



# **Indictive Sanctions Guidance**

# BRITISH/ PSYCHOANALYTIC /COUNCIL

## About Us

1. The British Psychoanalytic Council (BPC) is the UK's leading professional association and accredited public register for psychoanalytic psychotherapy. The BPC is a voluntary accredited register; registering psychoanalytic psychotherapists and psychodynamic psychotherapists and is accredited by the Professional Standards Authority (PSA).
2. The core functions of the BPC are to:
  - Set and maintain standards of practice and conduct;
  - Maintain a register of qualified psychoanalytic and psychodynamic psychotherapists ('Registrants');
  - Assure the quality of education and training provided to Registrants by their Registrant Institutions;
  - Require Registrants to keep their skills up to date through continuing professional development;
  - Consider and investigate complaints and concerns of a Fitness to Practise nature raised against Registrants and issue sanctions, where appropriate to protect the public, act in the public interest and uphold the standards of the profession and maintain public confidence in the profession.
3. The BPC's Council of Registrant Institutions ('MI') agreed to the introduction of a centralised Complaints Procedure in 2007 and conferred the responsibility for considering complaints raised against Registrants to the BPC.

## About this document

4. The purpose of this document is to provide guidance to the Fitness to Practice Committee ('the Committee') who are considering what sanction, if any, to impose against a Registrant who has been found impaired.
5. This guidance is intended to assist the Committee to make fair, consistent and transparent decisions. This guidance also provides all parties, Registrants, and members of the public with insight into the Committee's approach when considering the imposition, and appropriateness of a sanction.
6. The sanctions available to the Committee are as follows:
  - a. Reprimand;
  - b. Conditions, to be met within a specific time;
  - c. Suspension for up to 12 months;
  - d. Termination of registration;

7. In addition to the above, and where relevant, the Committee can also direct the following action be taken against a Registrant:
  - a. Removal of the Registrant from the Membership of a committee, sub-committee, working group, party or any other body of the BPC or a BPC MI for a period to be determined by the Committee but for no longer than 3 years.
  - b. Require the Registrant to stop training, teaching, supervising, or carrying out any other activity on behalf of the BPC or the MI for a specific period of time but for no longer than 3 years.
8. The Committee can also direct that a review Hearing take place before the end of the order to consider whether the Registrant is still currently impaired.

### **Purpose of Sanctions**

9. The purpose of a sanction is to protect the public and to safeguard public interest by improving a Registrant's practice and to remedy any shortcomings. Sanctions can also be put in place to protect the Registrant, but this will only happen in rare circumstances. Sanctions are not intended to be punitive.
10. The Committee may issue a sanction(s) against a Registrant where it has been identified that a Registrant's practice has fallen below the professional standards expected of them. Where a risk to the public is identified, the Committee must then determine what degree of public protection is required, ensuring that it is both proportionate to remedy the shortcomings identified and sufficiently protects the public.
11. In some cases, even where a Committee is satisfied that the conduct of a Registrant has fallen below the professional standards expected, the Committee does not have to impose a sanction. This might happen, for example, if a Registrant has already remedied the shortcoming.
12. Where the Committee has found that a sanction is necessary to maintain the public interest, the Committee will have to consider the seriousness of the Registrant's actions and the need to uphold the high standards of the profession.

### **Protecting the Public**

13. When considering the need to protect the public, the Committee will need to consider:
  - The protection of the safety and wellbeing of the Complainant, patients and the wider public;
  - The need to promote high professional standards in the profession;
  - Promoting and maintaining proper professional standards and conduct for Registrants of the profession;
  - The deterrent effect to other Registrants, and the importance of clear regulation in the profession;

### **Public Interest**

14. When considering the need to uphold the public interest, the Committee will need to consider:

- Whether the conduct is serious that it needs to be marked, and whether action needs to be taken to maintain good regulation of the profession;
- Whether the wider public interest would be undermined if a finding of no impairment was made in the particular circumstances;

### **Seriousness**

15. The Committee will need to consider the seriousness of the conduct. The Committee will consider whether there are serious concerns in these three categories:

- Concerns which are more difficult to put right than a standard complaint;
- Concerns that could result in serious harm to patients if not put right;
- Concerns based on the need to protect public confidence in the profession with could seriously be undermined if not put right;

