FITNESS TO PRACTISE PANELS
HEARINGS GUIDANCE AND
INDICATIVE SANCTIONS
<table>
<thead>
<tr>
<th>CONTENTS</th>
<th>PAGE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Introduction</td>
<td>4</td>
</tr>
<tr>
<td>Human Rights</td>
<td>4</td>
</tr>
<tr>
<td>Equality and diversity</td>
<td>4</td>
</tr>
<tr>
<td>Fitness to practise and what it means</td>
<td>4</td>
</tr>
<tr>
<td>The public interest</td>
<td>5</td>
</tr>
<tr>
<td>What this guidance is for</td>
<td>5</td>
</tr>
<tr>
<td>Who this guidance is for</td>
<td>5</td>
</tr>
<tr>
<td>Responsibility for decisions</td>
<td>6</td>
</tr>
<tr>
<td>Standard of proof</td>
<td>6</td>
</tr>
<tr>
<td>- The process</td>
<td>6</td>
</tr>
<tr>
<td>- The application of the standard of proof</td>
<td>7</td>
</tr>
<tr>
<td>Decision-making</td>
<td>8</td>
</tr>
<tr>
<td>- Giving reasons in determinations</td>
<td>8</td>
</tr>
<tr>
<td>- How detailed does a determination have to be?</td>
<td>8</td>
</tr>
<tr>
<td>- Findings of fact</td>
<td>9</td>
</tr>
<tr>
<td>- What makes a good determination?</td>
<td>9</td>
</tr>
<tr>
<td>- Interim order review determinations</td>
<td>11</td>
</tr>
<tr>
<td>Mitigation</td>
<td>11</td>
</tr>
<tr>
<td>- What counts as mitigation and when to take it into account?</td>
<td>11</td>
</tr>
<tr>
<td>- Generic mitigating and aggravating features</td>
<td>11</td>
</tr>
<tr>
<td>- Absence of evidence</td>
<td>12</td>
</tr>
<tr>
<td>- Personal mitigation and testimonials</td>
<td>12</td>
</tr>
<tr>
<td>- The relevance of mitigating circumstances</td>
<td>12</td>
</tr>
<tr>
<td>- At what stage should the Committee receive personal mitigation?</td>
<td>12</td>
</tr>
<tr>
<td>Interim orders</td>
<td>14</td>
</tr>
<tr>
<td>- Revocation of interim orders</td>
<td>16</td>
</tr>
<tr>
<td>Fitness to practise not impaired</td>
<td>16</td>
</tr>
<tr>
<td>Impaired fitness to practise</td>
<td>17</td>
</tr>
<tr>
<td>Definition of impaired fitness to practise</td>
<td>17</td>
</tr>
<tr>
<td>- Registered individuals (including students)</td>
<td>17</td>
</tr>
<tr>
<td>- Business Registrants</td>
<td>18</td>
</tr>
<tr>
<td>Available sanctions</td>
<td>19</td>
</tr>
<tr>
<td>Proportionality</td>
<td>20</td>
</tr>
<tr>
<td>The sanctions</td>
<td>20</td>
</tr>
<tr>
<td>Financial penalty orders</td>
<td>20</td>
</tr>
<tr>
<td>Conditional registration</td>
<td>20</td>
</tr>
</tbody>
</table>
- Conditions – educational
- Suspension
- Review hearing
- Erasure
  - Sexual misconduct
  - Cases involving child pornography
  - Dishonesty
  - Failure to provide an acceptable level of patient care and persistent clinical failure
  - Immediate orders (conditional registration/suspension/erasure)

Cases involving a Conviction, Caution or Determination by another regulatory body

No further action

Costs and expenses

Annex A – Conditional registration – Bank of Conditions

This guidance is a ‘living document’, which will be updated and revised as the need arises. Please email any comments or suggestions for consideration for further revisions to David Henley, Hearings Manager, at dhenley@optical.org
Introduction

The aim of this document is to assist all individuals when sitting on the Fitness to Practise Committee to understand their individual and collective responsibilities leading to the making of fair and just decisions. The professional and lay personnel appointed to sit on the Committee exercise their own judgments in making decisions but must also take into consideration the standards of good practice the General Optical Council has established.

Throughout this document reference is made to “Registrants”. The term “Registrants” relate to optometrists, dispensing opticians, student optometrists, student dispensing opticians and business Registrants.

Human rights

The General Optical Council is a public authority for the purposes of the Human Rights Act 1998. The Council will seek to uphold and promote the principles of the European Convention on Human Rights in accordance with the Act.

Equality and Diversity

The Council is committed to promoting equality and valuing diversity and to operating procedures and processes which are fair, objective, transparent and free from discrimination. This includes setting out in guidance, by way of the Code of Conduct for Individual Registrants and the Code of Conduct for Business Registrants, the attitudes and behaviours expected of the optometrist and dispensing optician. Promoting equality is also a requirement under current and emerging equality legislation – everyone who is acting on behalf of the Council is expected to adhere to the spirit and letter of this legislation.

Members of the profession are required to treat both patients and colleagues fairly to the best of their ability and without discrimination.

