

Stage 3 | Case Examiners Consideration of the Case

40. Once all the statements and evidence have been gathered, the Case Officer will within 10 working days pass the case materials, including a list of breaches to be considered, Registrar's guidance, and a case summary, to a Case Examiner team. The Case Officer will as far as possible separate evidence on the facts from statements in mitigation. The Case Examiner team consists of two case examiners but NRCPD may appoint a team of three as necessary for a fair consideration of the case. The Case Examiners will consider all the material and make a recommendation to NRCPD for how the case should conclude. The standard for all Case Examiner conclusions is the balance of probabilities, that is that something is more likely than not. In all their deliberations, Case examiners will apply the three-step procedure below, and the guidance on evidence and sanctions.

41. Case Examiners Three-Step Consideration Procedure. The Case Examiners will consider the case in three steps:

a. Step 1 - Misconduct. Consider and decide upon the evidence whether, on the balance of probability, there was likely a breach of the Code of Conduct in relation to the allegations listed. If they decide there is likely to have been at least one breach, then they go on to Step 2. If not, they take no further steps and they recommend to NRCPD that there is no case to answer.

b. Step 2 - Affected Practice and Sanction. Case Examiners now consider whether the evidence shows that on the balance of probability, the Registrant/Trainee's practice is still affected and then what the appropriate sanction should be. They will look at the evidence on mitigation and character, and any corrective learning and reflection, or any other factor that is fair and relevant.

i. If they consider that practice is not still affected, and therefore the misconduct leading to the breach is unlikely to occur again, then they may recommend the following sanctions to NRCPD:

- a) to give relevant advice to the Registrant/Trainee; or
- b) give a written warning.

- ii. If Case Examiners consider that, on the balance of probability, the Registrant/Trainee's practice is still affected, and therefore is still below standard and a further breach is likely, then they will come to a provisional conclusion as to an appropriate sanction and go to Step 3.

c. Step 3 – Referral to a Professional Conduct Committee - The Public Interest Test.

Case Examiners will now consider whether it is in the public interest for the case to be referred to a Professional Conduct Committee to be decided.

- i. The factors that will be taken into account are:
 - a) The complexity of the case;
 - b) The seriousness of the breach or breaches;
 - c) The likelihood of the appropriate sanction being one that only a Professional Conduct Committee can award;
 - d) Health or disability of the Registrant/trainee as a potential significant factor in either the alleged misconduct or in their ability to engage with the fitness to practice process.
- ii. If the Case Examiners consider that one or more of these factors is present to a significant degree then it is in the public interest for the case to be referred to the Professional Conduct Committee and they must make that recommendation to NRCPD. The Professional Conduct Committee will have the necessary procedures and legal advice to fairly consider the case in these circumstances.
- iii. If Case Examiners consider that none of these factors are present to a significant degree then they must recommend to NRCPD one or more of the following as the appropriate sanction for the Registrant/Trainee:
 - a) written warning;
 - b) undertaking a program of training and/or supervision;
 - c) practice restriction for a Regulated Trainee of up to 6 months duration;

Case Examiners may also offer relevant advice but only in combination with any of these.

42. Evidence in Mitigation. Evidence as to mitigation and character is not relevant to Step 1 deliberations. The Case Officer will provide any available statements of mitigation and character to the Case Examiners for their Step 2 considerations. Evidence on mitigation and character that is inseparable from evidence of fact in statements provided shall be disregarded by Case Examiners at Step 1.

43. Previous Sanctions for Misconduct. The record of any previous in-date sanctions for Misconduct against the Registrant/Trainee will be provided for consideration by Case Examiners for Step 2. Previous findings of Misconduct are in-date for consideration if at the time of the newly alleged misconduct they were:

- a. In the case of written warnings, issued to the registrant less than 2 years prior.
- b. In the case of all other sanctions, the term concluded less than 2 years prior.

When taking previous misconduct into account, Case Examiners will consider to what extent the previous misconduct is relevant to the case before them. Where previous sanctions are for relevant misconduct Case Examiners may consider this a reason to recommend a more substantial sanction or elevate the sanction to one only a Committee can award.

44. Impact Statements. During the investigation NRCPD will invite people most personally affected by the alleged misconduct to provide statements on the impact they believe the misconduct had on them. Such statements will be provided to Case Examiners for Step 2.

45. Guidance for Case Examiners on Considering Evidence. All evidence that is relevant and from a verifiable source is provided to Case Examiners by the Case Officer. Case Examiners must then determine how the evidence supports the allegations or not. Relevance, corroboration, consistency, credibility and the weight of it in relation to the allegations should be considered.

- a. Relevance – does the evidence relate to the alleged breach;
- b. Corroboration – is the evidence matched by another piece of evidence;
- c. Consistency - is the evidence consistent with other things stated or recorded elsewhere by the same witness.
- d. Credibility – is it reasonable to believe that the evidence is of plausible events, actions or omissions given the nature of the case and other evidence.

- e. Weight – to what extent does the evidence reliably support the allegation of the specific breach alleged. For example, a signed witness statement by a person present at the time will hold more weight than a reported conversation about the incident

Case examiners come to their conclusion on the balance of probabilities so evidence need not fully meet all the above factors. It is for case examiners to use their judgement with this guidance in mind as to the weight of the evidence.

