CNHC Complementary & Natural Healthcare Council

GUIDANCE

Sanctions Guidance

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professional standards authority accredited register

CYBER ESSENTIALS CERTIFIED PLUS

GUIDANCE

How Case Examiners and Panels decide the right outcome

The principles, factors and outcomes to consider when a registrant's fitness to practise is found to be impaired, or an accepted outcome or consensual disposal is proposed.

1 Introduction

1.1 The Complementary and Natural Healthcare Council (CNHC) keeps a Register of complementary healthcare practitioners. Our Register has been accredited by the Professional Standards Authority for Health and Social Care (PSA) since 2013. The disciplines we register are listed on our website.

1.2 Our main purpose in dealing with complaints is to protect the public. This guidance helps the people who make decisions on complaints to reach outcomes that are fair, consistent and proportionate.

1.3 It should be read with our **Detailed Procedures for Dealing with Complaints** (the Procedures), the **CNHC Code of Conduct, Ethics and Performance** (the Code), our Accepted Outcomes Policy, our Consensual Disposal Policy and our Case Examiner Guidance. Paragraph numbers in this guidance refer to the Procedures unless we say otherwise.

2 Who uses this guidance

2.1 This guidance is for:

a. the Conduct and Competence Panel and the Health Panel, when deciding sanctions at a hearing or on a review of an Order;

b. Case Examiners, and the Investigating Committee where Case Examiners cannot agree, when deciding whether to issue a warning or propose an accepted outcome (paragraphs 16 and 17);

c. Panels considering a consensual disposal proposal (Appendix 2, paragraph 30); and

d. CNHC staff, when reviewing proposals before they go to a decision maker.

2.2 The guidance is not legally binding, and each case must be decided on its own facts. But decision makers must use it. They can depart from it where the facts of a case justify this, provided the decision is fair, consistent, transparent, objective and free from discrimination. **Any departure must be explained in writing.**

2.3 At a hearing, the Legal Adviser will advise the Panel on questions of law and on how the guidance applies.

3 How decisions are made

Panels

3.1 A Panel must decide, in order:

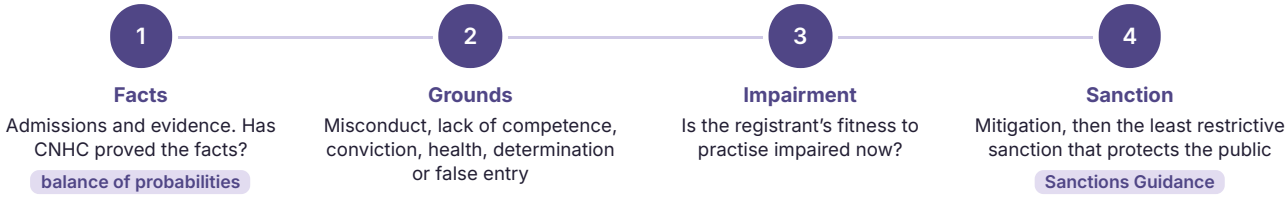
a. whether the facts alleged are proved, either by the Panel's findings or by the registrant's admission;

b. whether the facts proved amount to the ground alleged, for example misconduct or lack of competence, and to a breach of the Code;

c. whether, as a result, the registrant's fitness to practise is impaired; and only then

d. what sanction, if any, is needed.

THE FOUR STAGES OF A HEARING



3.2 Not every breach of the Code is serious enough to need a sanction. The Panel must first consider how, and how far, the registrant departed from the standards in the Code.

3.3 To be fair, the Panel should invite representations from CNHC and the registrant at each stage. A registrant may be represented by a barrister, a solicitor, or a representative of their professional body or trade union (Appendix 2, paragraph 9.2).

3.4 When a sanction is imposed, the Panel Chair must explain the decision and the reasons to the registrant in the presence of the Parties. A written Notice of Decision follows within seven days (Appendix 2, paragraph 24.1).

Case Examiners

3.5 Case Examiners do not make findings of fact after hearing evidence. Where there is a realistic prospect of a finding of impairment, they may propose an accepted outcome only where the facts are not disputed and the registrant accepts them. They then use this guidance in the same way as a Panel to decide whether a Caution or a Restriction of Practice Order is the right outcome.

3.6 If a Case Examiner considers that the right outcome may be suspension or removal, the case must be referred to a Panel (paragraph 17.2).

