

**General  
Chiropractic  
Council**



# Guidance on Sanctions

April 2018

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## Section A: Introduction

### A1. The role and status of the sanctions guidance

1. This guidance has been developed by the GCC for use by the Professional Conduct Committee ("the PCC") when it is considering what sanction to impose upon a chiropractor following a finding of unacceptable professional conduct, professional incompetence or a criminal conviction, and by the Health Committee (HC) following a finding that a chiropractor's fitness to practise chiropractic is seriously impaired as a result of physical or mental condition. It is also to be used where a committee is reviewing a previously imposed order. It outlines the decision-making process and the factors to be considered.<sup>1</sup>
2. Committee members must use their own judgement when making decisions as they are acting in a judicial capacity, but within a framework set by the GCC. This guidance provides the framework and committee members are expected to take full account of it. Where a committee has reason to depart from it, it should clearly explain why in its written determination. Nothing in this guidance is intended to restrict a committee's discretion in any particular case.
3. The sanctions guidance is an important link between two of the GCC's regulatory roles: setting standards of conduct and practice for the profession and dealing with complaints against chiropractors. The Council of the GCC is responsible for all decisions taken by the PCC and the HC, although Council members do not sit on either committee. The chiropractic and lay members appointed by the Council<sup>2</sup> to sit on the PCC and HC must use their own judgement in deciding whether allegations against chiropractors are well-founded. These independent decisions must take account of the requirements of *The Code: Standards of conduct, performance and ethics for chiropractors*, effective from 30 June 2016<sup>3</sup> ("the Code") and any other guidance the Council issues to the profession.
4. The sanctions guidance aims to promote consistency and openness in decision-making. It ensures that all parties are aware from the outset of the approach to be taken to sanctions by the PCC or HC. The use of guidance on sanctions has in similar contexts received strong endorsement from the judiciary, and Mr Justice Collins in the case of *CRHP -v- (1) GMC (2) Leeper* [2004] EWHC 1850 recorded that:

*"it helps to achieve a consistent approach to the imposition of penalties where serious professional misconduct is established. The [panel] must have regard to it although obviously each case will depend on its own facts and guidance is what it says and must not be regarded as laying down a rigid tariff."*

5. Mr Justice Newman, in the case of *R (on the application of Abrahaem) v GMC* [2004] described the GMC's Indicative Sanctions Guidance as:

*"very useful guidelines and they form a framework which enables any tribunal, including this court, to focus its attention on the relevant issues. But one has to come back to the essential exercise which the law now requires in what lies behind the purpose of sanctions, which, as I have already pointed out, is not to be punitive but to protect the public interest; public interest is a label which gives rise to separate areas of consideration."*

<sup>1</sup> Any list of factors referenced in this guidance should be considered as a non-exhaustive list. Committees should use their discretion when imposing sanctions, and can consider other factors as they consider necessary and proportionate.

<sup>2</sup> The Council makes appointments based on recommendations made to it by an arms-length panel.

<sup>3</sup> The Code replaced the Code of Practice and Standard of Proficiency 2010, which in turn replaced the Code of Practice and Standard of Proficiency 2005. Committees must refer to the code that was in place at the time of the alleged conduct.

6. This revision of the guidance comes into effect and will be applied from 1 May 2018. In any case where a committee, had, prior to 1 May 2018, determined that an allegation was well-founded and had heard any submissions about sanction by the parties but had then adjourned the hearing before determining sanction, that committee shall continue to apply the indicative sanctions guidance that was in force at the date it adjourned the hearing. In all other cases, this revised guidance shall be applied.
7. It is intended that this sanctions guidance is a 'live document' with users having the opportunity to provide comments on its use to the GCC. This will allow changes to be considered on a regular basis. If, having used this guidance, you have some comments to make, please email them to [isg@gcc-uk.org](mailto:isg@gcc-uk.org) with 'Comments on the sanctions guidance' in the subject line.

## A2. The GCC's over-arching objective

8. The GCC is the statutory regulator of the chiropractic profession in the UK. Its functions are set out in the Chiropractors Act 1994 ("the Act").
9. The Health and Social Care (Safety and Quality) Act 2015 introduced the same over-arching objective for all of the statutory regulators of health and care professionals in the UK. That over-arching objective is the protection of the public. The 2015 Act states that the pursuit of protection of the public involves the pursuit of the following:
  - a) to protect, promote and maintain the health, safety and well-being of the public;
  - b) to promote and maintain public confidence in the profession of chiropractic;
  - c) to promote and maintain proper professional standards and conduct for members of the chiropractic profession.

## A3. Equality & diversity statement

10. The GCC is listed in the Equality Act 2010 as a public authority and so must have due regard to the need to:
  - a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act;
  - b) advance equality of opportunity between persons who share a relevant protected characteristic and those who do not share it;
  - c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
11. The public sector equality duty applies to the GCC in relation to the exercise of its public functions.<sup>4</sup>

## A4. Why are sanctions imposed?

12. The main reason for imposing sanctions is to protect the public, which is the GCC's statutory over-arching objective.<sup>5</sup>
13. The over-arching objective codifies the position previously established in case law - that protection of the public is a broad term and includes all three of the limbs set out above in

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<sup>4</sup> The GCC's published equality scheme can be found on the website – see <https://www.gcc-uk.org/about-us/equality-and-diversity/>

<sup>5</sup> Section 4A Chiropractors Act 1994 (inserted by the Health and Social Care (Safety and Quality) Act 2015)

paragraph 9. Each reference to protecting the public in this guidance should be read as including all three limbs of the over-arching objective. There may be a public interest in allowing a chiropractor's return to safe practice, and, where appropriate, committee decisions should take account of this. However, committees should bear in mind that their first concern is the protection of the public in the broad sense set out.

14. The purpose of sanctions is not to punish, but sanctions may have a punitive effect.<sup>6</sup>

## A5. The committee decision-making process

### Nature of allegations

15. Section 20(1) of the Act sets out four types of allegation:

1. the chiropractor has been guilty of conduct which falls short of the standard required of a registered chiropractor (defined as "unacceptable professional conduct" ("UPC") in section 20(2));
2. the chiropractor has been guilty of professional incompetence;
3. the chiropractor has been convicted (at any time) in the United Kingdom of a criminal offence;
4. the chiropractor's ability to practise as a chiropractor is seriously impaired because of their physical or mental condition.

16. Where the Investigating Committee considers one of these allegations and finds that there is a case to answer, it will refer an allegation concerning health to the HC, and an allegation of any other kind to the PCC.<sup>7</sup>

### The staged approach

17. Committees must follow a sequential approach before moving to consider sanction. The approach to be followed depends on the type of allegation.

18. In the case of an allegation concerning either UPC or professional incompetence, the PCC has to decide in this order:

- a) whether the facts as set out in the allegation have been proved by the GCC according to the "balance of probabilities"<sup>8</sup>. If none of the facts have been proved, the allegation is not well-founded;
- b) whether, if any of the facts have been found to be proved, some or all of these (whether taken individually or collectively) constitute UPC or professional incompetence, as alleged. If the PCC finds they do not, the allegation is not well-founded;
- c) if the allegation is well-founded, which of the sanctions available to the PCC is the minimum necessary to protect the public.

19. The first two decisions are taken together; after the committee has considered all the evidence presented to it and has asked any questions for clarification. Decision-making about sanction takes place only once the PCC has decided that the allegation is well-founded.

20. The standard required of a registered chiropractor is set out in the Code. Section 19(4) of the

<sup>6</sup> *Raschid v Fatnani v The General Medical Council* [2007] 1 WLR 1460

<sup>7</sup> Section 20(12) Chiropractors Act 1994

<sup>8</sup> The GCC must prove that it is more likely than not that whatever is alleged occurred. It is not for the chiropractor to disprove the allegation.