46. Sanctions Guidance for Case Examiners. Sanctions should be proportionate and the least restrictive on the Registrant/Trainee that in the view of Case Examiners will likely minimise the risk to the public. General guidance on sanctions is:

- a. Case Examiners will always take the most serious breach as the start point for what to recommend as a sanction.
- b. Case Examiners may consider that several breaches taken together may justify a more severe sanction than just for one similar breach.
- c. In all cases where misconduct is found and fitness to practice is still affected, Case Examiners will recommend a written warning as a minimum.
- d. In cases of fundamental ethical breaches, Case Examiners will set a high standard for the scale and quality of evidence required to decide that practice is not still affected, especially if in the assessment of the Case Examiners the Registrant/Trainee should have reasonably been aware of that misconduct. Examples of this type of misconduct are: being under the influence of non-prescription drugs or alcohol, abandoning assignments without good reason, exploitation of a client, lewd behaviour, reckless or deliberate professional conduct leading to significant harm or serious offense, bullying, discrimination or harassment (including sexual harassment), or conduct that risks seriously undermining the professions.
- e. Where a breach, or collection of breaches, warrants a more severe sanction than is available to Case Examiners then it is in the public interest to refer the case to a Professional Conduct Committee.
- f. Advice, training requirements, supervision requirements and practice restrictions recommended by Case Examiners will always be proportionate and relevant to the misconduct found and must be implementable. Cost to the

Registrant/Trainee is not a factor in determining the sanction.

And with regard to the specific sanctions available to Case Examiners:

- g. Advice. Advice to the Registrant/Trainee must be constructive and relevant to the misconduct. There is no follow up monitoring of this sanction by NRCPD.
- h. Written Warning. A warning is given when it is the intention that:
 - i. the Registrant/Trainee stays alert to and takes active measures to prevent similar misconduct in future, and
 - ii. this misconduct is drawn to the attention of Case Examiners and/or Professional Conduct Committees in future if the Registrant/Trainee is again found in breach of the Code of Conduct.

A warning stays active for two years from when it is given.

- i. Program of training and/or supervision. This sanction is given when there are clear learning and reflection points to be tackled by the Registrant/Trainee in order to improve their practice and that 'giving advice' is not regarded as sufficient to ensure the Registrant/Trainee makes the necessary practice improvements. Such a program may be up to twelve months duration. NRCPD monitors compliance through periodic reports from the Registrant/Trainee. Non-compliance with the required program is a breach of the Code of Conduct and is treated as a new Misconduct Report.
- j. Practice Restriction. A practice restriction is applied where the Regulated Trainee must not practice in a particular field or specialism while they improve their practice in that field. It may include a stipulation for practice in a given setting without restricting it completely – for example, to 'always co-work with an RSLI' in that field. It should always be accompanied by relevant advice or a targeted program of learning and/or supervision over the restriction period. Case Examiners may only recommend a practice restriction for a Regulated Trainee and for up to six months duration. Non-compliance with a practice restriction is a breach of the Code of Conduct and is treated as a new Misconduct Report.

47. Case Examiners Report to NRCPD. On completion of their deliberations, Case Examiners will make their recommendations to the NRCPD as to the conclusion of the case. Their report will follow the three-step process at s.41. above and will include their reasons for each recommendation, including any advice, training or supervision requirement. The Registrar will decide whether to:

- a. accept the Case Examiners recommendations; or
- b. refer the report back to Case Examiners for clarification; or
- c. issue the case back to Case Examiners for review:
 - i. in light of new evidence not originally available,
 - ii. or with revised Registrar's guidance,
 - iii. or if there is a risk that procedural guidance has not been followed.

Such a review may, if the Registrar decides, be referred once to a new Case Examiner team.

48. Communication of the Case Examiners Outcome. Once the Case Examiner's report is final and accepted by the NRCPD, the Professional Conduct Manager will communicate the outcome to the Registrant/Trainee and to the Reporting Witness within 10 days or will give reasons if there is delay.

49. Acceptance of Sanction by Registrant/Trainee. If the outcome is a recommendation of one or more sanctions available to Case Examiners, these will be put to the Registrant/Trainee to accept. If the Registrant/Trainee does not accept the sanctions in full within 20 working days, the case is automatically referred to the Professional Conduct Committee. If a case is referred to the Professional Conduct Committee in these circumstances, and the Registrant/Trainee changes their mind at any time before the Committee is convened and fully accepts the Case Examiners recommended sanctions, then the proceedings for the Committee will be discontinued and the sanctions applied.

50. Implementation of Sanctions. On acceptance of the sanctions by the Registrant/Trainee, NRCPD will take the necessary steps for implementation and notify the registrant/Trainee of actions required of them within 10 working days. Where a program of training or supervision is required NRCPD will require periodic reports as evidence of compliance. If NRCPD obtains evidence of non-compliance a new misconduct case will be opened, investigated, and referred to Case Examiners.

51. Publication of Outcome. If the Registrant/Trainee does not accept the sanction recommendations then the case has not concluded, there is no outcome publication at this stage and the case goes to a Professional Conduct Committee. If the Registrant/Trainee accepts the sanctions, the case outcome is published by NRCPD as follows:

- a. Any outcome that includes a practice restriction will be published as a case summary with the Regulated Trainee named. (Registrants may not be given this sanction at Case Examiner stage). No other party to the case will be named.
- b. Any other outcome will be published as an anonymised case summary.