

6.3.3 When making its decision on sanction, the Panels should consider:

- a) the fact that a Registrant convicted of a serious offence is still serving their sentence (even if on probation), and
- b) whether the Registrant should be able to restart their professional practice before they have completed their sentence.

6.3.4 In general, the Registrant should not be permitted to resume practice as a Registered CNHC practitioner, until they have completed a sentence for a serious offence (**CHRE v GDC and (2) Fleischmann [2005] EWHC 87 (Admin)**⁶). However, there is no automatic option open to the Panels to remove the Registrant from the Register.

6.4 Sanctions at Review Hearings

6.4.1 A Panel reviewing an Order made at a substantive hearing will have the power to extend, vary, revoke or replace the Order with one which was available to the Panel on first imposition. The Legal Adviser will give advice and guidance to the Panel on range of options and powers available to it during the review hearing.

6.4.2 On exercising its powers, Panels must be careful to avoid allowing a Registrant to return to practise as a practitioner registered with CNHC, unless he/she has demonstrated full insight and has sufficiently addressed the relevant breach(es) of the Code. In doing so, the following factors must be taken into consideration:

- a) Has the Registrant complied with all restrictions?
- b) Has the Registrant provided any evidence of successful completion or compliance with the restrictions?
- c) Does the Registrant demonstrate sufficient insight into his/her conduct and behaviour?
- d) Is there evidence that the Registrant has repeated the breach(es) of the Code?
- e) Is there evidence that the Registrant has kept up to date with their knowledge and skills?

⁶ CHRE v GDC and (2) Fleischmann [2005] EWHC 87 (Admin).

7. Types of Sanctions

7.1 In each case, Panels must consider the range of sanctions open to them. They must always start with the least severe sanction and give clear and detailed reasons for its decision on the chosen sanction, as well as reasons for the rejection of the other sanctions.

7.2 There are four types of sanctions available, starting with the least restrictive:

- a) No further action
- b) Caution Order for up to two years
- c) Restriction of Practice Order for not less than one year and no more than three years
- d) Suspension Order not exceeding two years
- e) Removal Order (removal from the Register)

7.3 Where the Health Panel has found that a Registrant has breached one or more sections of the Code due to being physically or mentally unfit to practise, it may make a decision to take no further action, impose a Caution Order, a Restriction of Practice Order, refer the matter to the Conduct and Competence Panel to consider the question of sanction or make a Suspension Order; suspending the Registrant from the Register.

(See CNHC Detailed procedures for dealing with complaints 2017-Appendix 2, page 19).

7.4 No further action

7.4.1 A Panel which has reached a decision that the Registrant has breached one or more sections of the Code, may decide not to impose a sanction. In taking no further action, it must exercise the utmost care and caution, having firstly determined that the Registrant is not at risk of a repeated conduct and behaviour and or that behaviour has not breached a fundamental tenet of the profession and or brought the profession in disrepute.

7.4.2 Where no Order is imposed following a finding of breach(es), the Panel must clearly set out its reasons.

7.5 Caution Order

7.5.1 This is the lowest and least restrictive form of sanction that can be applied by the Conduct and Competence Panel or the Health Panel. This sanction is most appropriate where the Panel has satisfied itself that there no risk of repetition and that the Registrant does not pose a risk to the public.

7.5.2 A Caution may be appropriate if the allegation is at the lower end of the spectrum of unacceptable professional conduct, professional incompetence or criminal conviction and the Panel wants to mark that the behaviour of the Registrant was unacceptable and must not happen again.

7.5.3 Whilst this sanction does not prevent the Registrant from practising under the auspices of CNHC, it is recorded on the CNHC Register and disclosed to those enquiring about the Registrant`s fitness to disciplinary history. This Order can be placed on the Registrant`s entry on the Register for a period up to two years.

7.5.4 A Caution Order would be appropriate once the Panel is satisfied that this sanction is sufficient to protect the public and may be considered when most of the following factors are present in the case (non-exhaustive list):

- a) evidence that the behaviour would not have caused direct or indirect client harm
- b) evidence of insight into failings
- c) the behaviour was an isolated incident, which was not deliberate
- d) a genuine expression of regret or apologies
- e) the Registrant was acting under duress
- f) previous good history
- g) no repetition of the behaviour since the incident
- h) evidence that rehabilitative or corrective steps have been taken
- i) relevant and appropriate references and testimonials.