Chiropractors Act 1994 provides that, where a chiropractor is alleged and found to have breached any provision within the Code, this shall not be taken, of itself, to constitute UPC. However, any breach will be taken into account in any proceedings.<sup>9</sup>

21. In the case of an allegation concerning a conviction, the PCC has to decide in this order:
  - a) whether the fact of the conviction is proven. The process to be followed by the PCC in such cases is set out in more detail at paragraphs 55-58. If the fact of the conviction is not proven, the allegation is not well-founded. If the fact of the conviction is proven, the matter is well-founded;
  - b) if the allegation is well-founded, whether the criminal offence has any material relevance to the fitness of the chiropractor to practise chiropractic. If it has no material relevance, the PCC may take no further action;
  - c) if the criminal offence has material relevance, which of the sanctions available to the PCC is the minimum necessary to protect the public.
22. In the case of an allegation concerning impairment of fitness to practise due to a physical or mental condition, the HC should usually approach its decision-making in this order:
  - a) whether the GCC has proved, on the balance of probabilities, that the chiropractor suffers from the physical or mental condition as alleged. If the HC finds that that is not proved, the allegation is not well-founded;
  - b) whether, if the GCC has proved that the chiropractor suffers from the physical or mental condition as alleged, the chiropractor's ability to practise as a chiropractor is seriously impaired as a result. If the HC finds that it is not, the allegation is not well-founded;
  - c) if the allegation is well-founded, which of the sanctions available to the HC is the minimum necessary to protect the public.
23. Where a committee finds that an allegation is not well-founded, no action is taken and the chiropractor is informed of this outcome. The committee must give full reasons for these decisions in its written determination.

## The sanction options

24. There are four sanctions available to the PCC:
  - a) Admonishment;
  - b) Conditions of Practice Order;
  - c) Suspension Order;
  - d) Removal from the register.
25. There are two sanctions available to the HC if it decides that an allegation against a chiropractor that their ability to practise is seriously impaired because of a physical or mental condition is well founded:
  - a) Conditions of Practice Order;
  - b) Suspension Order.
26. When considering the appropriate sanction to impose, the committee should consider carefully the matters covered in section B of this document.

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<sup>9</sup> This is also the approach to be taken in cases of alleged incompetence, though there is no express provision to this effect in the Chiropractors Act 1994

27. Both the GCC and the chiropractor may make submissions about the appropriate sanction to impose, and the committee should take account of those submissions. In practice the GCC does not generally make the case for a particular sanction to be imposed in its submissions when acting in its prosecuting role, but may draw the committee's attention to relevant parts of this guidance.
28. The committee must give reasons in its written determination for the particular sanction that it has decided to impose.<sup>10</sup> The reasons must summarise the committee's findings on the principal important issues<sup>11</sup>, in order to enable the chiropractor and the public to understand:
- a) why a particular sanction has been chosen;
  - b) how it protects the public;
  - c) why it is the minimum sanction that is necessary.

## A6. Proportionality

29. In deciding what sanction to impose, the committee must consider the principle of proportionality. This means that when considering what sanction to impose in order to fulfil the statutory over-arching objective, the committee must take into consideration the interests of the chiropractor. The committee should consider the sanctions available, starting with the least restrictive sanction available, judging whether that sanction will be sufficient to achieve the over-arching objective, and if it will not, moving on to consider the next least restrictive sanction. It is good practice for the committee to provide reasons for its conclusions about each sanction option considered.
30. Once the committee has determined that a particular sanction is necessary to protect the public, that sanction must be imposed, even where that may have a negative impact on the practitioner. This is necessary to fulfil the statutory over-arching objective.
31. The chiropractor may have been made subject to an interim order suspending their registration during the GCC's investigation. There is no principle that (as in criminal proceedings if an individual is remanded in custody) time spent suspended under an interim suspension order must be deducted from the length of any suspension then imposed by the PCC or the HC at a hearing. However, the committee should take account of the interim order and its effect on the registrant when deciding whether a sanction is proportionate.<sup>12</sup> Having considered that issue, the committee is entitled to conclude that the interim order does not affect the substantive order.<sup>13</sup>

## A7. Mitigating factors

32. When deciding on a sanction, the committee will need to consider any evidence presented by way of mitigation by the chiropractor, or which it identifies as being relevant mitigation.
33. The weight, if any, to be placed on any particular mitigation is a matter for the committee's judgement. It must have the over-arching objective in the forefront of its mind when considering the relevance of any mitigation and the weight, if any, to attach to it.
34. There are some cases where, regardless of the mitigation presented, a chiropractor's failings are so serious or persistent that a particular sanction is needed in order to uphold standards and maintain public confidence.

<sup>10</sup> Determinations are subject to review by the Professional Standards Authority for Health and Social Care (PSA), which can refer to court any decision that it considers insufficient to protect the public. Case law has established that the failure by a committee to provide reasons can constitute a 'serious procedural irregularity'.

<sup>11</sup> *Professional Standards Authority v (1) GMC & (2) Uppal* [2015] EWHC 1304

<sup>12</sup> *Kamberova v NMC* [2016] EWHC 2955 (Admin)

<sup>13</sup> *Akhtar v GDC* [2017] EWHC 1986 (Admin)

35. Committees will be mindful that, because they are not concerned with matters of punishment, considerations which would normally weigh in mitigation of punishment are likely to have less effect. For example, see paragraph 36(d) below.<sup>14</sup>
36. The following are examples of mitigating factors:
- a) evidence of the extent of the chiropractor's understanding of and insight into the problem and their attempts to address and remediate it. Such evidence could arise from the facts that have been found proved. It could also take the form of any apologies by the chiropractor to the complainant or person in question. A committee may feel able to give more weight to apologies made at the time or close to relevant events, than to those made at or in the run up to the hearing. Insight could also be evidenced by demonstrable efforts to prevent such behaviour happening again or to correct any deficiencies in performance;
  - b) evidence of the chiropractor's overall compliance with important principles of good practice (for example, keeping up to date and working within their area of competence);
  - c) evidence of mitigating circumstances that contributed to the relevant incidents, for example a lack of training or supervision at work, personal hardship at the time of the relevant events or work-related stress;
  - d) any hardship which the chiropractor will face as a result of the sanction imposed. Committees will note, though, that the case-law states that while the personal consequences for the chiropractor of a particular sanction being imposed should be taken into account, the essential concern of the committee is to maintain public confidence in the profession even if doing so by imposing a particular sanction entails unfortunate consequences for the individual chiropractor;<sup>15</sup>
  - e) while not strictly mitigation, committees will wish to take into account whether or not the chiropractor has previously had a finding made against them by a GCC committee or by any equivalent committee or other regulatory/licensing body.
37. In some cases, the stage of the chiropractor's career may be a mitigating factor - for example because the chiropractor was very inexperienced at the time of relevant events but has subsequently been able to reflect on how they might have done things differently, with the benefit of experience. In other cases, for example those involving predatory behaviour or serious dishonesty, the stage of the chiropractor's career is unlikely to be regarded as mitigation - serious poor practice or UPC is not regarded as being less unacceptable simply because the chiropractor was inexperienced.
38. The principles in the Code emphasise that chiropractors should take a mature and responsible approach to work. The committee is likely to want to see evidence to support a chiropractor's submission that they have taken steps to put things right or to prevent similar problems arising in future.
39. Committees will be mindful that the absence of what would otherwise be an aggravating factor is not to be treated as a mitigating factor<sup>16</sup>.

