

GOC Audit of Decisions 2018/19 – Learning Points & Management Response

Note: Learning Points are grouped by subject, rather than in numerical order.

Learning Point	Learning Point for	Learning Point Number(s)	Training?	GOC Formal Response	GOC Action Points
Allegation Drafting					
We noted that in a small number of cases allegations were drafted in a manner which relied on the effect of a registrant’s alleged conduct as determinative of whether the conduct was inappropriate.	FTP Team	Report page 16	FTP Staff	Accept	<p>Action Point 1 – Review/Update allegations drafting guidance [Q4 19-20] Complete</p> <p>Action Point 2 – Staff Training (Q4 19-20). Pending</p>
As with last year’s case cohort there were occasions on which the allegations against Business Registrants had not taken account of the relevant qualification on the obligations of Business Registrants.		Report page 17			
<p>As we noted last year, these cases illustrate scope for tightening up the reviewing process before cases are sent to the Case Examiners to ensure:</p> <ul style="list-style-type: none"> • The registration status of the registrant is properly reflected in the allegations. • All relevant statutory grounds are referred to and the corresponding parts of the Act are cited. 		5			

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When allegations are being drafted the Case Examiners should bear in mind outcomes should not be relied upon in allegations unless they are genuinely determinative of the issue.	CEs/IC	3	CEs/IC	Accept	Action Point 3 – CE/IC training (Completed Nov 19)
Last year we noted that when considering raising allegations against business registrants care should be taken to reflect the qualified nature of the obligations which fall on such registrants under the relevant Code. This learning point should be reinforced albeit that it will become less relevant after the introduction of the new Standards for Business Registrants in October 2019.	CEs/IC	4	CEs/IC	Accept	Action Point 3 – CE/IC training (Completed Nov 19)
Risk Assessment					
It is not for the Caseworker to decide whether an Interim Order is, or is not, warranted. Rather the Caseworker ought to be considering whether the concern is such that the FTPC ought to determine the issue. Caseworkers should not limit referral only to those case where they believe the imposition of an order is a certainty.	FTP Team	1	FTP Team	Partially Accept	We accept that the first assessment was not appropriately worded. However, subsequent IO risk assessments <u>do</u> consider the risk to the public and we also obtained an opinion from external counsel regarding the making of an IO application. The audit report now reflects this. No action required. Risk management is already embedded in FtP processes.

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Guidance and Standards					
Case Examiners should be reminded of the importance of making reference to the standards which were in force at the time of the conduct which is the subject of the allegations. In some cases that may require reference to both the Code and the Standards. Warnings and Advice relate to future conduct and should refer to the standards currently in force.	Case Examiners/IC	2	CE/IC	Accept	Action Point 3 – CE/IC training (Completed Nov 19)
GOC Procedures & Guidance					
The Council should consider whether evidence that representations have been sought and/or chased should be included within the Case Examiners' papers as a matter of routine both at the time of the initial consideration and following a minded to warn decision.	FTP Team	6	n/a	Accept	Action Point 4: COMPLETE (We already did this, but not consistently enough so we have tightened up the process).
Realistic Prospect Test					
Evidence from this year's audit suggests that Case Examiners have taken on board the learning from previous audits. Nonetheless, Case Examiners should be reminded to take care in their choice of language when recording the outcome of the real prospect test.	CEs/IC	7	CEs/IC	Accept	Action Point 3 – CE/IC training (Completed Nov 19)

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Grounds of Impairment					
Case Examiners should be reminded of the importance of dealing separately with each of the alleged grounds of impairment when more than one ground is relied upon.	CEs/IC	8	CEs/IC	Accept	Action Point 3 – CE/IC training (Completed Nov 19)
The Public Interest					
As we noted last year, Case Examiners must address the issue of the Public Interest with care, considering the constituent elements of the public interest and setting out their reasons for determining whether the public interest is or is not engaged. Further reinforcement of this point is required.	CEs/IC	9	CEs/IC	Accept	Action Point 3 – CE/IC training (Completed Nov 19)
Giving Advice					
Case Examiners should be reminded that advice issued to registrants during the fitness to practise process should be clearly linked to the applicable standards of professional conduct promulgated by the Council.	CEs/IC	10	CEs/IC	Accept	Action Point 3 – CE/IC training (Completed Nov 19)

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CE/IC Warnings					
<p>Case Examiners should be reminded that the nature and effect of warnings needs to be considered when determining whether a warning is proportionate. Those considerations should be addressed at the Minded to Warn stage. This would serve two distinct functions; Firstly, it would ensure that the issue of proportionality is addressed by the Case Examiners. Secondly, it would afford the registrant the opportunity to address those matters in any representations before a final decision is made.</p>					
<p>Case Examiners should be reminded to make explicit reference to the relevant guidance on warnings. Decisions should ideally provide a clear indication of any aggravating or mitigating factors which have been considered, in accordance with the guidance.</p>	CEs/IC	11	CEs/IC	Accept	<p>Action Point 3 – CE/IC training (Completed Nov 19)</p>
<p>The text of warnings should be clearly anchored in the applicable standards.</p>					

