

Indicative Sanctions Policy

1. Introduction

1.1 This document produced by BAPT to be used in conjunction with its Professional Conduct Policy. It is for use by members of its Professional Conduct Panels when deciding whether to impose sanctions on a registrant in cases where the panel is satisfied that the registrant is not suitable to remain on BAPT register without any restrictions or conditions.

1.2 The decision as to whether a sanction should be imposed on a registrant whose fitness to practice has been found to be impaired is properly a matter for the Panel which heard the case. Panels operate independently from the BAPT Board and it would be inappropriate for the Board to seek to establish a fixed 'tariff' of sanctions.

2. The purpose of sanctions

2.1 The purpose of fitness to practice proceedings is not to punish registrants, but to protect the public. Inevitably, a sanction may be punitive in effect, but should not be imposed simply for that purpose. The Panel's task is to determine whether, on the basis of the evidence before it, the registrant's fitness to practice is impaired. In effect, the task is to consider a registrant's past acts, determine whether the registrant's fitness to provide professional services is below accepted standards and to consider whether he or she may pose a risk to those who may need or use his or her services in the future. Where such a risk is identified, the Panel must then determine what degree of public protection is required.

2.3 It is important for Panels to remember that a sanction may only be imposed in relation to the facts which a Panel has found to be true or which are admitted by the

registrant. Equally, it is important that any sanction addresses all of the relevant facts which have led to a finding of impairment.

2.4 The primary function of any sanction is to address public safety from the perspective of the risk which the registrant concerned may pose to those who use or need his or her services. However, in reaching their decisions, Panels must also give appropriate weight to the wider public interest, which includes:

- the deterrent effect to other registrants;
- the reputation of the profession concerned; and
- public confidence in the regulatory process.

This guidance is intended to aid panels in their deliberations and assist them in making fair, consistent, and transparent decisions.

2.5 If further action is to be taken then a range of sanctions is available which enables a Panel to take the most appropriate steps to protect the public and they are:

- mediation
- caution
- conditions of practice
- suspension
- removal from BAPT registration and membership

Even if a Panel has determined that fitness to practice is impaired, it is not obliged to impose a sanction. This is likely to be an exceptional outcome but, for example, may be appropriate in cases where a finding of impairment has been reached on the wider public interest grounds identified above but where the registrant has insight, has already taken remedial action and there is no risk of repetition or a safeguarding risk.

3. Proportionality

In deciding what, if any, sanction to impose, Panels must act proportionately and balance the interests of the registrant with those of the public:

- Is the sanction an appropriate exercise of the Panel's powers?
- Is it a suitable means of attaining the degree of public protection identified by the Panel?
- Does it take account of the wider public interest, such as maintaining public confidence in the profession?
- Is the least restrictive means of attaining that degree of public protection?

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- Is proportionate in the strict sense and strikes a proper balance between the protection of the public and the rights of the registrant

4. Public Interest

4.1 The Panel should consider all available sanctions, starting with the least restrictive. Any interference with a registrant's ability to practice should be no more than is necessary to satisfy the public interest, which includes the protection of the public.

4.2 The primary function of any sanction is to address public safety from the perceived risk that the registrant may pose. However, in reaching their decision the panel must also consider the wider public interest, with a focus on the particular need to protect clients and maintain confidence in the profession.

5. Equality and diversity statement

BAPT is committed to promoting equality, inclusion, and diversity and works to ensure that its processes are fair, transparent, objective, and free from discrimination. BAPT expects that everyone who is acting for the BAPT uphold these values.

6. Insight and remorse

6.1 The primary purpose of fitness to practice proceedings is to identify and secure a proportionate measure of public protection rather than to punish. A key factor in many cases will be the extent to which a registrant recognises his or her failings and is willing to address them.

6.2 In taking account of any insight, explanation, apology or remorse offered by a registrant, Panels are reminded that there may be cultural differences in the way that these may be expressed - both verbally and non-verbally – and especially where the registrant may not be using his or her first language.