## A8. Aggravating factors

40. The committee should consider any aggravating factors presented to it, or which it identifies

<sup>14</sup> *Bolton v Law Society* [1994] 1 WLR 512

<sup>15</sup> *Bolton v Law Society* [1994] 1 WLR 512

<sup>16</sup> *Professional Standards Authority v(1) Nursing and Midwifery Council and (2) Judge* [2017] EWHC 817 (Admin)



keeping the over-arching objective in the forefront of its mind.

41. Aggravating factors may include (this is not an exhaustive list):
- a) previous regulatory findings;
  - b) abuse of position of trust;
  - c) lack of insight;
  - d) direct or indirect patient harm (or conduct which could foreseeably cause harm); and
  - e) a pattern of UPC over time.

## A9. Considering references and testimonials

42. Testimonial evidence concerning the chiropractor's propensity to commit the acts alleged may have been presented at the fact-finding stage of the hearing. At the stage when the committee considers sanction, personal mitigation testimonials may also be presented, for example concerning the chiropractor's standing in the community or the profession. The committee should consider the weight to attach to these. The committee should consider who the author of any reference or testimonial is, the nature of their relationship with the chiropractor (for example, if they are a current or former employer), the nature and extent of their experience of the chiropractor when the reference or testimonial was written, how it was solicited, whether the author was aware of the GCC proceedings and the allegations, whether the reference or testimonial appears to be authentic (for example, whether it is signed), and whether the reference or testimonial is relevant to the specific findings made by the committee against the chiropractor. A committee may wish to give more weight to a reference or testimonial if it confirms that the author is willing to attend the proceedings to answer questions.
43. The quantity, quality and spread of references and testimonials will vary from case to case and this will not necessarily depend upon the standing of the chiropractor. A committee should not draw adverse conclusions if no references or testimonials are presented. Committees will be mindful that obtaining references and testimonials may be difficult for chiropractors who qualified overseas and have only recently arrived in the UK.

## A10. Expressions of regret and apology, and demonstrating insight

44. Demonstrating insight is different from expressing remorse. A chiropractor is likely to have demonstrated they have some insight if they: accept they should have behaved differently; take timely steps to remediate; apologise sufficiently in advance of the hearing; and demonstrate the development of insight during the investigation and hearing.
45. There is an expectation within the Code that a chiropractor will: think about and learn from events; recognise when things have not gone well; be open and honest and apologise to the patient(s) concerned; and provide redress if appropriate. The Code states that chiropractors must *"fulfil the duty of candour by being open and honest with every patient. You must inform the patient if something goes wrong with their care which causes, or has the potential to cause, harm or distress. You must offer an apology, a suitable remedy or support along with an explanation as to what has happened"* (Standard B7). It also requires chiropractors to *"listen to, be polite and considerate at all times with patients including regarding any complaint that a patient may have"* (Standard F5). The GCC has published guidance about the duty of candour to assist chiropractors in applying the Code's requirements, which sets out the steps that must be taken before starting care and after something has gone wrong.<sup>17</sup>

<sup>17</sup> Available from: <https://www.gcc-uk.org/good-practice/guidance/>

46. Evidence of the chiropractor's actions since the relevant events and during the hearing may assist the committee to assess the extent to which any remorse and/or insight has been demonstrated. The committee may wish to have regard to whether the chiropractor has denied the allegation, has been equivocal or ambivalent (perhaps by not acting to improve the position, or by saying they will do so, but then taking no action), has made admissions at the outset of the hearing or late in the day when they think it will then help their case, or has given untruthful evidence to the committee or falsified documents.
47. Committees should be aware that different practitioners may express insight and/or remorse in different ways. Cross-cultural communication studies show that there are significant differences in the way that people from different cultures and language groups use language and non-verbal signals both to understand what is being said and to express themselves. This is particularly the case when individuals are using a second language. Committees should also have regard to any independent expert evidence presented by a practitioner that establishes that they have a particular health condition that impacts on the way in which they express remorse. Awareness of and sensitivity to these issues are important in considering and assessing the degree of insight or remorse shown.

## Section B: The sanctions

### Bl. Overview

48. There is a range of sanction options available to the PCC and HC. Each of these sanctions is addressed individually later in this section, commencing at paragraph 78.
49. Rule 19 of The General Chiropractic Council (Professional Conduct Committee) Rules Order of Council 2000 and Rule 19 of The General Chiropractic Council (Health Committee) Rules Order of Council 2000 require the committee to vote on the issue of sanction. No member of the committee can abstain.
50. Before the committee moves to a vote it must make sure that it fully discusses the case, any submissions about the appropriate sanction, and is fully aware of all the options available to it. The committee alone makes the final decision on the appropriate sanction, working within the relevant legislation and having regard to the framework set out by this guidance. The committee must keep the statutory over-arching objective in the forefront of its mind at all times.
51. The committee's written determination on the sanction must make it clear that it has considered the available sanctions in ascending order, starting with the least restrictive option, moving upwards if that option was thought to be insufficient, and stopping when it reached the least restrictive sanction necessary to achieve the statutory over-arching objective. The committee's written determination must provide clear and cogent reasons for imposing a particular sanction, including explaining the relevance of any mitigating and aggravating factors. This is especially important if the sanction is lower, or higher, than that suggested by this guidance or where it differs from the sanction the chiropractor has submitted that the committee should select. The written determination should also include a clear explanation of why a particular period of sanction has been considered necessary (if the committee selects a sanction that will remain in place for a fixed period). The written determination must set out whether the committee considered imposing a more restrictive sanction and provide reasons for any conclusion that a

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The GCC is also a signatory to the joint statement made by the regulators of healthcare professionals on the professional duty of candour, available from: <http://www.gcc-uk.org/UserFiles/Docs/Joint%20statement%20on%20the%20professional%20duty%20of%20candour%20FINAL.pdf>

more restrictive sanction was unnecessary.

52. The chiropractor has the right to appeal to the courts within 28 days against any decision of the PCC or HC to impose a sanction. The sanction does not take effect during these 28 days nor; if an appeal is lodged, until that appeal has been disposed of. During this time, the chiropractor's registration remains fully effective unless the committee also orders an interim suspension (see section C).<sup>18</sup>

## B2. General issues relevant to sanction

53. The Code requires chiropractors to “*act with honesty and integrity at all times and uphold high standards of professional conduct and personal behaviour to ensure public confidence in the profession*” (Principle B) and to “*ensure your behaviour is professional at all times, including outside the workplace, thus upholding and protecting the reputation of, and confidence in, the profession and justifying patient trust.*” (Standard B5)
54. Certain cases are particularly serious for all aspects of the statutory over-arching objective. Some particular considerations which may arise for committees in such cases are set out in the following paragraphs.

### Convictions

55. 'Convictions' mean findings of guilt by a criminal court in the United Kingdom (UK). A conviction by itself constitutes sufficient basis for the committee to impose a sanction, regardless of whether the criminal offence occurred in the chiropractor's professional or private life.
56. Should the sentence imposed by the criminal court be a conditional discharge, that does not constitute a “conviction” under English law. Nor do cautions or penalty notices administered by the police or other enforcement authorities constitute “convictions”. They may however amount to UPC.
57. If the committee receives in evidence a signed certificate of the conviction, then it must accept the certificate as conclusive evidence of the offence having been committed, unless it also receives evidence to the effect that the chiropractor is not the person referred to in the conviction<sup>19</sup>. In these cases the purpose and focus of the proceedings is to:
- a) establish whether the conviction has material relevance to the fitness of the chiropractor to practise chiropractic;
  - b) consider the gravity of the offence; and
  - c) take due account of any mitigating and aggravating circumstances. At the hearing the committee may decide to take no further action in respect of a conviction if it considers that the conviction has no material relevance to the fitness of the chiropractor concerned to practise chiropractic<sup>20</sup>. However the committee may decide to impose a sanction even where the conviction occurred in the chiropractor's private life, rather than in the course of their professional practice.
58. The committee cannot seek to 'go behind' the conviction or reach another conclusion about the matters that led to it being issued. In a hearing about a conviction, the GCC case presenter will be invited to put forward evidence about the circumstances leading up to the conviction and the character and previous history of the respondent chiropractor. The chiropractor will then have the opportunity to address the committee by way of mitigation and present any evidence about this.