16. Each case will depend on its facts, and these factors should be considered in the context of the case.

### **Assessing Sanctions**

17. In deciding whether a sanction is appropriate and proportionate, the Committee may have regard to:

- Whether the Registrant has admitted to, and apologised for the behaviour which led to the complaint;
- Whether the Registrant has shown insight and remorse into their own behaviour or practice and taken steps to address any deficiencies through appropriate training, coaching or similar;
- What steps, if any, the Registrant has taken to remedy the practice or behaviour that is the subject of the complaint;
- The Registrant's previous Fitness to Practise history;
- Any relevant personal or professional issues raised by the Registrant or the Complainant;
- The time that has passed since the incident took place;
- Whether the Registrant knew, or reasonably should have known that their actions or omissions did or could have caused harm to the Complainant;
- The seriousness of the harm suffered by the Complainant and the extent to which that was caused by the Registrant's actions or omissions;
- Whether the Registrant is likely to repeat or compound that wrongdoing;
- The impact the misconduct may have on public confidence in the profession;
- Any public interest factors;
- Whether the Registrant discriminated against the complainant on the basis of race, gender, religion, sexual orientation, gender reassignment, marital status, age, disability, or any other characteristic protected by law;
- Any other circumstance which could reasonably be seen as a mitigating factor;
- Any other circumstance which could reasonably be seen as an aggravating factor;

18. It is for the Committee to decide which factors to consider and how much weight to attach to each factor. The above list is not exhaustive. The Committee may give regard to specific factors which relate to a specific category of complaint.

## **Breach of Confidentiality**

19. Confidentiality is a fundamental tenet of the profession. It should only be breached if there is a risk of harm to an individual. The risk must be clear and serious.
20. It is important that Registrants do everything they can to protect and develop patients' trust, and maintaining confidentiality is a fundamental part of this. The Committee should take care when deciding what sanction is appropriate to remedy a proven breach of confidentiality.
21. In making its decision, a Committee may wish to consider:
  - The reason or reasons for the breach;
  - Whether there is evidence to suggest a lack of understanding and training in matters of confidentiality;
  - Whether there appears to have been any purposeful intent behind the breach;
  - Any evidence of remorse or insight on the part of the Registrant.

## **Breach of Boundaries**

22. It is a Registrants responsibility to maintain clear boundaries with their patients at all times.
23. Registrants must establish and maintain appropriate professional and personal boundaries in their relationship with patients. It is the Registrants responsibility to maintain these boundaries and any breach of these boundaries is a serious breach of the Ethical Framework.
24. Boundaries may be breached in a number of ways during a therapeutic relationship, and some are more serious than others. For example, excessive out of session contact through to an inappropriate and/or sexual and/or emotional relationship with a patient.
25. In some instances, breaches of professional boundaries could be due to a lack of experience or training around maintaining boundaries. In such circumstances, an appropriate and suitable sanction may be a requirement to undertake specific training. The public interest should be considered in these matters and the need to maintain public confidence in the profession.
26. However, in some cases the boundary breach may be considered so serious as to warrant an alternative sanction. For example, where the evidence suggests the breach was intentional and/or caused serious harm to the patient, the Committee may consider suspending or withdrawing registration. Any breach that involves motives of sex or money will usually fall under this category.
27. When considering the most appropriate sanction the Committee should consider:
  - The way in which the breach occurred;
  - The surrounding circumstances of the breach;
  - The Registrant's supervisory arrangements at the time of the breach;
  - Whether there was a lack of knowledge or understanding leading to the breach;
  - Whether there appears to be any other motive;
  - The impact and harm caused to the patient;

- The need to protect the public.

### **Cases Involving Dishonesty**

28. Registrants are expected to maintain high standards of honesty and integrity in all aspects of their work and to act in the best interest of their patients. This is particularly important as patients will often be vulnerable and place particular trust in the Registrants.
29. Where there is evidence that a Registrant has acted dishonestly, the most likely sanction would be withdrawal of registration. On deciding the appropriate sanction, a Committee should consider the following factors which make the conduct more serious:
- Deliberately breaching the professional Duty of Candour by covering up when things have gone wrong, especially if it could cause harm to patients;
  - The misuse of power;
  - The vulnerability of victims, especially the patient(s);
  - Personal financial gain from a breach of trust;
  - Direct risk to a patient;
  - Premeditated, systematic or longstanding deception;
  - The position of trust the Registrant was in at the time of the conduct
30. Dishonest conduct will generally be less serious in cases of:
- One-off incidents;
  - Opportunistic or spontaneous conduct;
  - No direct personal gain;
  - No risk of harm to patients.