3.7 An accepted outcome must be consistent with the outcome a Panel would be likely to reach on the same facts. It must not be more lenient because it has been agreed.

4 The purpose of sanctions

4.1 The purpose of a sanction is not to punish, although it may have that effect. A sanction is only imposed after a finding that the registrant has breached the Code and that their fitness to practise is impaired.

4.2 In deciding a sanction, decision makers must consider the wider public interest, which includes:

a. protecting clients and the wider public;

b. maintaining public confidence in complementary healthcare and in CNHC as its regulator; and

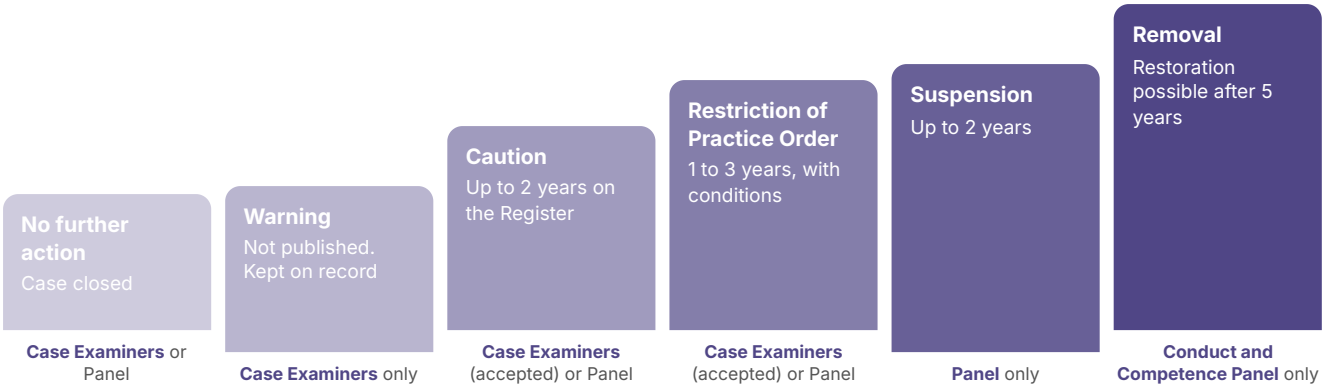
c. declaring and upholding proper standards of conduct and behaviour.

Proportionality

4.3 Every decision must be proportionate. This means striking the right balance between the registrant's interest in practising and the public interest.

4.4 Decision makers must consider the available outcomes **starting with the least serious**, and only move to a more serious one if the less serious one would not be enough. They must give clear reasons for the outcome they choose, and for rejecting the less serious ones.

OUTCOMES, FROM LEAST TO MOST SERIOUS, AND WHO CAN DECIDE THEM



5 Aggravating and mitigating factors

5.1 Aggravating factors make a case more serious and may point to a more serious outcome. Mitigating factors may point to a less serious one. Neither list is complete.

Aggravating factors	Mitigating factors
Previous regulatory or disciplinary findings, including warnings	Insight: understanding what went wrong and its actual or potential impact on clients and the public
Abuse of a position of trust	Early admission of the facts, and a genuine apology to the client
Lack of insight into the breach of the Code	Steps taken to put things right, such as relevant training or correcting advertising
A pattern of misconduct over a period of time	Evidence of keeping up to date in their area of practice
Conduct that put clients at risk of harm, or caused harm	The time that has passed since the events, with no repetition
Deliberately taking an unreasonable risk with client safety	Relevant references and testimonials

5.2 References and testimonials should be signed and dated, and should show that the writer knows about the concerns being considered.

5.3 Declining an accepted outcome, or choosing to contest the allegations at a hearing, is not in itself evidence of a lack of insight.

6 Interim Orders

6.1 Decision makers should not give undue weight to an Interim Order made before the case was decided. An Interim Order is made to manage risk while a complaint is dealt with, and is not a finding about what happened. However, a breach of an Interim Order may be relevant to the registrant's insight and to whether they are likely to comply with a sanction.

7 Serious cases

The relationship between a registrant and a client is based on trust. The cases below are likely to be at the more serious end. They are not suitable for an accepted outcome (paragraph 17.2), but can be concluded through consensual disposal if the outcome reflects how serious they are.

7.1 Dishonesty

7.1.1 Dishonesty is usually serious, because of the position of trust registrants hold (section C1 of the Code). The public expects every registrant to act with honesty and integrity. Deliberately failing to be open and honest is even more serious.