6.3 There is a significant difference between insight and remorse. The degree of insight displayed by a registrant is central to a proper determination of whether fitness to

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practice is impaired and, if so, what sanction (if any) is required. The issues which the Panel need to consider include whether the registrant:

- has admitted or recognised any wrongdoing,
- has genuinely recognised his or her failings,
- has taken and / or is taking any appropriate remedial action,
- is likely to repeat or compound that wrong doing.

6.4 Registrants are expected to be open and honest with service users and, generally, Panels should regard registrants' candid explanations, expressions of empathy and apologies as positive steps. Importantly, they will rarely amount to an admission of liability by the registrant concerned and, in the absence of evidence to the contrary, should not be treated as such by Panels.

7. Procedure

7.1 The range of sanctions available to Panels should not influence the decision as to whether or not fitness to practice is impaired. The finding of impairment and sanctioning stages of a hearing should be (and be seen to be) separate elements of the process.

7.2 To reinforce this point, Panels should retire to determine whether or not fitness to practice is impaired and then return to announce their decision and the reasons for that decision. Where the Panel has decided that fitness to practice is impaired, it should then hear any submissions on behalf of the parties in relation to mitigating or aggravating factors before retiring again to consider (in ascending order) what, if any, sanction to impose. The Panel should then return to announce that sanction and the reasons for that sanction.

7.3 Panels must ensure that registrants fully understand any sanction which is being imposed upon them. The Panel Chair should carefully explain what sanction, if any, the Panel has imposed, the reasons for doing so and the consequences for the registrant in clear and direct language which leaves no room for misunderstanding or ambiguity. In particular, Panel Chairs should avoid the temptation to give lectures, which often obscure clear communication of the Panel's decision.

8. Sanctions

Mediation

8.1 Mediation may only be used if the Panel is satisfied that the only other appropriate course would be to take no further action. Thus, a case may only be referred to mediation if the Panel considers that no further sanction is required. Generally this will only be where impairment is minor and isolated in nature and unlikely to recur, where the registrant fully understands the nature and effect of that impairment and has taken appropriate corrective action.

8.2 Mediation is not really a sanction as such but is a consensual process and will be most appropriate where issues between the registrant and another party (e.g., the complainant or an employer) remain unresolved. Types of mediation may include:

- an apology from the registrant to the complainant acknowledging mistakes were made.
- A written warning to the registrant in relation to specific conduct or misjudgment.
- A written report by the registrant to be submitted to the panel to explain their learning. This will be within an agreed time scale and will appear on the Register for a period of twelve months but does not affect a registrant's ability to practice, or
- removal from a committee, position or office.
- Further supervision, therapy or training to achieve the goals identified by the Panel. A Panel must provide clear, concise direction for the registrant, including but not limited to: the specific outcomes of the training, who will oversee the training, whether the panel need to be informed before the training is chosen and commenced, and when the training needs to be completed by. A Panel may require a written report from the Registrant, their supervisor or therapist (or a combination of all) at the completion of therapy or supervision in order to determine whether the goals set have been met. If the Panel does not believe that the goals set have been adequately met it may determine whether any further sanctions are necessary.

Caution Sanction

8.3 A caution sanction must be for a specified period of between one to five years. Cautions appear on the register but do not restrict a registrant's ability to practice.

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However, a caution may be taken into account if a further allegation is made against the registrant concerned.

8.4 A caution order is an appropriate sanction for cases, where the lapse is isolated, limited or relatively minor in nature, there is a low risk of recurrence, and the registrant has shown insight and taken appropriate remedial action. A caution order should also be considered in cases where the nature of the allegation means that meaningful practice restrictions cannot be imposed but where the registrant has shown insight, the conduct concerned is out of character, the risk of repetition is low and thus suspension from practice would be disproportionate. A caution sanction is unlikely to be appropriate in cases where the registrant lacks insight.

8.5 At the Panel's discretion, a caution order may be imposed for any period between one and five years. In order to ensure that a fair and consistent approach is adopted, Panels should regard a period of three years as the 'benchmark' for a caution order. However, as Panels must consider sanctions in ascending order, the starting point for a caution is one year and a Panel should only impose a caution for a longer period if the facts of the case make it appropriate to do so. A Panel's decision should specify the duration of any caution order it imposes and its reasons for setting that duration.