7.6 Restriction of Practice Order

7.6.1 A Restriction of Practice Order can be imposed by the Conduct and Competence Panel or the Health Panel for a period of not less than one year and not more than three years. This Order will require the Registrant to comply with certain restrictions for the period of the Order and the Registrant would be allowed to continue to practise under the auspices of the CNHC, subject to the set restrictions. The Panel will only go on to consider this sanction, once it is satisfied that a Caution Order would not protect the public or satisfy the public interest.

7.6.2 The purpose of a Restriction of Practice Order is to protect clients and the public interest. It therefore must be clear, unambiguous and must specify the period for which the Order will last; ensuring that it is reviewed before its expiry date.

7.6.3 It must be fair to the Registrant, having weighed his/her interests against that of the public. There is also a public interest in a Registrant being allowed to practise their discipline under the auspices of the CNHC in a safe manner.

7.6.4 The restriction (s) of practice must be relevant, proportionate, workable and measurable. Such a sanction is deemed relevant as it pertains to and seeks to address the breach(es) of the Code. In making it proportionate, the restrictions imposed on the Registrant must not be unduly restrictive, but only as necessary to protect the public and uphold confidence in the profession. The restriction must be workable in that; it must be practicable and feasible for the Registrant to comply with the restrictions. Measurable restrictions enable an objective assessment to be made as to whether the Registrant has complied with each restriction; the Registrant having provided adequate information in time for the review to arrive at a fair decision.

7.6.5 The restriction must be clear and unambiguous. The question of whether the Registrant has complied with the restriction should be capable of being answered 'yes' or 'no'.

7.6.6 Restrictions may include:

- a) prohibition from carrying out particular aspects of their work including certain procedures
- b) the requirement to undertake additional training or assessment.

7.6.7 The main aim of specific restrictions is to protect clients from harm, whilst simultaneously allowing the Registrant an opportunity to address the specific breach(es) of the Code and to deal with any health issues.

7.6.8 The Panel will need to assess whether there is a need for remedial training. To do this, it must consider any objective evidence submitted about the Registrant's practice or health (for example; reports on the assessment of the Registrant's performance or health, or evidence submitted on behalf of the Registrant or by anyone else).

7.6.9 The Panel must take advice from the Legal Adviser and consider submissions by the Registrant before making a decision on restrictions to be imposed, taking into account the factors stated in 7.6.4 above.

7.6.10 Restriction of Practice Orders will always be subject to a review hearing before they expire. They may also be reviewed at the request of the Registrant or the Council before the end of the specified period, provided there has been a material change of circumstances since the Order was imposed.

7.7 Key Considerations

A Restriction of Practice Order may be appropriate when most or all of the following are apparent in the case (this is not a complete list):

- a) there is no evidence of harmful deep-seated personality or attitudinal problems
- b) there are identifiable areas of a Registrant's practice in need of review, retraining or assessment
- c) there is no evidence of general incompetence
- d) there is evidence of a willingness to have, and the potential to respond positively to, further training and assessment
- e) clients will not be put at risk either directly or indirectly as a result of continued registration with restrictions
- f) the restrictions will protect clients during the period they are in force
- g) it is possible to formulate appropriate, practicable and assessable restrictions to impose on registration.

7.8 Suspension Order

7.8.1 The Conduct and Competence Panel or Health Panel can impose a Suspension Order to send out a message to the Registrant, the profession and the public about:

- a) what is regarded as behaviour that is inappropriate to a CNHC Registrant or
- b) health issues that are sufficient to impair ability to practise safely and in accordance with the Code.

7.8.2 A Suspension Order directs CNHC's Registrar to suspend the Registrant from the Register for a period of up to two years, depending on the gravity of the particular case. It prevents a Registrant from practising in his or her discipline under the auspices of CNHC.