7.1.2 In deciding whether a registrant has been dishonest, the Panel applies the test in *Ivey v Genting Casinos (UK) Ltd* [2017] UKSC 67, confirmed in *R v Barton and Booth* [2020] EWCA Crim 575:

a. first, what was the registrant's actual state of knowledge or belief about the facts at the time? This is a question of fact, and the belief does not have to be reasonable, though how reasonable it is will help decide whether it was genuinely held;

b. second, in the light of that knowledge or belief, was the conduct dishonest by the standards of ordinary decent people?

7.1.3 The Panel must consider any evidence of an innocent explanation, and whether the conduct was an innocent or careless mistake rather than dishonesty.

7.1.4 CNHC must prove its case. The standard of proof is the civil standard: that it is more likely than not that the facts alleged happened.

7.1.5 Removal is not automatic in dishonesty cases, but it will often be a possible outcome. A registrant can be removed for dishonesty even where there are no other concerns about their competence or conduct (*Parkinson v Nursing and Midwifery Council* [2010] EWHC 1898 (Admin)).

7.2 Sexual misconduct

7.2.1 Section C3 of the Code requires registrants to establish and maintain clear sexual boundaries with clients. Sexual misconduct ranges from criminal convictions for sexual offences to sexual behaviour with clients, colleagues or clients' relatives. It seriously undermines public trust in the profession.

7.2.2 Sexual misconduct is particularly serious where the registrant abused a position of trust, or is required to register as a sex offender. Any involvement in accessing, viewing or making indecent images of children is a fundamental breach of the public's trust.

7.2.3 Panels should consider the Professional Standards Authority's guidance on clear sexual boundaries between healthcare practitioners and patients.

7.2.4 Panels must still start with the least serious outcome and work upwards. In cases of this kind they will often find that the only proportionate outcome is removal. If they impose a lesser sanction, they must explain why clearly and carefully.

7.2.5 Where the relationship was with a former client, the Panel should consider how long ago the professional relationship ended, how long it lasted, whether the person was vulnerable when the relationship began, any effect on their wellbeing, and whether the registrant abused their position. The Code does not set a time after which a relationship with a former client becomes acceptable. A sexual relationship with a former client, or their carer, will often be inappropriate however long ago the professional relationship ended, because of the imbalance of power it may have involved.

7.2.6 In deciding between suspension and removal, the Panel should consider:

a. the vulnerability of the person concerned;
b. whether the sexual contact was consensual;
c. whether it was a one-off incident or continued over a period of time;
d. whether it was part of a course of deliberate action;
e. the likelihood of repetition;
f. whether the registrant has insight and has taken steps to address their failings; and
g. the risk to the public if the registrant returned to practice.

7.3 Criminal convictions and cautions

7.3.1 A conviction is a decision by a criminal court in the UK, or an equivalent decision overseas for something that would be a criminal offence in the UK. A police caution is given where the person admitted the offence and court proceedings were not needed. The findings of a UK criminal court are conclusive proof of the conviction and the facts behind it (Appendix 2, paragraph 10.5).

7.3.2 The Panel should consider whether the registrant is still serving their sentence, including on probation or licence, and whether they should be able to return to practice before it ends. In general, a registrant convicted of a serious offence should not return to practice until they have completed their sentence (*CHRE v GDC and Fleischmann* [2005] EWHC 87 (Admin)). Removal is not automatic.

7.3.3 Where a registrant is serving a non-custodial sentence, the Panel may impose a Suspension Order on the basis that the registrant should not practise while serving it.

7.4 Health

7.4.1 Where the only issue is the registrant's health, the purpose of the outcome is to protect the public while the registrant gets the support they need. A registrant cannot be removed from the Register where the only issue is their health or lack of competence.

8 The outcomes available

8.1 No further action

8.1.1 A Panel that finds impairment may decide not to impose a sanction. It must take great care in doing so, and must first be satisfied that the registrant is not at risk of repeating the behaviour, and that the behaviour did not breach a fundamental principle of the profession or bring it into disrepute. It must give its reasons.

8.2 Warning (Case Examiners only)

8.2.1 Case Examiners can issue a warning where there is no realistic prospect of a finding of impairment, but the matter, if repeated, might meet that test (paragraph 16.6). A warning is not a sanction and is not published, but it is disclosed to the complainant and any employer, kept on record, and may be taken into account if there are further concerns.