### **Sexual Misconduct**

31. Registrants should not have sexual relationships with or behave sexually towards their patients, supervisees, or trainees. Where sexual misconduct has been found, the resulting sanction will almost always be suspension or withdrawal of registration as such conduct seriously jeopardizes public confidence in the profession.
32. If a Committee considers imposing a lesser sanction, it must give sufficiently detailed reasons for doing so to allow the public, who have not heard all the evidence, to easily understand their reason(s) for doing so. There will usually be exceptional circumstances for a Committee to do this.
33. In deciding whether a suspension or withdrawal of registration is the appropriate sanction, a Committee must consider:
- The risk to public protection if the Registrant were to remain on the Register;
  - The position of trust the Registrant was in at the time of the conduct;
  - The vulnerability of the client;
  - Whether the misconduct was a one-off incident or prolonged;
  - Whether deliberate steps were taken by the Registrant to facilitate the sexual misconduct;
  - Whether the Registrant has demonstrated insight into their misconduct and any steps to address their behaviour;

34. Where the sexual relationship was with a former patient, the Committee should also consider:
- The time that has passed since the therapeutic relationship and whether that time is considered reasonable in all the circumstances;
  - The vulnerability of the former patient;
  - The impact of the relationship on the patient's well-being
35. It is for the Committee to decide whether the passage of time since being in a therapeutic relationship is reasonable or not, and the Committee should consider whether there has been sufficient time for the patient to achieve proper closure.
36. As a guiding principle in deciding this, the Committee should weigh up the length of the therapeutic relationship against the passage of time between the ending of the therapeutic relationship and the start of the personal relationship.
37. The Committee should also consider any other relevant factors that inform the question of what a reasonable passage of time is.

### **Criminal Convictions or Cautions**

38. In the Criminal Courts, one of the purposes of sentencing is to punish people for offending. When making its decision passing sentence, the Criminal Courts will look carefully at the personal circumstances of the offender.
39. In contrast, the purpose of the Committee when deciding a sanction in a case about criminal offences is to achieve the overarching objective of public protection. When doing so, the Committee will think about promoting and maintaining the health, safety and wellbeing of the public, public faith in the profession and professional standards.
40. The Committee's purpose is not to punish the Registrant for a second time. Because of this, the sentence passed by the Criminal Court is not necessarily a reliable guide to how seriously the conviction affects the Registrant's Fitness to Practise. Therefore, the personal circumstances or mitigation of the Registrant is less likely to help the Committee when making a sanction decision than it would have been to the Criminal Court.
41. Cases about criminal offending by a Registrant illustrate the principle that the reputation of the profession is more important than the fortunes of any individual member of those professions. Being a registered professional brings many benefits, but this principle is part of the price of being a professional.
42. Where a Registrant is still serving a criminal sentence, the Committee should consider:
- The fact that a Registrant is convicted of a serious offence is still serving their sentence (even if on probation); and
  - Whether the Registrant should be able to restart their professional practice before they have completed their sentence.
43. In general, the rule is that a Registrant should not be permitted to start practising again until they have completed a sentence for a serious offence.

## **Decisions of Another Regulator**

44. As with Criminal Convictions and Cautions above, the purpose of decisions of another regulator cases are not to punish the registrant a second time for the offence committed. Decisions of another regulator should be considered in the same way as a decision of a Court of law unless there are exceptional circumstances.
45. The purpose is to consider whether the Registrant's Fitness to Practise is impaired and, if so, whether there is a need to impose a sanction in order to protect the public, or in the wider public interest, for example, to maintain public confidence in the profession. If a sanction has been imposed by another regulator, it would only be in rare and exceptional circumstances that it was not at least in the public interest to impose a sanction on the Registrant.
46. Where a Registrant is still subject to a sanction by another regulator body, the Committee is obliged to consider this fact when considering the sanction. This should be considered particularly in relation to conditions, as there should be limited overlap, though there should still be oversight from the BPC.
47. The fact that sanctions are in place by another regulator should not stop, in any way sanction's being put in place by the BPC.

## **Aggravating and Mitigating Factors**

48. When considering sanction, the Committee will consider the type of offence and the factors set out above. The Committee will also have to consider the Aggravating and Mitigating factors. The Committee should also consider the effects of the sanction they will impose, and the need to be proportionate.

### ***Aggravating Factors***

49. Aggravating factors may increase the impact of a Registrant's conduct and so may lead to a harsher sanction than might otherwise have been imposed.
50. For example, a Registrant's poor behaviour and lack of cooperation throughout the Fitness to Practise process might be considered by the Committee as an aggravating factor. In addition, and where the Committee finds that a Registrant has abused their position of trust or where the patient is particularly vulnerable, the Committee may also consider these to be aggravating factors.
51. If an Interim Suspension/Conditions Order was imposed, the Committee should not apply much weight to this as that Committee does not make findings of fact when imposing an Interim Order. However, where there was a breach of the terms of an Interim Suspension or Conditions, the Committee may take this into account. This may assist the Committee in assessing a Registrant's insight, their overall approach to the Fitness to Practise process and whether they are likely to comply with any sanctions given.
52. The Committee should also consider the Registrant's previous Fitness to Practise history with the BPC and other regulators. A lack of a history is not a mitigating factor. A history of issues with regulators and criminal convictions or cautions should be treated as a very serious aggravating factor.