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FTPC – IO Hearings					
<p>The Committee should be reminded that they should assess risk by taking the concerns at their highest. In the absence of clearly identified reasons to the contrary, they should proceed on the basis that the complainant's evidence might be accepted by the FTPC at a fact-finding hearing.</p>	FTPC	13	FTPC	Accept	<p>Action Point 5 – FTPC training (Completed Sep 19)</p>
FTPC – Drafting Determinations					
<p>Committees should be mindful of the points of obvious concern which might arise in the mind of someone reading their determination and should address those where possible. Interim Orders serve to address risks which require intervention pending the resolution of the case. There is a reasonable expectation that such orders are sought promptly when there is a proper basis for referral. Where a significant period of time has elapsed between the index event and the application – or between the opening of the investigation and the application – it is highly desirable for that to be addressed in the determination. The FTPC ought to be assisted in that task by the Case Presenter, who should provide a clear explanation for the timeline.</p>	FTPC	12	FTPC	Accept	<p>Action Point 5 – FTPC training (Completed Sep 19)</p>

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<p>Echoing observations made last year we note:</p> <p>A. At Interim Orders hearings the FTPC must take care not to determine or appear to be determining factual disputes. They must bear in mind that they are often considering cases at a very early stage in the investigation and that witness evidence has not been tested.</p> <p>B. Unless witness evidence is demonstrably unreliable it should not be discounted.</p> <p>C. The FTPC should take care to provide some indication of the nature of the submissions made by the parties and the content of the legal advice received. In the absence of such information it is difficult for the determination to serve as a standalone document. The absence of such information also makes it difficult for the parties to ascertain whether the submissions and advice have been correctly understood.</p>					
<p>When drafting the background section of the determination the Committee should consider including some brief details of the registrant's professional background including the period for which they have been registered.</p>	FTPC	14	FTPC	Accept	<p>Action Point 5 – FTPC training (Completed Sep 19)</p>
<p>When preferring the evidence of one expert over another Committees should be careful to ensure that they give reasons for that preference.</p>	FTPC	15	FTPC	Accept	<p>Action Point 5 – FTPC training (Completed Sep 19)</p>

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<p>Committees must draft their determinations in a manner which takes account of the range of possible readers; who may include people wholly unfamiliar with aspects of the process which are frequently taken for granted by panellists and lawyers. Where available guidance explains the relevant principles Committees should cite that in preference to citing case law. The Council's guidance is clearly written and readily accessible to lay people on the Council's website. Where there is a need to cite case law then the citation should be accompanied by a sufficient explanation of the principle for which the authority is being relied upon. Statements to the effect that the Committee has heard and accepted the advice of the Legal Adviser will be meaningless to many readers. Lay readers should not be left in the dark as to the key legal principles which shaped a decision.</p>	FTPC	16	FTPC	Accept	<p>Action Point 5 – FTPC training (Completed Sep 19)</p>
<p>Committees must be careful to ensure that their determinations demonstrate that they have properly considered the various elements of the over-riding objective.</p>	FTPC	21	FTPC	Accept	<p>Action Point 5 – FTPC training (Completed Sep 19)</p>

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FTPC Substantive Cases					
Where health is relied upon as a mitigating factor in relation to a protracted course of conduct Committees must be careful to consider whether the ill-health and misconduct were co-extensive. There may be cases where health served as a mitigating factor in respect of some of the period only.	FTPC	17	FTPC	Accept	Action Point 5 – FTPC training (Completed Sep 19)
When a series of alleged failures relate to a single appointment Committee members should approach those allegations in a logical sequence. A finding in respect of one may influence the decision as to whether a duty, relevant to another sub-head, continued or arose. A classic example is the pairing of allegations of a failure to do and a failure to record. Where a Committee find that a registrant failed to perform a particular assessment there can be no duty to record results. Indeed, recording results of an assessment which did not take place would itself be a serious concern.	FTPC	18	FTPC	Accept	Action Point 5 – FTPC training (Completed Sep 19)
Where Committees are considering submissions of no case to answer they are entitled to consider whether the alleged facts could be proved. They are also entitled to consider whether, if proved, those facts could	FTPC	19	FTPC	Accept	Action Point 5 – FTPC training (Completed Sep 19)

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amount to misconduct. When assessing whether the misconduct (which the Committee is satisfied could be proved) could establish current impairment the Committee should not weigh and assess any evidence of remediation.					
Where a Committee rejects the evidence of the registrant on a central issue they must make clear in the determination how that impacts on the assessment of the registrant's evidence more generally.	FTPC	20	FTPC	Accept	Action Point 5 – FTPC training (Completed Sep 19)
FTPC Warnings					
Warnings should not impose a higher standard on a registrant that that required of all their peers. Secondly, when warning registrant's about their future conduct the warning should be anchored in the current version of the applicable standards document.	FTPC	22	FTPC	Accept	Action Point 5 – FTPC training (Completed Sep 19)