8.3 Caution

8.3.1 A Caution is the least restrictive sanction. It is suitable where the concern is at the lower end of the spectrum, there is no risk of repetition, and the registrant does not pose a risk to the public, but the decision maker wants to mark that the behaviour was unacceptable and must not happen again.

8.3.2 A Caution does not stop the registrant practising. It is recorded on their Register entry for up to two years and is disclosed to anyone who asks about their fitness to practise history. It can be imposed by a Panel, or by Case Examiners as an accepted outcome.

8.4 Restriction of Practice Order

8.4.1 A Restriction of Practice Order lets the registrant keep practising, subject to restrictions or requirements, for between one and three years. It should only be considered once the decision maker is satisfied that a Caution would not protect the public or meet the public interest. It can be imposed by a Panel, or by Case Examiners as an accepted outcome.

8.4.2 Restrictions must be:

a. **relevant**: they address the breach of the Code;

b. **proportionate**: no more restrictive than needed to protect the public and uphold confidence;

c. **workable**: it is practical for the registrant to comply with them; and

d. **measurable**: whether the registrant has complied can be answered “yes” or “no”.

8.4.3 Restrictions may include not carrying out particular procedures or types of work, supervision, further training or assessment, or corrective action such as changing advertising or a website. The Order must say how long it lasts and what evidence of compliance the registrant must provide.

8.4.4 Before deciding restrictions, a Panel should consider any objective evidence about the registrant’s practice or health, take advice from the Legal Adviser, and hear from the registrant. Case Examiners should set out the proposed restrictions clearly so the registrant knows exactly what they are accepting.

8.4.5 A Restriction of Practice Order is always reviewed before it expires: by a Panel where a Panel imposed it (Appendix 2, paragraph 28), or by the Case Examiners where it was an accepted outcome, with any non-compliance decided by a Panel (paragraphs 17.9 and 17.11).

8.5 Suspension Order (Panels only)

8.5.1 A Suspension Order suspends the registrant from the Register for up to two years. It sends a clear message about behaviour that is not acceptable, or about health issues that mean the registrant cannot practise safely even with restrictions.

8.5.2 Suspension is likely to be appropriate for misconduct, lack of competence or a conviction that is serious, but not so serious as to justify removal, for example where the registrant has acknowledged their failings. Before suspending, the Panel should ask whether the case is serious enough to need a temporary removal from the Register, and whether a period of suspension would be enough to protect the public and maintain confidence.

8.5.3 When it suspends a registrant, the Panel should say what the registrant should do before the review, and what information would help the reviewing Panel.

8.6 Removal Order (Conduct and Competence Panel only)

8.6.1 Removal is the most serious sanction. It is appropriate where the behaviour is fundamentally incompatible with remaining on the Register, and public confidence could not be maintained if the registrant stayed on it. We tell the registrant's professional association and any relevant regulator about the decision.

8.6.2 The Health Panel cannot remove a registrant. Where a health case also involves other concerns that have been found proved, it can refer the case to the Conduct and Competence Panel.

8.6.3 A removed registrant can apply for restoration after five years (Appendix 4, paragraph 9.1). They must show they meet the requirements for registration and are a fit and proper person to practise.

8.7 Registrants who practise more than one discipline

8.7.1 Where a registrant is registered for more than one discipline, the decision maker should consider whether the outcome needs to apply to all of them. For example, a sanction for lack of competence in one discipline may not need to apply to the others. A sanction for dishonesty or sexual misconduct will usually apply to all of them.

9 Accepted outcomes and consensual disposal

9.1 The same principles apply whether an outcome is decided at a hearing, accepted by the registrant after a Case Examiner decision, or agreed through consensual disposal. The outcome must be the one a Panel would be likely to reach on the same facts.

9.2 Case Examiners proposing an accepted outcome should record which factors in sections 5 and 8 they relied on, and why a more serious outcome is not needed. If they are not confident that a Caution or a Restriction of Practice Order would be enough, the case should go to a Panel.

9.3 A Panel considering a consensual disposal proposal should test it against this guidance and reject it if it is too lenient (Consensual Disposal Policy, section 5).

10 When sanctions take effect

10.1 A Panel's sanction takes effect 28 days after the Notice of Decision is served on the registrant or, if the registrant appeals, when the appeal is decided or withdrawn (Appendix 2, paragraph 23.5). An accepted outcome takes effect when the Case Examiners confirm it, as there is no appeal (paragraph 17.7).