### ***Mitigating Factors***

53. The Committee needs to consider and balance any mitigating factors presented by the Registrant against the aim of sanctions. The Committee is less able to take mitigating factors into account when the concern is about public safety or is of a more serious nature.
54. Mitigation may include evidence from the Registrant of their insight into the proven misconduct, and any learning they have demonstrated. A Committee may also consider any attempts the Registrant may have made to address the wrongdoing, for example, admitting their conduct early on, apologising to the complainant and demonstrating remorse for their actions.
55. A Committee could also consider a Registrant's, otherwise, good practice; for example, references and demonstrable evidence of appropriate supervision and continuing professional development. Other personal mitigating factors such as mental or physical ill-health and hardship, may also be considered.
56. The Committee may also consider the time that has lapsed since the conduct occurred. In addition, the Registrant's level of training and experience at the time the conduct took place, compared to their current experience, may also be a mitigating factor.

### **Applicable sanctions**

57. In deciding what sanction, if any, to impose the Committee should consider the sanctions available, starting with the least restrictive.

### ***Reprimand***

58. A written reprimand is the least serious of the BPC's sanctions in that it is the least restrictive.
59. Reprimands are only appropriate if the Committee has decided there is no risk to the public or to patients requiring a Registrant's practice to be restricted. This means that the case is at the lower end of the spectrum of impaired Fitness to Practise, however the Committee wants to mark the behaviour as being unacceptable and must not happen again.
60. Because a reprimand doesn't affect a Registrant's practise, the Committee will always need to ask itself if its decision about the Registrant's Fitness to Practise indicated any risk to patient safety.
61. If it did, the Committee will then have to ask themselves whether a Reprimand will be enough to protect the public, given that it would allow the Registrant to continue to practise without any restriction.

### ***Conditions to be met in a specific time***

62. The key consideration for the Committee, before making this order, is whether conditions can be put in place that will be sufficient to protect patients, and if necessary,

address any concerns about public confidence or proper professional standards and conduct.

63. Conditions may be appropriate when some or all of the following factors are apparent (this list is not exhaustive):

- No evidence of harmful deep-seated personality or attitudinal problems;
- Identifiable areas of practice in need of review and/or retraining;
- No evidence of general incompetence;
- Potential and willingness to respond positively to training;
- Insight into any health problems and the Registrant is prepared to abide by conditions on medical condition, treatment, and supervision;
- Patients will not be put in danger either directly or indirectly as a result of the conditions;
- The conditions will protect patients during the period they are in force;
- Conditions can be created that can be monitored and assessed.

64. To make sure conditions of practice achieve their aim of public protection, in a way that's fair to the Registrant, they should be relevant, proportionate, workable and measurable.

65. Relevant means that the conditions should relate to and address the concerns that led to the Committee deciding that the Registrant's Fitness to Practise is impaired. Whilst proportionate means that the conditions must be no more restrictive than necessary to protect the public and uphold confidence in the profession. They must strike a fair balance between the interests of the Registrant and the public interest. This also includes public protection and public confidence. There is also a public interest in Registrant being allowed to practise their profession in a safe manner.

66. Workable means that it must be possible for the Registrant to comply with the conditions. Any conditions imposed should be realistic and practical for a Registrant to comply with. They should not have the effect of amounting to a complete restriction on the Registrant's ability to practise. It is inevitable that conditions may have the effect of making it more difficult to obtain employment, but this does not mean that the conditions are unworkable. Measurable means that it must be possible to assess objectively whether or not the Registrant has complied with each condition.

67. The conditions must be clear and unambiguous. The question of whether the Registrant has complied with the condition should be capable of being answered 'yes' or 'no'. If the question is capable of being answered '*it depends...*', then the condition is not measurable because it is not specific enough.

68. The conditions should also ensure that, where necessary, the Registrant is under an obligation to provide the BPC with sufficient information, in sufficient time, to allow the Committee at a review Hearing to properly consider whether the Registrant has complied with the condition(s).