<sup>18</sup> In addition, the PSA can refer to court any decision which it considers to be insufficient for the protection of the public.

<sup>19</sup> Rule 7(1) General Chiropractic Council (Professional Conduct Committee) Rules 2000.

<sup>20</sup> Section 22(3) Chiropractors Act 1994

59. Committees should bear in mind that the sentence imposed by the criminal court in relation to the conviction is not always a definitive guide to the seriousness of the offence. There may have been specific personal mitigation which led the court to its decision on sentence which, in the regulatory context, carries less weight, because of the different purpose of regulatory proceedings and the public interest considerations that apply (as reflected in the over-arching objective)<sup>21</sup>. The classic explanation of this principle<sup>22</sup> comes from the statement of Sir Thomas Bingham MR in *Bolton v Law Society*<sup>23</sup> that “*the reputation of the profession is more important than the fortunes of any individual member. Membership of a profession brings many benefits but that is part of the price*” said, “*because of these considerations, the seriousness of the criminal offence, as measured by the sentence imposed by the Crown Court, is not necessarily a reliable guide to its gravity in terms of maintaining public confidence in the profession.*”
60. As a general principle, when a chiropractor has been convicted of a serious criminal offence, they should not be allowed to return to unrestricted practice until they have completed their criminal sentence. In *CHRE v (1) General Dental Council and (2) Fleischmann*, a case concerning child pornography offences, Mr Justice Newman said that: “*as a general principle, where a practitioner has been convicted of a serious criminal offence or offences, he should not be permitted to resume his practice until he has satisfactorily completed his sentence. Only circumstances which plainly justify a different course should permit otherwise. Such circumstances could arise in connection with a period of disqualification from driving or time allowed by the court for the payment of a fine. The rationale for the principle is not that it can serve to punish the practitioner whilst serving his sentence, but that good standing in a profession must be earned if the reputation of the profession is to be maintained.*”<sup>24</sup>

## Sexual misconduct

61. Sexual misconduct takes in a wide range of behaviour, from criminal convictions for sexual assault and sexual abuse of children (including child pornography) to sexual misconduct with patients, patients' relatives or colleagues.
62. The committee should take account of the principles set out in the Code. Principle D requires chiropractors to “*establish and maintain clearly defined professional boundaries between yourself and your patients to avoid confusion or harm and to protect the welfare and safety of patients and those who care for them.*” Standard D1 requires chiropractors not to “*abuse the position of trust which you occupy as a professional. You must not cross sexual boundaries.*” The Council for Healthcare Regulatory Excellence (CHRE), the predecessor body to the PSA, produced guidance for fitness to practise panels (such as the PCC) on clear sexual boundaries.<sup>25</sup> Committees should have regard to that guidance where relevant.
63. Abuse of a position of trust (such as the relationship between a chiropractor and their patient) in order to initiate or pursue a sexual relationship is likely to be considered to be an aggravating factor. It is the chiropractor's responsibility to prevent sexual boundaries being crossed, not the patient's.
64. Sexual offences include accessing, viewing or other involvement in child pornography, which involves the abuse or exploitation of a child. These types of offences are likely gravely to undermine patients' and the public' trust in the profession and seriously undermine its reputation.
65. The criminal courts identify degrees of seriousness in relation to child pornography offences.

<sup>21</sup> For more information about the statutory over-arching objective, refer back to paragraph 9

<sup>22</sup> Cited in subsequent cases such as *Low v General Optical Council* [2007] EWHC 2839 (Admin)

<sup>23</sup> [1994] 1 WLR 512

<sup>24</sup> [2005] EWHC 87 (Admin)

<sup>25</sup> <http://www.professionalstandards.org.uk/docs/default-source/publications/policy-advice/clear-sexual-boundaries-guidance-for-fitness-to-practise-panels-2008.pdf?sfvrsn=6> checked July 2017

However, committees will usually regard any chiropractor's conviction for child pornography as potentially being a matter of very serious concern, because of the likelihood that it will damage the public's confidence in the profession as a whole.

66. Committees should be mindful that where someone is convicted of or receives a police caution for certain sexual offences<sup>26</sup> they will also be registered on the Sex Offenders' Register.<sup>27</sup> Any conviction relating to child pornography will lead to registration as a sex offender and possible inclusion on the Children's Barred List by the Disclosure and Barring Service. Committees are likely to consider such registration to be a marker of seriousness.
67. The committee is likely to consider that no chiropractor registered as a sex offender following a conviction or caution for a sexual offence should have unrestricted registration. In such cases, if the committee imposes conditions or suspension, it is likely to wish to order a review hearing to be held before expiry of the period of suspension/conditions.
68. If the committee has any significant doubt about whether a chiropractor who is no longer required to register as a sex offender should be permitted to resume unrestricted practice, it should give very careful consideration to all aspects of the over-arching objective, including the need to maintain public confidence in the profession, before deciding whether or not to impose a further sanction.
69. In all cases of serious sexual misconduct it will be highly likely that the only proportionate sanction will be removal from the register. If a committee decides to impose a lesser sanction in such a case, it will need to be particularly careful in explaining its reasons, so that those reasons can be clearly understood by those who did not hear the evidence in the case.

## Dishonesty

70. Dishonesty, even when it does not result in direct harm to patients, is particularly serious because it can undermine the trust the public places in the profession. This includes dishonesty that occurs entirely outside the chiropractor-patient relationship (for example giving false statements or making fraudulent claims for money). The Privy Council has emphasised that:

*"... [Authorities] must be able to place complete reliance on the integrity of practitioners; and the Committee is entitled to regard conduct which undermines that confidence as calculated to reflect on the standards and reputation of the profession as a whole."<sup>28</sup>*

71. Principle B of the Code requires chiropractors to *"act with honesty and integrity and maintain the highest standards of professional and personal conduct."*
72. Specifically, Standard B6 of the Code requires chiropractors to *"avoid placing any undue financial pressure on a patient to commit to any long term treatment that is not justified"*, Standard B7 requires chiropractors to *"fulfil the duty of candour by being open and honest with every patient"*, and Standard B3 requires any advertising information to be *"honest and comply with all advertising codes and standards."*
73. Examples of dishonesty in professional practice could include:
  - a) defrauding a partner in the practice;
  - b) falsifying or improperly amending patient records;
  - c) submitting or providing false references, or inaccurate or misleading information on a CV;

<sup>26</sup> As set out in section 80 Sexual Offences Act 2003

<sup>27</sup> The length of the registration varies depending on the sentence (or caution) imposed.

<sup>28</sup> *Dey v GMC* (Privy Council Appeal No 19 of 2001).

- d) failing to take reasonable steps to ensure that statements made in formal documents are accurate.

74. Research misconduct is particularly serious as it has the potential to have far-reaching consequences. Research misconduct ranges from presenting misleading information in publications through to dishonesty in clinical trials. This behaviour undermines the trust that both the public and the profession have in chiropractic as a science, whether or not this leads to direct harm to individual patients.
75. In all cases of dishonesty, especially when it is denied or persistent or covered up, committees are likely to wish to consider whether any sanction less than removal is appropriate, given the impact of dishonesty on public confidence in the profession.