Conditions of Practice Order

8.6 A Conditions of Practice Order (CPO) must be for a specified period not exceeding two years. A CPO appear on the register and, most often, will restrict a registrant's practice, require the registrant to take remedial action or impose a combination of both.

8.7 A CPO requires a registrant to comply with certain conditions for a specific timeframe. This particular sanction allows the registrant to continue to practice subject to certain conditions or restrictions. A CPO will be the most appropriate in circumstances where a failure is capable of being remedied and where the Panel is satisfied that allowing the registrant to continue to practice (albeit with certain restrictions) will not pose a risk of harm to the public. A Panel must be satisfied that a registrant has displayed insight into their failings and the willingness of the registrant to respond positively and adhere to the stipulated conditions.

8.8 A CPO has a maximum length of one to two years and therefore any conditions imposed should be remedial or rehabilitative in nature. Any conditions should be both practical and workable and relevant to the failings identified by the panel, and should also be easy to monitor. A panel must recognise that in order for a CPO to be effective, a registrant must comply with the conditions and therefore must be satisfied that the Registrant is committed to resolving the issues identified during the complaint.

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A CPO may not be appropriate in circumstances where a registrant has serious overall failings, lacks insight, or the matters involve abuse of service users or dishonesty.

8.9 A Panel may impose a number of conditions on a registrant; however the conditions must be workable and practical and must not be tantamount to a suspension. A CPO may include, but is not limited to:

- directing the registrant to cease practicing in a certain manner;
- to practice under a specific supervision regime;
- to be subject to audit or inspection;
- to be subject to additional training or assessment;
- to undergo assessment or treatment by a specified health practitioner; and
- to provide independent reports on physical or mental health to the Case Manager & Panel.

8.10 The objectives of any CPO must be clear so that the registrant knows what is expected of them and so that the Panel, at any future review hearing, is able to ascertain whether the shortcomings have been satisfactorily addressed. A CPO will generally take effect 30 days after the date of the hearing unless an Appeal is lodged and accepted.

Suspension Order

8.11 A suspension order must be for a specified period not exceeding one year. Suspension completely prohibits a registrant from practicing their profession.

8.12 Suspension should be considered where the Panel considers that a caution or conditions of practice would provide insufficient public protection or where the allegation is of a serious nature but unlikely to be repeated and, thus, removal of BAPT registration and membership is not merited.

8.13 Suspension from the register is a deterrent and may be used to send out a signal to the registrant, the public, and the profession about what is regarded as behaviour unbecoming a member of BAPT and the wider profession. However, suspension from the register has a punitive effect in that it prevents a registrant from earning a living as a play therapist during the period of suspension and therefore a panel must carefully balance the interests of the registrant with its duty to protect the public.

8.14 A registrant who is suspended cannot practice and the register is marked accordingly. However, the registrant may be subject to further fitness to practice proceedings for events which occur whilst he or she is suspended. If the evidence suggests that the registrant will be unable to resolve or remedy his or her failings then removal from BAPT register may be the more appropriate option. However, where there

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are no psychological or other difficulties preventing the registrant from understanding and seeking to remedy the failing's then suspension may be appropriate.

8.15 Short term suspension may also be appropriate where a registrant's current status means that he or she would be unable to respond to and comply with conditions of practice but where there is a realistic prospect that, if the registrant can resolve those difficulties whilst suspended, conditions of practice could then be imposed. In appropriate cases, this enables Panels to facilitate a staged return to practice for the registrant concerned.

8.16 Suspension sanctions cannot be made subject to conditions. However, where the Panel expects the registrant to address specific issues or take specific action before the suspension sanction is reviewed, for example, to undergo substance abuse treatment, clear guidance should be given to the registrant so that, when the sanction comes to be reviewed, he or she understands what is expected of them and the evidence that may need to be submitted to the reviewing Panel. However, in imposing suspension sanctions, Panels should avoid being unduly prescriptive and must not seek to bind, or fetter the discretion of, a future reviewing Panel.