69. An order of conditions should be easy to read and understand as a stand-alone document, without referring to any other document so with this in mind, when drafting conditions, the Committee should:

- Use plain English - Avoid complicated words when simple ones are available. For example, use 'before', not 'prior to', 'start', not 'commence'.
- Avoid jargon or technical terms - If it is necessary to use clinical terms, these should be defined clearly in a way that can be understood by a lay person.
- Use unambiguous language - If a term is used that is capable of being interpreted in different ways by different Committees, the Committee must provide a clear definition of what it means by that term.
- Express times and dates clearly - Times and periods of the order must be specified, for example 'weekly', 'on the first day of each month', or 'once every three months' instead of 'regularly', and 'within x days' instead of 'promptly'.
- Know when the order takes effect - It is important that Committees and Registrants understand when conditions take effect, and this is clearly reflected in the order.

70. For example, 'supervision' is a term that is capable of being interpreted differently by different people. Among other things, it could mean:

- Having regular meetings with a supervisor to discuss clinical issues and cases on a 1:1 basis;
- Working with a supervisor at the other end of a telephone if required;
- Working with a supervisor who is physically present some, but not all of the time;
- Being observed at all times by a supervisor;
- Presenting your cases to a supervisor during a peer supervision group.

71. Accordingly, if a committee considers there should be a degree of supervision or oversight of the Registrant's work, it must specify precisely the extent of that oversight.

### **Suspension of registration for up to 12 months**

72. Where there is a finding of professional misconduct, a Committee may consider that suspension of the Registrant is appropriate. Whilst the intention of imposing sanctions is not to punish the Registrant, suspension may be punitive in nature as it may affect the Registrant's ability to practise their profession. Therefore, a Committee must carefully balance the interests of the Registrant with the duty to protect the public and the profession.

73. The intention of suspension is that the experience will help the Registrant to be more careful in future practice and will encourage compliance with the required standards. This purpose is achieved for a longer period, or possibly indefinitely, by withdrawing registration.

74. Suspension may be appropriate even where the Registrant does not present a risk to public safety, but where this action is necessary to maintain public confidence in the profession. Suspension of registration is a deterrent and may be used to send a

message not just to the Registrant but to the public and the profession about what is expected of our Registrants.

75. A Committee may consider suspending registration, where it does not consider that the alternative sanctions are sufficient to protect the public and are unlikely to address the breach of professional standards, but where withdrawal of registration would be disproportionate.
76. Where it is apparent that a Registrant is not currently safe to practise, a Committee may wish to suspend registration until the Registrant has met other conditions, such as a requirement to complete additional training. A suspension from registration will not take effect until the 28-day appeal period has passed.

### **Withdrawal of registration**

77. Withdrawal of registration from BPC means that a Registrant's name is removed from the BPC's registration, and consequently, a Registrant's registration. This means they are not permitted to practise counselling or psychotherapy under the auspices of BPC.
78. Withdrawal of registration is the most serious sanction, and it will usually be appropriate where a Committee has upheld allegations of serious Professional Misconduct. This might include conduct which was of a dishonest and/or exploitive nature. A Committee must withdraw Registration where it considers that the other sanctions available are not sufficient to protect the public.
79. Withdrawal may also be appropriate even where the Registrant does not present a risk to public safety, but where this action is necessary to maintain public confidence in the profession. Withdrawal of registration may be used to send a message not just to the Registrant but to the public and the profession about what is expected of our Registrants and the profession.
80. The following factors and behaviours may indicate that withdrawal of registration is an appropriate sanction:
  - Where the Registrant has knowingly and deliberately behaved in a way to cause harm to the Complainant/Patient(s) or other Registrants or the public;
  - Where the Registrant has been dishonest or lacked integrity;
  - Where the complaint involves sexual misconduct;
  - Where the Registrant has shown a blatant disregard for professional standards;
  - Where the Registrant has abused their position or another's trust;
  - Where the harm to the complainant is particularly severe;
  - Where the Registrant has shown a complete lack of insight into, or remorse for, their behaviour;
  - Where the Registrant has demonstrated an unwillingness to comply with BPC's policies and procedures;
  - Any other factors which the Committee consider warrant withdrawal of registration;
81. The Committee must clearly state the reasons for its decision to withdraw registration, where there are public protection issues. Withdrawal from registration will not take effect until the 28-day appeal period has passed.

## **Publication and Notification**

82. The BPC acts in the public interest to uphold standards of professional conduct and practice to protect the public and maintain public confidence in the profession. The decision of the Committee will be published in line with the BPC's publication policy which is available here: [www.bpc.org.uk/regulation/fitness-to-practise-hearings/](http://www.bpc.org.uk/regulation/fitness-to-practise-hearings/)