### Failing to provide an acceptable level of treatment or care

76. Principle A of the Code requires chiropractors to “*put patients’ health first, respect them and ensure you promote their health and welfare at all times.*” Principle C of the Code requires chiropractors to “*uphold the high standards of the chiropractic profession by delivering safe and competent care to each patient*” in all aspects of clinical practice and patient care. Committees are likely to find particularly serious any case where the chiropractor shows a reckless disregard for patient safety or where there is a breach of the fundamental duty of chiropractors to protect the patient from harm.
77. A particularly important consideration in such cases is whether or not a chiropractor has, or has the potential, to develop insight into these failures. If this is not evident, it is likely that conditions of practice or suspension may not be appropriate or sufficient.<sup>29</sup>

## B3. The sanctions

78. There are four sanctions available to the PCC:
- a) Admonishment;
  - b) Conditions of Practice Order;
  - c) Suspension Order;
  - d) Removal from the register.
79. There are two sanctions available to the HC when an allegation against a chiropractor that their ability to practise is seriously impaired because of a physical or mental condition is well founded:
- a) Conditions of Practice Order;
  - b) Suspension Order.

## B4. Admonishment

80. The least restrictive sanction that can be applied by the PCC<sup>30</sup> is an admonishment, which does not directly restrict a chiropractor’s ability to practise. An admonishment 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 committee wants to mark that the behaviour of the chiropractor was unacceptable and must not happen again.

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<sup>29</sup> See *Ghosh v GMC* (Privy Council Appeal No 69 of 2000) and *Garfoot v GMC* (Privy Council Appeal No 81 of 2001).

<sup>30</sup> The HC has no power to impose an admonishment. It may only impose a conditions of practice or suspension order.

81. Admonishments 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 did not and would not have caused direct or indirect patient harm;
- b) evidence of sufficient insight into the matters found proved;
- c) the behaviour was an isolated incident, which was not deliberate;
- d) a genuine expression of regret or apologies;<sup>31</sup>
- e) the chiropractor was acting under duress;
- f) previous good history;
- g) no repetition of the behaviour since the incident;
- h) evidence that effective rehabilitative or corrective steps have been taken.

82. The committee will wish to consider whether it is sufficient to conclude the case with an admonishment, given:

- a) the over-arching objective;
- b) while imposing a sanction may have a punitive effect, that is not the purpose of imposing sanctions;
- c) the reasons for the finding of unacceptable professional conduct, professional incompetence or a criminal conviction.

83. If the committee concludes that it is not sufficient to conclude the case with an admonishment, it will need to move on to consider imposing a more restrictive sanction. If the committee considers that imposing an admonishment will not be sufficient in the circumstances of the case, having regard to the over-arching objective, it must go on to consider imposing a Conditions of Practice Order on the chiropractor's registration (see the next section).

## B5. Conditions of Practice Orders

84. A Conditions of Practice Order requires the chiropractor to comply with certain conditions before they are permitted to resume unrestricted registration. Such an order can be imposed by the PCC or the HC for a period of up to three years in the first instance, and may be extended or further extended for periods of up to three years subsequently at review hearings.

85. The main aim of specific conditions is to protect patients from harm, while allowing the chiropractor to put right any shortcomings in their practice which led to a finding of UPC or professional incompetence and/or to deal with any health issues (depending on the nature of the allegation).

86. The provisions within the Act surrounding the Conditions of Practice Order are slightly different depending on whether the case is being considered by the PCC or the HC.

87. Where imposed by the PCC, a Conditions of Practice Order must specify one or both of the following:

- a) the period for which the order is to have effect;
- b) a test of competence which must be taken by the chiropractor.<sup>32</sup>

<sup>31</sup> As per paragraph 44 the committee is likely to wish to have regard to the timing of any expression of regret or apology

<sup>32</sup> Section 22(5) Chiropractors Act 1994

88. Where imposed by the PCC, a Conditions of Practice Order will end
- a) if a period is specified in the Order, when that period ends;
  - b) if no period is specified but a test of competence is specified, when the chiropractor passes the test; or
  - c) if both a period and a test are specified, when the period ends or when the chiropractor concerned passes the test, whichever happens later.<sup>33</sup>
89. Where the HC imposes a Conditions of Practice Order, it has effect for the term specified in the Order. There is no provision in the Act for the HC to specify a test of competence.<sup>34</sup>
90. Given the nature and purpose of a Conditions of Practice Order, it is likely that any committee imposing such an Order, whether PCC or HC, will wish for it to be reviewed prior to its expiry. This is because the committee will wish to assess whether the chiropractor is fit to resume practice without restriction before the Order expires. In these circumstances, it is necessary for the committee to order a review hearing to be held, so that the committee can assess (in relevant cases) whether:
- a) the chiropractor fully appreciates the gravity of the offence;
  - b) the chiropractor has not reoffended;
  - c) the chiropractor has maintained their skills and knowledge;
  - d) the chiropractor no longer has a mental or physical health condition that is seriously impairing their ability to practise;
  - e) patients will not be placed at risk by the chiropractor's resumption of unrestricted practice or practice with less stringent conditions.
91. If the committee does not consider that a review hearing is necessary, it should clearly explain its reasons in its determination. Providing clear reasons for that decision is particularly helpful if at a later date that decision has to be reconsidered, as set out in paragraph 92 below.
92. Where a committee does not order a review hearing, if a change in circumstances leads the GCC to consider that it is necessary for the sanction to be reviewed, it can request that the committee holds a review hearing at any point before the expiry of the order. The committee's original reasons for not directing a review may be relevant to any decision that is then taken.
93. Where a review hearing has been ordered but circumstances arise which mean the GCC considers that the review hearing should be heard earlier than scheduled the GCC can request that an early review is held.
94. There is more detail about review hearings and the options available to the committee when reviewing a sanction at section D.
95. The objectives of any conditions within a Conditions of Practice Order must be made clear enough for:
- a) the chiropractor to know what is expected of them; and
  - b) the committee at any future review hearing to be able to understand the chiropractor's original shortcomings and the specific actions needed to correct them.
96. Only when the objectives are set out clearly will it be possible to evaluate whether they have been achieved. Any conditions must be:
- a) specific;

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<sup>33</sup> Section 22(6) Chiropractors Act 1994

<sup>34</sup> Section 23(3) Chiropractors Act 1994



- b) appropriate;
- c) proportionate;
- d) workable;<sup>35</sup>
- e) measurable.

97. If the HC has found a chiropractor's fitness to practise to be impaired due to their physical or mental condition, the Conditions of Practice Order should include conditions that relate to medical supervision of the chiropractor, as well as some relating to practice if considered necessary to fulfil the over-arching objective.
98. Generally, it is not appropriate to impose conditions that include a requirement for medical supervision unless the chiropractor's fitness to practise has been found impaired because of their physical or mental health. An exception may be a case where a chiropractor has refused to undergo a health assessment or has a conviction for the possession or use of drugs, or for alcohol abuse.
99. Committees should refer to the GCC's Bank of Conditions when deciding which conditions to impose in any particular case.
100. Before the committee decides on any conditions to be imposed, it should consider inviting any comments from the GCC and the chiropractor concerned about whether or not the proposed conditions will be workable. This is likely to be particularly important if the committee intends to impose conditions requiring workplace supervision. Seeking such comments may mean the committee needs to adjourn for a brief period of time in order to allow the GCC and chiropractor an opportunity for consideration.
101. A Conditions 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 chiropractor'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 undertake, and the potential to respond positively to, further training and assessment (where the allegation does not relate solely to ill-health);
  - e) the chiropractor has insight into any health problems seriously impairing their ability to practise and is prepared to agree to abide by conditions relating to medical condition, treatment and supervision;
  - f) patients will not be put at risk either directly or indirectly as a result of continued registration with conditions;
  - g) the conditions will protect patients during the period they are in force;
  - h) it is possible to formulate appropriate, practicable and assessable conditions to impose on registration.
102. The committee will wish to consider whether it is sufficient to conclude the case with conditions imposed upon registration, given:

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<sup>35</sup> Committees must take care to ensure that the conditions imposed are not so restrictive as to be tantamount to a Suspension Order. In circumstances where a committee is unable to formulate workable conditions that sufficiently protect the public, it is likely to be appropriate instead to consider a Suspension Order

- a) the over-arching objective;
  - b) while imposing a sanction may have a punitive effect, that is not the purpose of imposing sanctions;
  - c) the reasons for the finding of unacceptable professional conduct, professional incompetence, a criminal conviction or impairment by reason of health
103. If the Committee concludes that it is not sufficient to conclude the case with a Conditions of Practice Order it will need to move on to consider imposing a more restrictive sanction.