7.8.3 The Panel may, after reviewing a Suspension Order, revoke, vary or amend that Order. The Panel may also impose a further Suspension Order, to commence upon the expiry of the existing Order.

7.8.4 Suspension is appropriate when the Registrant's health dictates that he or she cannot practise safely even under restrictions. In these cases, the Health Panel may direct a review hearing to get further information (such as a medical report) about whether the Registrant is then fit to resume practice with or without restrictions; and the Registrant demonstrates potential for remedying the situation or for retraining.

7.8.5 The Order may be appropriate in cases where the misconduct is not fundamentally incompatible with the practitioner's continuing to be registered with CNHC and that a lesser sanction would not be appropriate.

7.8.6 A Suspension Order is likely to be appropriate for unacceptable professional conduct, professional incompetence or a conviction that is serious, but not so serious as to justify removal from the Register (for example; if there has been an acknowledgment of fault).

7.9 Key considerations before imposing a Suspension Order

- a) whether the seriousness of the case requires temporary removal from the Register?
- b) will a period of suspension be sufficient to protect clients, public confidence in Complementary Therapists or professional standards?

7.10 The sanction may be appropriate when some or all of the following factors are apparent (non-exhaustive list):

- a) a single instance of breach(es) of the Code, but where a lesser sanction is not sufficient
- b) no evidence of harmful deep-seated personality or attitudinal problems
- c) no evidence of repetition of behaviour since the incident
- d) the Panel is satisfied that the Registrant has insight and does not pose a significant risk of repeating behaviour
- e) in cases where the only issue relates to the Registrant's health, there is a risk to patient safety if they were allowed to continue to practise even with restrictions
- f) in cases where the only issue relates to the Registrant's lack of competence, there is a risk to patient safety if they were allowed to continue to practise even with restrictions

7.11 In cases where the Panel decides on a Suspension Order, it must make clear any actions that the Registrant should take that would assist the review Panel at the next hearing.

7.12 Where a Registrant is serving a non-custodial sentence, the Panel has the power to impose a Suspension Order on the basis that the practitioner should not practise while serving a sentence.

7.13 In cases when the Panel or Panel decides to impose a Suspension Order, it should also seriously consider whether it needs to impose an Interim Suspension Order to protect members of the public. An Interim Suspension Order takes effect immediately. Conversely, a Suspension Order does not take effect for 28 days and, during this time, the Registrant can continue to practise under the auspices of the CNHC until a decision has been reached following an application.

7.14 Removal Order

7.14.1 A Removal Order is the most serious sanction for serious cases such as sexual misconduct or dishonesty. It results in removing the practitioner's name from the Register, which prevents them from working as a Registrant under the auspices of the CNHC. The Registrant's Professional Association and any relevant regulatory body which governs the Registrant will also be informed of the decision by CNHC.

7.14.2 If the Health Panel has decided that a Registrant has a serious health problem that impairs their ability to practise safely and competently, it cannot remove them from the Register unless there are also other allegations (such as a conviction, misconduct or deficient performance) that the Panel have found to be well-founded. It is only the Conduct and

Competence Panel that can order the removal of a Registrant from the Register, after the case has been referred to it by the Health Panel. The Panel must always consider the need to impose an Interim Order as necessary.

7.14.3 The Registrant may apply for restoration to the Register five years after the imposition of the Order. The Health or Conduct and Competence Panel must be satisfied that the Registrant meets all requirements for entrance unto the Register and that he or she is a fit and proper person to practise as a Complementary Therapist. Guidance on restoration can be found in the CHNC Detailed procedures for dealing with complaints 2017.