8.17 Panels may specify a minimum period (of up to 10 months) for which a suspension sanction is to have effect before the registrant may apply to vary, replace or revoke it. In general, Panels should only exercise that power in cases where it is clear from the evidence that earlier review is unlikely to be of value.

Removal from BAPT Register

8.18 Termination of registration with BAPT means that a registrant's name is removed from the BAPT Register and they are prohibited from practicing play therapy under the auspices of BAPT. The registrant's college and/or organisational membership and any relevant employers will also be informed.

8.19 Termination of registration is a sanction of last resort for serious, deliberate, or reckless acts involving abuse of trust (such as sexual misconduct), dishonesty, or persistent and irreparable failure. Termination of registration should be used when the panel considers there is no other way to sufficiently protect the public or there is an unwillingness by the registrant to show insight or resolve their failings. Termination of registration may also be appropriate when there is no other way that public confidence in the profession can be maintained if the registrant is permitted to remain on the register.

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When termination is used to address public protection issues, panels must clearly state their reasons for doing so.

8.20 Removal is a long term sanction.

Unless new evidence comes to light, a person may not apply for restoration to the register within five years of the date of removal being made and Panels do not have the power to vary that restriction. Any future application would have to be accompanied by evidence that the original reasons for removal are dealt with and no longer an issue regarding public safety.

8.21 Termination of registration will take effect after the 30 day appeal period has expired. A panel may consider imposing an interim suspension order which will apply during the appeal period if it considers there to be a danger to the public if the Registrant is permitted to practice during the appeal periods.

Interim Suspension Orders and Considerations

8.22 Where a complaint is being considered under the Professional Conduct process, BAPT may decide it is necessary for the protection of the public, or is otherwise in the public interest and/or is in the interests of the registrant to consider whether the registrant should be suspended from the register as an interim measure until the original allegations are heard.

8.23 When deciding whether or not to impose an interim suspension order the panel must consider the following points:

- The seriousness of the allegations.
- The time the alleged conduct took place.
- Whether public confidence in the profession is likely to be seriously damaged if the registrant continues to hold unrestricted registration during the relevant period.
- The impact of an interim suspension order on the Registrant and their capacity to earn a living.
- The impact on public safety should the allegations be found proved.

An interim suspension order is a precautionary measure and should not be seen as prejudicial to the registrant.

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Multiple Sanctions

8.24 There is an escalating range of sanctions and Panels may impose only one sanction at any one time. Similarly, when reviewing sanctions, a Panel may vary, extend, replace or revoke an existing sanction but cannot impose a second, additional sanction. Consequently, it will be rare for a registrant to be subject to more than one sanction at the same time. However, if that situation does arise, Panels need to ensure that there is no doubt as to the duration and effect of each sanction.

8.25 A registrant is only likely to be subject to multiple sanctions where a sanction has been imposed in respect of one allegation and the registrant is then the subject of separate proceedings in respect of another allegation. Even then the circumstances in which multiple sanctions would be appropriate are limited.

8.26 If the second allegation involves a repetition of prior conduct, is broadly similar in nature to the previous allegation or involves breach of the existing sanction, then escalation to a higher sanction is likely to be the more appropriate course of action. In addition, some sanctions will simply 'trump' others. For example, the imposition of a suspension order will have the effect of ending a conditions of practice order.

8.27 In practice, multiple sanctions are only likely to arise where a sanction has been imposed in respect of one allegation and a second needs to be imposed in respect of an entirely separate and unconnected allegation. For example, if an allegation based upon misconduct is made against a Registrant who is already subject to a competence-related conditions of practice order, then provided -that the misconduct is unconnected, does not amount to breach of the existing order or raise wider concerns about overall fitness to practice, it might be appropriate to impose a separate caution order in respect of that misconduct. In that event, the Panel should be very clear as to the effect (if any) of its order on the existing sanction. In the example given, the Panel would be expected to make clear that the order it has made has no effect on the terms and duration of the conditions of practice order to which the registrant is already subject.

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