## B6. Suspension

104. A Suspension Order directs the Registrar to suspend the chiropractor's registration for a period of up to three years. The chiropractor must not practise as a registered chiropractor.
105. Suspension is likely to be appropriate for UPC, professional incompetence or a conviction that is serious, but not so serious as to justify removal from the register. Suspension can be used to send out a signal to the chiropractor, the profession and the public about what is regarded as serious UPC from a registered chiropractor.
106. Suspension is the most restrictive sanction available to the HC.
107. Whether imposed by the PCC or the HC, the length of suspension may be up to three years. The length of a suspension is for the committee to decide on; it must impose the minimum required for protection of the public and the wider public interest in the circumstances of the particular case.
108. In some UPC cases – for example those where there is well-developed insight, remorse, proper remediation and no risk of repetition – it may be self-evident that, following a short suspension there would be no value in a review hearing. However, in most cases where a period of suspension is imposed the committee will need to be reassured that the chiropractor is fit to resume practice – either unrestricted or with conditions – upon the expiry of the Order. In these circumstances, it is necessary for the committee to order for a review hearing to be held in order that the committee can assess whether:
- a) the chiropractor fully appreciates the gravity of the offence;
  - b) the chiropractor has not reoffended;
  - c) the chiropractor has maintained their skills and knowledge;
  - d) the chiropractor no longer has a mental or physical health condition that is seriously impairing their ability to practise;
  - e) patients will not be placed at risk by the resumption of practice or by the imposition of conditional registration.
109. If the committee does not consider that a review hearing is necessary, it should clearly explain its reasons in its determination.
110. Where a committee does not order a review hearing, if a change of circumstances leads the GCC to consider that it is necessary for the sanction to be reviewed, it can request that the committee holds a review hearing at any point before the expiry of the order. The committee's reasons for not directing a review may be helpful in informing any decision.
111. Where a review hearing has been ordered, but circumstances arise which mean the GCC considers that the review hearing should be heard earlier than scheduled, the GCC can request that an early review is held.

112. There is more detail about review hearings and the options available to the committee when reviewing a sanction at section D.
113. Suspension may be appropriate in a case of UPC or incompetence in which the chiropractor currently poses a risk of harm to patients, but where there is evidence that they have gained insight into the deficiencies and there is potential and willingness for them to remedy their shortcomings. This will include cases where a Conditions of Practice Order is not sufficient either to protect patients directly or to meet the other elements of the over-arching objective that relate to maintaining public confidence in the profession and upholding professional standards. In such cases the committee may wish to impose a period of suspension and to make recommendations as to the evidence which the chiropractor may wish to bring to any future review hearing; for example, evidence of further training.
114. 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 Code and, while the UPC concerned is not fundamentally incompatible with continued registration, the breach is so serious that any sanction lower than a suspension would not be sufficient in view of the requirements of the statutory over-arching objective;
  - b) the case involves professional incompetence where there is a risk to patient safety if the chiropractor's registration is not suspended, and the chiropractor demonstrates potential and willingness to remediate their deficiencies and failings;
  - c) there is no evidence of harmful deep-seated personality or attitudinal problems;
  - d) there is no evidence of repetition of similar behaviour since the incident;
  - e) the committee is satisfied the chiropractor has insight and does not pose a significant risk of repeating the behaviour.
115. Suspension Orders may be appropriate when the chiropractor's ill-health impairment is such that the committee is not satisfied that the chiropractor cannot practise safely even if conditions were to be imposed. In such cases, the HC is likely to wish to direct a review hearing in order to ensure that up to date information about the chiropractor's health is available to the reviewing committee to enable it decide whether the chiropractor is then fit to resume practice, either under conditions or unrestricted.
116. Suspension from the register will have a punitive effect, in that it prevents a chiropractor from practising (and therefore earning a living as a chiropractor) during the period of the order. It is also likely to have a longer-term adverse effect on the individual's reputation. The committee will be mindful of the principle of proportionality set out at paragraphs 29-31 - once it determines that a period of suspension is necessary to protect the public, that sanction must be imposed, even where that may have a negative impact on the practitioner. This is necessary so as to fulfil the statutory over-arching objective. Case law has established that it can never be an objection to suspension that the chiropractor may be unable to re-establish his practice when the period has ended.<sup>36</sup>
117. The PCC will wish to consider whether it is sufficient to conclude the case by suspending the chiropractor's registration, given:
- a) the over-arching objective;
  - b) the purpose of imposing sanctions is not to be punitive but to protect patients and the wider public interest;
  - c) the reasons for the finding of unacceptable professional conduct, professional

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<sup>36</sup> *Bolton v Law Society*

incompetence, criminal conviction.

118. If the PCC concludes that it is not sufficient to conclude the case with a suspension, it will need to order the removal of the chiropractor's name from the register.<sup>37</sup>
119. In cases when the PCC or the HC decides to impose a Suspension Order, the committee should also seriously consider whether it needs to impose an Interim Suspension Order in order to protect members of the public during the period until the Suspension Order comes into effect.<sup>38</sup> A Suspension Order does not take effect for 28 days and, if an appeal is lodged, not until the appeal has been decided, during which time the chiropractor would remain on the register and be able to practise if an Interim Suspension Order has not also been imposed.

## B7. Removal from the register

120. This sanction requires the Registrar to remove the chiropractor's name from the register, thus prohibiting that individual from working as a chiropractor in the UK. Removal from the register may well be necessary 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 chiropractor;
  - b) a reckless disregard for the principles set out in the Code and for patient safety;
  - c) doing serious harm to others (patients or otherwise), either deliberately or through incompetence; particularly where there is a continuing risk to patients (see further guidance at paragraphs 76-77 about failure to provide an acceptable level of treatment or care);
  - d) abuse of position of trust;
  - e) violation of a patient's rights or exploiting vulnerable people;
  - f) offences of a sexual nature, including involvement in child pornography (see paragraphs 61-69);
  - g) offences involving serious violence that have resulted in a custodial sentence;.
  - h) dishonesty, especially when it is denied, persistent or covered up (see paragraphs 70-75);
  - i) acting without integrity and abusing professional standing;
  - j) persistent lack of insight into the seriousness of their actions or the consequences.

121. Protection of the public and upholding the public interest are the most important considerations when deciding the appropriate sanction. Lord Bingham, Master of the Rolls, in the case of *Bolton v The Law Society*, stated that:

*"Because orders made by the tribunal are not primarily punitive, it follows that considerations which would ordinarily weigh in mitigation of punishment have less effect on the exercise of this jurisdiction than on the ordinary run of sentences imposed in criminal cases. It often happens that a solicitor appearing before the tribunal can adduce a wealth of glowing tributes from his professional brethren. He can often show that for him and his family the consequences of striking off or suspension would be little short of tragic. Often he will say, convincingly, that he has learned his lesson and will not offend again. On applying for restoration after striking off, all these points may be made, and the former solicitor may also be*

<sup>37</sup>The HC has no power to remove a chiropractor from the register; a Suspension Order is the most restrictive sanction available to it.

