

Northern Ireland



**MAKING A DETERMINATION OF IMPAIRED FITNESS TO
PRACTISE
GUIDANCE FOR COMMITTEES ON REMEDIATION**

May 2016

Deciding upon impairment

- 1.1 There are five key issues to consider when deciding upon impairment:
- i. Has the Registrant acted so as to pose a risk to service users?
 - ii. Has the Registrant brought the profession into disrepute and / or is liable to do so in the future?
 - iii. Has the Registrant breached one of the fundamental tenets of the profession and / or are they liable to do so in the future?
 - iv. Can the Registrant's integrity be relied upon?
 - v. Is the conduct / practice which led to the allegation easily remediable, or has it been remedied, and how likely is it to be repeated? (Explained below at paragraphs 3.19 – 3.29).

Remediation

Is the conduct complained of remediable?

- 2.1 Committees typically consider the question of current impairment of fitness to practise some considerable time after the matters which gave rise to the factual allegations took place. The issue of remediation must therefore be considered, taking into account the following factors:
- i. Is the conduct complained of remediable?
 - ii. Has it in fact been remedied?
 - iii. Is it highly unlikely that the conduct will be repeated?
- 2.2 These factors do not form a determinative test as to whether the Registrant's fitness to practise is impaired. However, they are key points for consideration, particularly in those cases where a finding of impairment is not otherwise required in the public interest.
- 2.3 Committees should first consider whether the concerns can be remedied, i.e. whether steps can readily be taken by the Registrant to remedy an identified problem in their practice.

2.4 It may be very difficult, if not impossible, to 'put right' the outcome of the failing or behaviour, particularly where it has resulted in harm to service users. Committees should instead focus on whether the conduct / practice complained of, and the risks to the public arising from this, have been remedied.

2.5 In some cases, the behaviour of the Registrant will fall so far short of what is acceptable, and risks undermining public confidence in the profession, that it is simply not capable of being 'remedied', even where a direct on-going risk to the public cannot be readily identified. Examples of such allegations may include:

- Criminal convictions that result in a custodial sentence;
- Inappropriate personal or sexual relationships with a service user or other vulnerable person, or other sexual misconduct;
- Dishonesty, particularly where serious and sustained over a period of time and / or linked to the Registrant's practice;
- Violence; and
- Neglect or abuse of service users, whether physical or verbal.

2.6 In such cases, it will be difficult for a Registrant to demonstrate that they have remedied the concerns. For example, it is unlikely that such behaviour will be satisfactorily addressed by participating in a training course or through supervision at work.

2.7 However, some behaviour may be easier to remedy, particularly where isolated in nature. Examples of this sort of behaviour may include:

- Medication administration errors;
- Poor record keeping;
- Failings in respect of a discrete and readily identifiable aspect of practice; and
- Allegations that arise from incidents that took place a significant amount of time ago. The passage of time can provide the opportunity for concerns

to be addressed, particularly where the Registrant has continued to practise safely in the interim.

Has the conduct been remedied?

- 3.1 Where Committees consider that past failings can be remedied, the next step is to consider whether they have, in fact, been remedied. To effectively remedy past failings, a Registrant must:
- Demonstrate insight into the past behaviour, acknowledging why it is a cause of concern and recognising a need to act differently in the future;
 - Show that sufficient remedial steps have been taken to remedy the concerns; and
 - Provide evidence of both of the above.
- 3.2 What amounts to 'sufficient' remediation will depend on the facts of any particular case, including the nature of the alleged failings or behaviour. Sufficiency will depend on the scale of the concerns. For example, the reassurance required by a Committee may be less for a single incident in an otherwise unblemished career as opposed to where a number of errors have taken place.
- 3.3 A number of key principles should be taken into account when considering steps taken by a Registrant to remedy identified concerns:
- i. The steps must be relevant, directly linked to the nature of the concerns;
 - ii. The steps must be measurable. For example, where the Registrant asserts they have been on a training course, information should be provided to enable the Committee to understand the scope of the course, the topics covered and the results of any assessments;
 - iii. The steps must be effective, addressing the concerns and clearly demonstrating that past failings have been objectively understood, appreciated and tackled.

3.4 Committees should only rely on the evidence that is available at the time they consider the case. They must not speculate about what other information might be available.