7.15 Key considerations before a decision to impose a Removal Order

7.15.1 Removal from the Register may be appropriate when the misconduct or behaviour is fundamentally incompatible with remaining on the Register and has the potential to severely affect public confidence in the Regulator. This will apply in any of the following (this is not a complete list):

a) particularly serious departure from the principles set out in the Code, that is, behaviour fundamentally incompatible with being a Registrant.

b) a reckless disregard for the principles set out in the Code and for clients` safety.

c) doing serious harm to others (clients or otherwise), either deliberately or through incompetence; particularly where there is a continuing risk to clients and a failure to provide an acceptable level of treatment or care).

d) abuse of position or trust.

e) violation of a client`s rights or exploiting vulnerable people (see for example; Paragraph A1 on respecting the client`s privacy and dignity; B4 on obtaining consent and E7 on the welfare of children, young people and vulnerable adults).

f) offences of a sexual nature, including involvement in child pornography (see paragraphs C3 of the Code and corresponding guidance notes).

g) dishonesty, particularly when it is denied, persistent or covered up (see paragraph C1 of the Code).

h) acting without integrity and abusing professional standing.

i) persistent lack of insight into the seriousness of their actions or the consequences.

7.15.2 Protection of the public and upholding the public interest are the most important considerations when deciding the appropriate sanction.

7.15.3 A Registrant cannot be removed from the Register if the only issue relates to their health or lack of competence.

7.15.4 A Registrant can be removed from the Register if there is evidence of dishonesty in the absence of other concerns about competence, conduct or behaviour; especially "if they had not appeared before the Fitness to Practise Panel (the Panel) either personally or by his representatives, with the result that he had effectively forfeited the small chance he had had

of persuading the Panel to adopt a lenient or merciful outcome” **[Parking v NMC [2010] EWHC 1898 (Admin)]⁷.**

7.15.5 Termination of registration may also be appropriate when there is no other way that public confidence in the profession can be maintained if the Registrant is permitted to remain on the Register.

7.15.6 In cases where the Panel decides to remove a Registrant from the Register (that is, imposes a Removal Order), it should also seriously consider whether it is necessary to impose an Interim Order to protect members of the public.

7.15.7 The Panel has the power to order the Registrar to suspend the registration of a Registrant with immediate effect where it decides to suspend or remove the Registrant from the Register, if it is satisfied that this is necessary to protect members of the public.

7.15.8 Termination of registration will take effect upon expiry of the 28-day appeal period. A Panel may consider imposing an Interim Suspension Order which will apply during the appeal period, if it considers there would be a danger to the public if the Registrant is permitted to practise under the auspices of the CNHC during the appeal period. If an Interim Suspension Order is already in place, a Panel may consider extending that Order until the expiry of the appeal period. If a Panel is considering imposing an Interim Suspension Order, it must hear submissions from both parties on whether or not such an order should be made in each case.

8 Interim Orders after sanctions have been imposed on a Registrant

8.1 A sanction can only take effect twenty- eight (28) days after the decision letter has been served on the Registrant or if an appeal is lodged, before the appeal has concluded.

8.2 The Panel has the discretionary, but not automatic power to impose an Interim Order in each case, upon imposition of a Suspension or Removal Order. The decision must be based on the facts of the case, with the aim of protecting the public. Any previous Interim Order lapses after announcing the decision on sanction.

8.3 An Interim Suspension Order prevents the Registrant from practising their discipline under the auspices of the CHNC which is subject to these proceedings, during the period of the appeal where this is deemed necessary for the protection of the public. In the event that the Registrant practises a number of disciplines, the Panel must decide whether the sanction will impact on all the disciplines applicable to the Registrant. For example; it may not be appropriate to apply the sanction to all disciplines in a case which relates to lack of competence.

8.4 The Panel must consider these factors alongside other circumstances of the case likely to raise significant public confidence issues if no interim action is taken;

- a) information that a Registrant is under investigation by the police in connection to serious offences such as rape, sexual assault, or sexual abuse of children;
- b) allegations and or serious concerns about a Registrant`s sexualised or sexually motivated behaviour towards a client.

⁷ Parking v NMC [2010] EWHC 1898 (Admin).

9. Review hearings

9.1 Interim Order reviews

9.1.1 All Interim Orders are usually reviewed in private every six months until its expiry date.

9.1.2 When the Panel decides that a period of registration with restrictions or suspension is appropriate, it will normally order that a review hearing be held. The exception to this applies when the Suspension Order is for a very limited period.

9.1.3 The Panel should always make clear what it expects the Registrant to do during the period covered by restrictions or suspension, and what information it would be helpful for the Registrant to submit ahead of the review hearing.