<sup>38</sup>Section 24(2) Chiropractors Act 1994

*able to point to real efforts made to re-establish himself and redeem his reputation. All these matters are relevant and should be considered. But none of them touches the essential issue, which is the need to maintain among members of the public a well-founded confidence that any solicitor whom they instruct will be a person of unquestionable integrity, probity and trustworthiness. Thus it can never be an objection to an order of suspension in an appropriate case that the solicitor may be unable to re-establish his practice when the period of suspension is past. If that proves, or appears likely to be, so the consequence for the individual and his family may be deeply unfortunate and unintended. But it does not make suspension the wrong order if it is otherwise right. The reputation of the profession is more important than the fortunes of any individual member. Membership of a profession brings many benefits, but that is a part of the price."*

122. The judgment in *Gupta v The General Medical Council*<sup>39</sup>, which followed the approach set out in *Bolton v The Law Society*, emphasised the General Medical Council's role in maintaining justified confidence in the profession. In particular, it stated that removal was appropriate when, despite a practitioner presenting no risk:

*".. the appellant's behaviour demonstrated a blatant disregard for the system of registration which is designed to safeguard the interests of patients and to maintain high standards within the profession."*

123. In the case of *Bijl v the GMC*, which involved two clinical errors of judgement and mistakes relating to one operation performed by Dr Bijl, the Privy Council stated that [a committee] should not feel it necessary to remove:

*"an otherwise competent and useful doctor who presents no danger to the public in order to satisfy [public] demand for blame and punishment"*

and drew attention to the statement that:

*"honest failure should not be responded to primarily by blame and retribution but by learning and by a drive to reduce risks for future patient ."*

124. There are some examples of misconduct where the Privy Council has upheld decisions to remove health practitioners from registers despite strong mitigation. This has been because it would not have been in the public interest to do otherwise given the circumstances of the case.
125. In cases where the committee decides to remove a chiropractor from the register (that is, imposes a Removal Order), it should also seriously consider whether it is necessary to impose an Interim Suspension Order in order to protect members of the public during the period before the removal takes effect (section 24(2) of the Chiropractors Act 1994 - see section C). A Removal Order does not take effect for 28 days and, if an appeal is made, not until the appeal has been decided, during which time the chiropractor would remain on the register and be able to practise.

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<sup>39</sup> [2002] 1 WLR 1691

## Section C: Interim suspension

126. The committee has the power to order the Registrar to suspend the registration of a chiropractor with immediate effect where it decides to suspend or remove the chiropractor from the register, if it is satisfied that this is necessary to protect members of the public.<sup>40</sup> This prevents the chiropractor from practising during the 28 day period in which they can appeal the sanction and until any appeal has been decided. This is called an Interim Suspension Order (ISO).
127. Chiropractors or their representatives sometimes argue that no ISO should be made, as the chiropractor needs time to make arrangements for the care of their patients before the substantive order for suspension or removal from the register takes effect. In considering such arguments, the committee will need to bear in mind its reasons for imposing a particular sanction, and that the purpose of Interim Suspension Orders is to protect the public and the wider public interest. The committee will also wish to take account of the fact that any chiropractor whose case is being considered by a committee will have been aware of the date of the hearing for some time so should have had sufficient time to plan for the possibility of a Suspension Order or Removal Order (and ISO) being made.
128. In practice, it is arguable that, if it is considered necessary to suspend or remove a chiropractor from the register, interim suspension should always be considered as a logical step to protect the public during the period in which the chiropractor may appeal the sanction. The decision about whether or not to impose an Interim Suspension Order is one that the committee will approach based on the individual facts of the case.

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<sup>40</sup> Section 24 [Chiropractors Act 1994](#).

## Section D: Review hearings

129. As already set out at paragraphs 90 and 108, when a committee decides that a period of registration with conditions or suspension is appropriate, it will normally order that a review hearing be held, because the committee will want to ensure that the chiropractor is fit to resume practice before the order lapses.
130. It is important that no chiropractor should be allowed to resume unrestricted practice following a period of conditional registration or suspension unless the committee considers that they are safe to do so. The committee will need to be reassured that the chiropractor is fit to resume practice either unrestricted, or with conditions, or further conditions. The committee will also need to satisfy itself (as relevant) that:
- a) the chiropractor has fully appreciated the gravity of the offence;
  - b) the chiropractor has not reoffended;
  - c) the chiropractor has maintained their skills and knowledge;
  - d) the chiropractor's ability to practise is no longer seriously impaired by a mental or physical condition; and
  - e) patients will not be placed at risk by resumption of practice or by the imposition of conditional registration.
131. In cases where the chiropractor was required to register as a sex offender following a conviction or caution for a sexual offence, at any review hearing the reviewing committee is likely to wish to take into account the following factors:
- a) whether the registration requirement has ceased;
  - b) the seriousness of the original offence;
  - c) evidence about the chiropractor's response to any treatment programme they have undertaken;
  - d) the level of insight shown by the chiropractor into the seriousness of their previous actions;
  - e) the likelihood of the chiropractor re-offending;
  - f) any possible risk to patients and the wider public if the chiropractor is allowed to resume unrestricted practice;
  - g) any possible damage to public confidence in the profession if the chiropractor is allowed to resume unrestricted practice;
  - h) whether any risk to patients and the wider public could be adequately managed by the placing of restrictions on the chiropractor's registration.
132. The committee should consider whether the chiropractor has produced any information or objective evidence on these matters.
133. The options available to a committee at a review hearing vary depending on whether the case is before the HC or the PCC and the order being reviewed.
134. At any time when a Conditions of Practice Order is in force, the PCC may (whether or not of its own motion):
- a) extend, or further extend, the period for which the order has effect;

- b) revoke or vary any of the conditions;
  - c) require the chiropractor to pass a test of competence specified by the Committee;
  - d) reduce the period for which the order has effect; or
  - e) revoke the order.<sup>41</sup>
135. Where the PCC extends or reduces the Conditions of Practice Order, or specifies a test of competence, as described in paragraph 84 above, the order will have effect as if:
- a) the period specified in the Conditions of Practice Order was the extended or reduced period; and
  - b) a test of competence was specified in that Order.
136. Where the HC has imposed a Conditions of Practice Order, at any time the Order is in force, it may (whether or not of its own motion):
- a) extend, or further extend, the period for which the Order has effect; or
  - b) make a Suspension Order.<sup>42</sup>
137. On the application of the chiropractor with respect to whom a Conditions of Practice Order is in force the HC may:
- a) revoke the Order;
  - b) vary the Order by reducing the period for which it has effect; or
  - c) vary the Order by removing or altering any of the conditions.<sup>43</sup>
138. Where a chiropractor makes an application to the HC as described in paragraph 137, and the application is refused, the HC will not entertain a further such application unless it is made after the end of the period of twelve months beginning with the date on which the previous application was reviewed by the committee.
139. Where the PCC has imposed a Suspension Order, at any time while that Order is in force, the PCC may (whether or not of its own motion):
- a) extend, or further extend, the period of suspension; and
  - b) make a Conditions of Practice Order with which the chiropractor must comply if they resume the practice of chiropractic after the end of the period of suspension<sup>44</sup>.
140. Where the HC has imposed a Suspension Order, at any time while that Order is in force, the HC may (whether or not of its own motion):
- a) extend, or further extend, the period of suspension;
  - b) replace the order with a Conditions of Practice Order having effect for the remainder of the period of suspension; or
  - c) (c) make a Conditions of Practice Order with which the chiropractor must comply if they resume the practice of chiropractic after the end of the period of suspension.<sup>45</sup>
141. On the application of the chiropractor with respect to whom the Suspension Order is in force, the HC may:
- a) revoke the Order;