10.2 When a Panel imposes a Restriction of Practice Order, Suspension Order or Removal Order, it should consider whether an Interim Order is needed to protect the public during the appeal period. An Interim Order is not automatic. The Panel must hear from both Parties first, and give reasons.

10.3 An Interim Order during the appeal period is likely to be needed where there is a serious and ongoing risk to clients or the public, or where public confidence would be seriously harmed if the registrant could practise without restriction in the meantime. Examples include a police investigation into serious sexual offences, or serious concerns about sexually motivated behaviour towards a client.

10.4 Where the registrant practises more than one discipline, the Panel should consider whether any Interim Order needs to apply to all of them.

10.5 Once a sanction has been decided, any earlier Interim Order lapses or should be revoked, unless it is replaced by an Interim Order for the appeal period (Appendix 2, paragraph 23.1f).

11 Reviews of Orders

11.1 Interim Order reviews

11.1.1 Interim Orders are reviewed in private every six months until they expire (Appendix 1, paragraph 5). A review can be held earlier, but not normally within three months of the Order, where new information suggests the Order may not be appropriate, or that a more or less restrictive measure is needed.

11.1.2 An early review will not be arranged just because the registrant is unhappy with the earlier decision, or where there is no new relevant information.

11.1.3 At a review, the Panel or Committee considers the circumstances when the Order was made, any change since, and any new documents. It may revoke, confirm or vary the Order, or replace an interim restriction with an interim suspension, or the other way round.

11.2 Reviews of Suspension and Restriction of Practice Orders

11.2.1 A Suspension Order or Restriction of Practice Order made by a Panel must be reviewed before it expires, unless the Panel that made it decided a review was not needed. Reviews are usually held about eight weeks before the expiry date, in private.

11.2.2 The reviewing Panel will consider:

a. whether the registrant has complied with the restrictions, and the quality of the evidence;

b. whether the registrant shows insight into their failings, and how this has developed;

c. whether they have kept their skills and knowledge up to date;

d. whether there have been any further incidents; and

e. whether the registrant is now safe to practise without restrictions, or whether a risk remains.

11.2.3 The Panel must first decide, with reasons, whether the registrant has complied with the Order. If the concerns have been fully addressed, it can let the Order expire. If not, it may revoke, vary or extend the Order, or impose a further Suspension or Restriction of Practice Order to start when the current one ends.

11.2.4 In health or lack of competence cases, removal is only available on review where the registrant has been subject to a substantive Restriction of Practice Order or Suspension Order, or both, for more than two continuous years. Time on an Interim Order does not count.

11.2.5 The registrant or CNHC can ask for an early review where there is new information, for example that the registrant is not complying, that concerns have recurred, that the restrictions have become unworkable, or that the registrant has already complied in full. Removal Orders cannot be reviewed early.

11.2.6 In some cases a review will not be needed, for example after a short suspension for practising without professional indemnity insurance. The Panel must give reasons for deciding not to order a review.

12 Review of this guidance

12.1 We will review this guidance every two years, or sooner if the Procedures, the Code, the PSA's guidance or relevant case law change.