9.1.4 The Panel must ensure that it gives full consideration to the initial Interim Order in the light of all the circumstances that are now before the review hearing. Some of the factors to be considered include:

- a) the circumstances at the time of the imposition of the Interim Order
- b) any other relevant documentation, and
- c) any change of circumstances since the imposition of the Interim Order

9.1.5 The Panel has the power to:

- a) revoke the Interim Order or revoke any restriction imposed by the Interim Order
- b) confirm the Interim Order
- c) vary any restriction imposed by the Interim Order
- d) replace an interim Restriction of Practice Order with an Interim Suspension Order for the remainder of the duration of the Interim Order
- e) replace an interim Suspension Order with an Interim Restriction of Practice Order for the remainder of the duration of the Interim Order.

9.1.6 The Panel will need to be reassured that the Registrant is fit to resume practice either unrestricted or with restrictions or further restrictions. The Panel should consider whether the Registrant has produced any information or objective evidence on these matters. The Panel will also need to satisfy itself that:

- a) the Registrant has fully appreciated the gravity of the breach
- b) the Registrant has maintained their skills and knowledge and
- c) clients will not be placed at risk by resumption of practice or by the imposition of registration with restrictions.

9.1.7 At review hearings, the Panel will need to consider and make a finding as to whether the Registrant has complied or failed to comply with any restrictions imposed at the previous hearing (giving reasons for its decision). The Panel must do this before deciding whether or not to impose a further Order.

9.1.8. If a Panel has found that the Registrant has not complied with the restrictions on their registration it may extend the restrictions for a period up to three years, or revoke or vary any of the previous restrictions.

9.1.9 A case may be reviewed earlier; no less than three (3)-monthly (initiated by CNHC or requested by the Registrant) than its scheduled date of six (6) months, when;

- a) information received that shows the original Interim Order may not be appropriate
- b) information received that suggests a more restrictive, or a less restrictive measure is needed to manage any risk to clients or the wider public interest.

9.1.10 A request for an early review by the Registrant will be declined in cases where:

- a) the Registrant is dissatisfied with the outcome of a previous hearing or
- b) there is no new relevant information since imposition of the Order or
- c) information received which suggests that the practice restrictions are unworkable or
- d) when the Registrant was unable to attend the initial Interim Order hearing or provide detailed submissions to the Panel and is now in a position to do so.

9.1.11 Notice for review hearings are usually fourteen (14) days but could be as short as seven (7) days if there is an urgent concern over public protection which the current Interim Order does not sufficiently address. The reasons for the review hearing must be clearly detailed in the notice to the Registrant.

9.1.12 At an early review hearing, the Panel will consider the grounds for an Interim Order in full, ensuring that all relevant matters are taken into account.

9.1.13 Where either party wishes the hearing to be postponed, such applications shall be made in writing to the Chair of the Panel **(See CNHC Detailed procedures for dealing with complaints 2017)**.

9.2 Review of Substantive Orders

9.2.1 When a Restriction of Practice or Suspension Order has been imposed, the Order must be reviewed before it expires, unless the Panel making the original Order expressly decided that a review was not necessary. This is usually scheduled for eight (8) weeks prior to the expiry date of the Order and shall be heard in private.

9.2.2 At the hearing, the Panel must consider whether the Registrant has addressed the breach(es) of the Code and whether they are fit to practise; taking into account new information which is relevant to the decision to be made at the hearing.

9.2.3 The Panel will take into account the following factors:

a) Has the Registrant complied with any restrictions imposed and what is the quality of the evidence?

b) Does the Registrant show insight into their failings or the seriousness of any past misconduct? What is the level of the Registrant's insight- no insight, developing, getting worse since last hearing or full insight?

d) Has the Registrant taken reasonable and meaningful steps to maintain their skills and knowledge?

e) Has there been any further incident since the last hearing?

f) Does compliance with restrictions or the completion of required steps demonstrate that the Registrant is now safe to practise unrestricted under the auspices of the CNHC, or does any risk to client safety still remain?