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<sup>41</sup> Section 22(7) Chiropractors Act 1994

<sup>42</sup> Section 23(4) Chiropractors Act 1994

<sup>43</sup> Section 23(6) Chiropractors Act 1994

<sup>44</sup> Section 22(9) Chiropractors Act 1994

<sup>45</sup> Section 23(5) Chiropractors Act 1994



b) vary the Order by reducing the period for which it has effect.<sup>46</sup>

142. Where a chiropractor makes an application as described in paragraph 141, which is refused, the HC shall not entertain a further such application unless it is made after the end of the period of twelve months beginning with the date on which the previous application was reviewed by the HC.
143. At review hearings, the committee will need to consider and make a finding as to whether the chiropractor has complied or failed to comply with any conditions imposed at the previous hearing (giving reasons for its decision). The committee must do this before deciding whether or not to impose a further order.
144. If a review hearing cannot be finished before the end of the period of conditional registration or suspension, the committee may extend that period for a further short period. This is to allow for a review hearing to continue as soon as practicable, while keeping the conditions or suspension in force until the outcome. The committee should ask both parties to confirm when they will be ready to resume the hearing, and take that into account when deciding on the period of extension.
145. Where a reviewing committee imposes a further sanction, it should consider whether or not to direct a further review hearing be held. In most cases a further review hearing will be necessary, because the committee will again want to check the chiropractor's compliance with the order before it expires. Where a committee decides not to direct a review hearing be held, it must give reasons to make it clear that the matter has been considered, and explain the basis of the decision not to direct that a review hearing be held.

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<sup>46</sup> Section 23(6) Chiropractors Act 1994

## Appendix A: Checklist of sanctions and relevant factors

### Admonishment

1. Admonishments 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 did not and would not have caused direct or indirect patient harm;
  - b) evidence of sufficient insight into the matters found proved;
  - c) the behaviour was an isolated incident, which was not deliberate;
  - d) a genuine expression of regret or apologies;<sup>47</sup>
  - e) the chiropractor was acting under duress;
  - f) previous good history;
  - g) no repetition of the behaviour since the incident;
  - h) evidence that effective rehabilitative or corrective steps have been taken;
  - i) relevant and appropriate references and testimonials.
2. The committee will wish to consider whether it is sufficient to conclude the case with an admonishment, given:
  - a) the over-arching objective;
  - b) while imposing a sanction may have a punitive effect, that is not the purpose of imposing sanctions;
  - c) the reasons for the finding of UPC, professional incompetence or a criminal conviction.
3. If the committee concludes that it is not sufficient to conclude the case with an admonishment, it will need to move on to consider imposing a more restrictive sanction.

### Conditions of Practice Order

4. A Conditions 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 chiropractor'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 undertake, and the potential to respond positively to, further training and assessment (where the allegation does not relate solely to ill-health);
  - e) the chiropractor has insight into any health problems seriously impairing their ability to practise and is prepared to agree to abide by conditions relating to medical condition,

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<sup>47</sup> As per paragraph 44 the committee is likely to wish to have regard to the timing of any expression of regret or apology

treatment and supervision;

- f) patients will not be put at risk either directly or indirectly as a result of continued registration with conditions;
  - g) the conditions will protect patients during the period they are in force;
  - h) it is possible to formulate appropriate, practicable and assessable conditions to impose on registration.
5. The committee will wish to consider whether it is sufficient to conclude the case with conditions imposed upon registration, given:
- a) the over-arching objective;
  - b) while imposing a sanction may have a punitive effect, that is not the purpose of imposing sanctions;
  - c) the reasons for the finding of UPC, professional incompetence, a criminal conviction or impairment by reason of health
6. If the Committee concludes that it is not sufficient to conclude the case with a Conditions of Practice Order it will need to move on to consider imposing a more restrictive sanction.

## Suspension

7. Suspension may be appropriate in a case of UPC or incompetence in which the chiropractor currently poses a risk of harm to patients, but where there is evidence that they have gained insight into the deficiencies and there is potential and willingness for them to remedy their shortcomings. This will include cases where a Conditions of Practice Order is not sufficient either to protect patients directly or to meet the other elements of the over-arching objective that relate to maintaining public confidence in the profession and upholding professional standards. In such cases the committee may wish to impose a period of suspension and make recommendations as to the evidence which the chiropractor may wish to bring to any future review hearing; for example, evidence of further training.
8. 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 Code and, while the unprofessional conduct concerned is not fundamentally incompatible with continued registration, the breach is so serious that any sanction lower than a suspension would not be sufficient in view of the requirements of the statutory over-arching objective;
  - b) the case involves professional incompetence where there is a risk to patient safety if the chiropractor's registration is not suspended, and the chiropractor demonstrates potential and willingness to remediate their deficiencies and failings;
  - c) there is no evidence of harmful deep-seated personality or attitudinal problems;
  - d) there is no evidence of repetition of similar behaviour since the incident;
  - e) the committee is satisfied that the chiropractor has insight and does not pose a significant risk of repeating the behaviour.
9. Suspension Orders may be appropriate when a chiropractor's ill-health impairment is such that the committee is not satisfied that the chiropractor can practise safely, even if conditions are imposed. In such cases, the HC is likely to wish to direct a review hearing be held, in order to ensure that up to date information about the chiropractor's health is available to the reviewing

committee to enable it decide whether the chiropractor is then fit to resume practice, either under conditions or unrestricted.

10. The PCC will wish to consider whether it is sufficient to conclude the case with registration being suspended, given:
- a) the over-arching objective;
  - b) the purpose of imposing sanctions is not to be punitive but to protect patients and the wider public interest;
  - c) the reasons for the finding of UPC, professional incompetence or a criminal conviction.
11. If the PCC concludes that it is not sufficient to conclude the case with a Suspension Order, it will need to order the removal of the chiropractor's name from the register.<sup>48</sup>

## Removal from the register

12. This sanction requires the Registrar to remove the chiropractor's name from the register, thus prohibiting that individual from working as a chiropractor in the UK. Removal from the register may well be necessary 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 chiropractor;
  - b) a reckless disregard for the principles set out in the Code and for patient safety;
  - c) doing serious harm to others (patients or otherwise), either deliberately or through incompetence; particularly where there is a continuing risk to patients (see further guidance at paragraphs 76-77 about failure to provide an acceptable level of treatment or care);
  - d) abuse of a position of trust;
  - e) violation of a patient's rights or exploiting vulnerable people;
  - f) offences of a sexual nature, including involvement in child pornography (see paragraphs 61-69);
  - g) offences involving serious violence that have resulted in a custodial sentence.
  - h) dishonesty, especially when it is denied, persistent or covered up (see paragraphs 70-75);
  - i) acting without integrity and abusing professional standing;.
  - j) persistent lack of insight into the seriousness of their actions or the consequences.
13. In cases where the committee decides to remove a chiropractor from the register (that is, imposes a Removal Order), it should also seriously consider whether it is necessary to impose an Interim Suspension Order in order to protect members of the public during the period before the removal takes effect (section 24(2) of the Chiropractors Act 1994 - see section C). A Removal Order does not take effect for 28 days and, if an appeal is made, not until the appeal has been decided, during which time the chiropractor would remain on the register and be able to practise.

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<sup>48</sup>The HC has no power to remove a chiropractor from the register; a Suspension Order is the most restrictive sanction available to it.