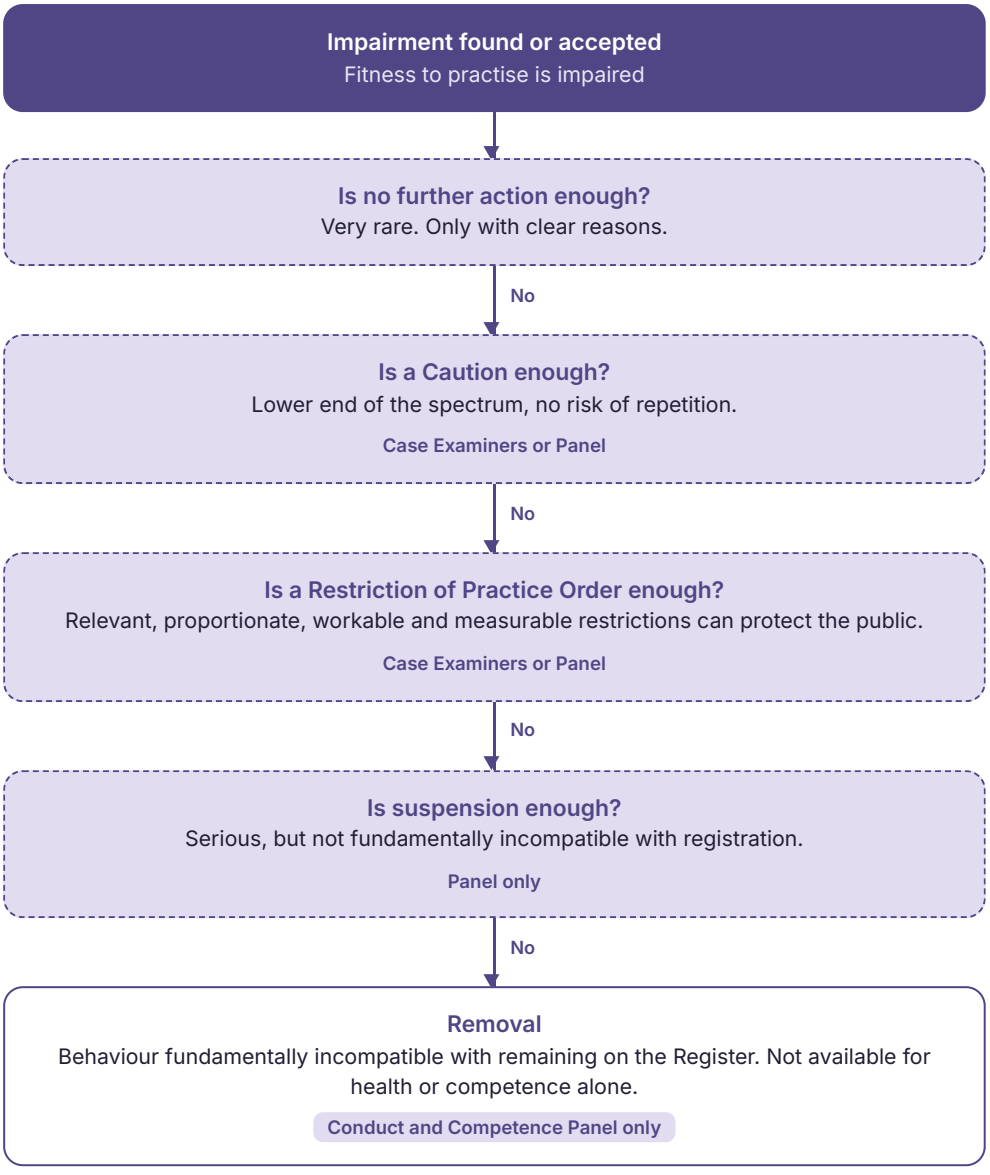
A Checklist of outcomes and relevant factors

Start at the top. Only move down the table if the outcome in the row above would not be enough to protect the public and the wider public interest. None of the lists of factors is complete.

Outcome	May be appropriate where	Question before moving on
No further action	The registrant is not at risk of repeating the behaviour, the behaviour did not breach a fundamental principle of the profession, and it has not brought the profession into disrepute.	Use with great care, and always give reasons.
Caution	Most of these: no direct or indirect harm to clients; insight; an isolated incident that was not deliberate; genuine regret or an apology; acting under duress; previous good history; no repetition; corrective steps taken; relevant references and testimonials.	Is a Caution enough to protect clients and the wider public interest? If not, consider a Restriction of Practice Order.
Restriction of Practice Order	Most or all of these: no deep-seated personality or attitude problems; identifiable areas of practice that need review, retraining or assessment; no general incompetence; willingness and potential to respond to training; clients will not be put at risk; workable restrictions can be set.	Is it enough to conclude the case with restrictions? If not, consider suspension.
Suspension Order	Some or all of these: a serious breach that is not fundamentally incompatible with registration; deficient performance with a risk to clients but potential to retrain; no deep-seated problems; no repetition; insight and a low risk of repetition; workable actions for the period of suspension.	Is suspension enough? If not, the registrant must be removed.
Removal Order	Any of these: a particularly serious departure from the Code; reckless disregard for the Code or client safety; serious harm to others; abuse of position or trust; violation of a client's rights or exploiting vulnerable people; sexual offences; serious violence with a custodial sentence; dishonesty, especially if denied, persistent or covered up; acting without integrity; persistent lack of insight.	Conduct and Competence Panel only. Not available where the only issue is the registrant's health or lack of competence.

B Deciding the outcome: flowchart

WORK UPWARDS FROM THE LEAST SERIOUS OUTCOME



Case Examiners stop at the Restriction of Practice Order. If that would not be enough, the case must be referred to a Panel.

Document control

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