9.2.4 If the Panel decides that the Registrant has fully addressed the concerns, they can allow the existing Order to expire and the case will conclude. However, if the Panel reaches a decision that restrictions on practice remains necessary, the Panel may, after reviewing a Suspension Order, revoke, vary or amend that Order. The Panel may also impose a further Suspension or Restriction of Practice Order, to commence upon the expiry of the existing Order. For example; the Panel may extend the Order if the original was imposed for less than the maximum period, or impose a new Order.

9.2.5 A Removal Order is not open to the Panel when replacing one Order with another in health or lack of competence cases, unless the Registrant has been on a substantive Restriction of Practice Order, a substantive Suspension Order, or a combination of the two, for more than two continuous years. Any time spent on an Interim Order does not count towards the continuous two- year period. A Removal Order does not apply in cases where the Registrant has been subject to two 12-month Suspension Orders; one following on immediately from the first (as the review hearing takes place before expiry of the second 12-month Suspension Order).

9.2.6 Where changes are made to the Order or any extension, this will not take effect until the existing Order expires. An immediate change can only be made in exceptional circumstances.

9.2.7 If a review hearing cannot be finished before the end of the period of restrictional registration or suspension, the Panel may extend that period for a further short period. This is to allow for a review hearing to continue as soon as practicable, whilst keeping the restriction or suspension in force until the outcome. The Panel should ask both parties to confirm when they will be ready to resume the hearing and determine the period of extension accordingly.

9.2.8 In some misconduct cases it may be self-evident that following a short period of suspension, there will be no need to have a review hearing. This could be for example; in cases where the Registrant has been practising under the auspices of the CNHC and has failed to have professional indemnity insurance cover.

9.2.9 The Panel must give reasons for its decision whether or not to order a review hearing. This makes it clear that the matter has been considered and gives the basis on which the decision has been reached. If the Panel does not order a review hearing, the reasons must include an explanation of the factors that led it to decide that the Registrant would be fit to resume unrestricted practice following the end of the period of restrictions or suspension.

9.3 Early reviews

9.3.1 An early review may be sought by the Registrant (but not for Removal Orders) during any point in the life of the Order. Likewise, the Council may apply for an early review, if it has received new information about the Registrant's current fitness to practise and that it may be; that a different or no Order is required in the circumstances.

9.3.2 An early review is likely to be scheduled such in instances where:

- a) information received suggests that the Registrant's conduct or behaviour is acting in breach of the Order.
- b) information received which suggests that the problems in the Registrant's practice which led to the imposition of the Order have recurred, worsened, or their fitness to practise has worsened.
- c) restrictions on practice have become unworkable and a review is required to allow the Practitioner to continue to practise under the auspices of the CNHC, while ensuring ongoing public protection.
- d) the Registrant has complied with all restrictions within the Order, and or has taken effective steps to address the problems in their practice which led to the imposition of the Order.

9.3.3 An early review will not be arranged for these reasons:

- a) the Registrant has requested a review because they are generally dissatisfied with the outcome of a previous hearing. The Registrant can appeal to the Board if this is the case.
- b) there is no relevant new information for consideration by the Panel.

9.3.4 If an early review hearing is scheduled, the Registrant is sent a Notice of Hearing which gives the detail of the hearing that it is being held under the powers of early review, and what the Panel has the power to impose.

9.3.5 Where a change has been made to the existing Order at an early review, this change will only have effect for the remaining period of the current Order. If the request to review is made less than eight (8) weeks before the expiry date, if the review is allowed, the review will be treated as a standard review.

9.3.6 During an early review, the Panel has the power to

- a) confirm the Order
- b) extend, or further extend, the period of the Order
 - c) reduce the period of the Order, except for in the case of a Caution Order
 - d) replace the Order with a Removal Order, a Suspension Order, a Restriction of Practice Order. Where an Order is replaced, it will be in place for the remainder of the term of the Order being reviewed at the time
 - e) revoke the Order or revoke any restriction imposed by the Order
 - f) change any restriction imposed by the Order, and extend, or further extend, the period for which the Order is in place.

9.3.7 The differences between the Panel's powers with regard to an early review and a standard review are:

- a) any change made to an Order on an early review takes effect immediately, rather than when the current Order expires.
- b) when replacing one kind of Order with another for example; Restriction of Practice with Suspension, the replacement Order will only have effect for the remaining period of the Order being reviewed.

Appendix 1

Checklist of sanctions and relevant factors

No further action

1. A Panel who has reached a decision that the Registrant has breached one or more sections of the Code, may decide not to impose a sanction. In taking no further action:
 - a) having firstly determined that the Registrant is not at risk of a repeated conduct and behaviour and or that behaviour has not breached a fundamental tenet of the profession and or brought the profession in disrepute
 - b) it must exercise the utmost care and caution
 - c) the Panel must clearly set out its reasons

Caution Order

1. A Caution Order may be considered when most of the following factors are present in the case (this is not a complete list):
 - a) evidence that the behaviour would not have caused direct or indirect patient harm
 - b) evidence of insight into failings
 - c) the behaviour was an isolated incident, which was not deliberate
 - d) a genuine expression of regret or apologies
 - e) the respondent was acting under duress
 - f) previous good history
 - g) no repetition of the behaviour since the incident
 - h) evidence that rehabilitative or corrective steps have been taken
 - i) relevant and appropriate references and testimonials.
2. Consider if it is sufficient to conclude this case with a caution, given:
 - a) the purpose of imposing sanctions is not to be punitive but to protect clients and the wider public interest?
 - b) the reasons for the finding of unacceptable professional conduct, professional incompetence or criminal conviction?
3. If the answer is 'no', then consider imposing a Restriction of Practice Order on the Registrant's registration.

Restriction of Practice Order

1. A Restriction of Practice Order may be appropriate when most or all of the following are apparent in the case (this is not a complete list):
 - a) there is no evidence of harmful deep-seated personality or attitudinal problems
 - b) there are identifiable areas of a Registrant's practice in need of review, retraining or assessment
 - c) there is no evidence of general incompetence
 - d) there is evidence of a willingness to have, and the potential to respond positively to, further training and assessment
 - e) clients will not be put at risk either directly or indirectly as a result of continued registration with restrictions
 - f) the restrictions will protect clients during the period they are in force

g) it is possible to formulate appropriate, practicable and assessable restrictions to impose on registration.

2. Consider if it is sufficient to conclude this case with restrictions imposed upon registration, given:

- a) the purpose of imposing sanctions is not to be punitive but to protect clients and the wider public interest?
- b) the reasons for the finding of unacceptable professional conduct, professional incompetence or criminal conviction?

3. If the answer is 'no', then consider suspending the Registrant from the Register with recommendations of the actions to be undertaken and stating when the Suspension Order is to be reviewed.

Suspension

1. Suspension Orders may be appropriate when some or all of the following are apparent in the case (this is not a complete list):

- a) there has been a serious breach of the CNHC Code and the misconduct is not fundamentally incompatible with continued registration. Therefore, removal from the Register would not be in the public interest. However, the breach is so serious that any sanction lower than a suspension would not be sufficient to serve the need to protect the public interest.
- b) the case involves deficient performance where there is a risk to clients' safety if the Registrant's registration were not suspended, and the Registrant demonstrates potential for remedying the situation or for retraining.
- c) there is no evidence of harmful deep-seated personality or attitudinal problems
- d) there is no evidence of the repetition of similar behaviour since the incident
- e) the Panel is satisfied the Registrant has insight and does not pose a significant risk of repeating the behaviour
- f) it is possible to decide on appropriate, practicable and assessable actions that have to be undertaken during the period of suspension.

2. Consider if it is sufficient to conclude this case with registration being suspended, given:

- a) the purpose of imposing sanctions is not to be punitive but to protect clients and the wider public interest?
- b) the reasons for the finding of unacceptable professional conduct, professional incompetence or criminal conviction

3. If the answer is 'no', the Registrant must be removed from the Register.

4. In cases when the Panel decides to impose a Suspension Order, it should also seriously consider whether it is necessary to impose an Interim Suspension Order to protect members of the public. The Panel must invite both parties' views on this question before considering it in private. This decision should be delivered separately.

Removal Order (removal from the Register)

1. Removal from the Register may well be appropriate when the behaviour involves any of the following (this is not a complete list):

- a) particularly serious departure from the principles set out in the Code, that is; behaviour fundamentally incompatible with being a Registrant
- b) a reckless disregard for the principles set out in the Code or for patient safety.

- c) doing serious harm to others (clients or otherwise), either deliberately or through incompetence; particularly where there is a continuing risk to clients about failure to provide an acceptable level of treatment or care).
- d) abuse of position or trust (see paragraph CI of the Code - 'Registrants must act with integrity and never abuse their professional standing....')
- e) violation of a patient's rights or exploiting vulnerable people (paragraph B1 the Code and E7 about safeguarding the welfare of children and vulnerable adults, paragraph A4 about their own beliefs and values, and paragraph B1 about communication with clients).
- f) offences of a sexual nature, including involvement in child pornography (see paragraph C3 of the Code and establishing sexual boundaries).
- g) offences involving serious violence that have resulted in a custodial sentence.
- h) dishonesty, especially when it is denied, persistent or covered up
- i) acting without integrity and abusing professional standing
- j) persistent lack of insight into the seriousness of their actions or the consequences

2. A Registrant cannot be removed from the Register if the only issue relates to the Registrant's health.

3. In cases where the Panel decides to remove a Registrant from the Register, it should also seriously consider whether it is necessary to impose an Interim Suspension Order to protect members of the public. The Panel must invite both parties' views on this question before considering it in private. This decision should be delivered separately.

Appendix 2 (Flowchart on Process for Sanctions)

At Substantive hearings, the Panel decides:

1. Whether facts are found proved
2. If proved, do they amount to serious breach(es) of the Code?
3. Is it appropriate for the Registrant to remain on the CNHC Register?

'Yes' to Questions 1 and 2 and 'No' to question 3.

If 'No' to questions 1 and 2
'Yes' to question 3

Consider;
Aggravating and mitigating factors
Serious cases (Dishonesty, sexual misconduct and criminal convictions)
Proportionality in all cases
Start with the least restrictive sanction

Make no order and set out reasons
Registrant continues or returns to practice under the auspices of CNHC

Caution Order;

Consider, if breach(es) of the Code are at the lower end of the spectrum and the Order is sufficient to protect the public
No restriction on practice
Can be made for a period of up to 2 years
Set out reasons clearly

Restriction of Practice Order

Consider, if a Caution Order will not protect the public and the public interest (See list of key considerations).
Restriction (s) must be proportionate, workable, measurable and unambiguous
The order can be made for a period of 1-3 years
May include retraining or assessment, prohibition from carrying out tasks or submission of reports (such as health reports)
Set out reasons clearly

Suspension Order

Consider, if the seriousness of the case requires temporary removal from the Register for one or more registered disciplines (See list of key considerations)
The Order can be made for a period of up to two years
The Registrant must not practise under the auspices of CNHC during this period
Consider an Interim Order
Set out reasons clearly

Removal Order

Appropriate when behaviour is incompatible with remaining on the Register
It prevents the Registrant from practising under the auspices of CNHC for all registered disciplines (See list of considerations)
Consider an Interim Order
Set out reasons clearly

Sanctions at Review Hearings

Factors for consideration:

- a) Has the Registrant complied with all restrictions?
- b) Has the Registrant provided any evidence of successful completion or compliance with the restrictions?
- c) Does the Registrant demonstrate sufficient insight into his/her conduct and behaviour?
- d) Is there evidence that the Registrant has repeated the breach(es) of the Code?
- e) Is there evidence that the Registrant has kept up to date with their knowledge and skills?

The Panel has the power to;

- a) extend
- b) vary
- c) revoke or
- d) replace the Order with one which was available to the Panel on first imposition.

A sanction takes effect 28 days after the decision letter has been served on the Registrant or if an appeal is lodged, before it is concluded.

Document Control Table

Version number and date	Date Agreed by Board	Date Agreed by PSA	Changes made to version	Date Issued
Version 1	24/04/2019		New document	2019