Fitness to practise and what it means

Optometrists and dispensing opticians must demonstrate safe and competent practice. To do this they must establish and maintain proper and effective relationships with patients and colleagues alike. Their position in society as a respected professional gives them access to patients from all walks of life, including those who may be vulnerable, and therefore trust from both parties is paramount but should that trust be brought into question through the Registrant’s conduct, it may be considered that he should not continue to work in unrestricted practice.

The public expect their optometrist or dispensing optician to be fit to practise and are entitled to a good standard of care and indeed the majority achieve and maintain such standards but there will always be a minority who fail to maintain standards.

It is for that reason the Council has the powers to take appropriate action where it appears that there may be an impairment of an optometrist’s or a
dispensing optician’s fitness to practise and it is for the Fitness to Practise Committee to determine an appropriate sanction.

The Public Interest

When determining sanctions in relation to the registration of an optometrist or a dispensing optician, the Fitness to Practise Committee should consider whether their decision would adequately protect members of the public or the wider public interest: they are both closely linked i.e. the particular need to protect the patient or another individual(s) and the collective need to maintain confidence of the public in their professional.

Public interest includes: protection of patients; maintenance of public confidence in the profession and declaring and upholding proper standards of conduct and behaviour and therefore a Fitness to Practise Committee should bear those factors in mind when considering an appropriate sanction regarding an optometrist’s or a dispensing optician’s registration.

What this guidance is for

This guidance has been developed by the Council for use by its Fitness to Practise Committee when considering what sanction to impose following a finding of impaired fitness to practise.

The Indicative Sanctions Guidance is an authoritative statement of the Council’s approach to sanctions issues. This guidance is not an alternative source of legal advice. When appropriate, the Legal Adviser will advise you on questions of law, including questions about the use of this guidance and the approach you should take to it. Each case is different and should be decided on its unique facts and merits.

Who this guidance is for

Although this guidance is addressed to the members of the Fitness to Practise Committee, it will be useful to others involved personally or professionally in fitness to practise cases, including:

- Patients who are considering making a complaint to the regulatory body about a Registrant
- Registrants who are subject to fitness to practise procedures
- Organisations and agencies which are considering making a referral to the regulatory body, or whose own procedures interact with the regulatory body’s
- Factual and expert witnesses
- Organisations, firms and advocates representing complainants and respondent professionals
- Assessors and examiners (medical, legal, professional)
- Other regulatory bodies, including the Professional Standards Authority
- The Courts
Responsibility for decisions

As independent Fitness to Practise Committee members, you are asked to keep this guidance in mind when considering cases. The publication of this guidance does not undermine your independence or the separation of responsibilities which exists between the Council in setting policy and you as members of the Fitness to Practise Committee.

This guidance provides a crucial link between two key regulatory roles of the GOC – of setting standards for the profession and of taking action on registration when a Registrant’s fitness to practise is called in question because those standards have not been met. The professional and lay members appointed to sit on committees exercise their own judgement in making decisions but must take into consideration the standards of good practice the GOC has established. Decisions taken by committee members in relation to sanction are at their discretion however the members should refer to this guidance when making their decisions.

Standard of proof

The rules establish the standard of proof to be applied by the Fitness to Practise Committee when making findings of fact.

The standard of proof used in criminal proceedings, and used in Fitness to Practise proceedings by the General Optical Council before 3 November 2008 was proof beyond reasonable doubt. In civil proceedings, the standard of proof is proof on the balance of probabilities; a fact will be established if it is more likely than not to have happened. The civil standard of proof has been used in Fitness to Practise proceedings by GOC from 3 November 2008 when Rule 50A came into force.

It is only in relation to findings of fact that the standard of proof has any relevance.

The standard of proof is not relevant for Interim Orders where no findings of fact are made. Nor is it relevant where there is no dispute as to the facts. The standard of proof is only relevant where there are facts in dispute between the parties.

The process

In cases where there are facts in dispute, the following process is to be followed. Once the Fitness to Practise Committee has heard the evidence, it must decide:

1. Whether the facts alleged have been found proved;
2. Whether, on the basis of the facts found proved, the Registrant’s actions amount to misconduct, deficient professional performance, or that he or she has adverse physical or mental health (where the
allegation relates to a criminal conviction, stages 1 and 2 are in effect merged as a conviction is itself a ground for impairment);  
(3) Whether the misconduct, conviction, deficient professional performance, or adverse physical or mental health, leads to a finding of impaired fitness to practise;  
(4) What sanction (if any) is to apply.  

The application of the civil standard of proof applies to (1) only. Questions as to whether or not, in the light of those findings, the Registrant has acted in a way which amounts to misconduct, deficient professional performance, or has adverse physical or mental health are a matter of judgement in respect of which the standard of proof is not relevant. The same is true regarding the decision as to whether the Registrant’s fitness to practise is impaired and what sanction is to apply.  

The application of the standard of proof  
Case law has made clear that there is only one civil standard of proof (ie proof that the fact in issue more probably occurred than not), and it is finite and unvarying. There is no "sliding scale", and the standard of proof does not vary depending on the seriousness of the allegations (In re B (Children) [2008] UKHL 35 and In re Doherty [2008] UKHL 33).  

Lady Hale said in S-B Children [2009] UKSC 17, "All are agreed that Re B reaffirmed the principles adopted in Re H (Minors) (Sexual Abuse: Standard of Proof) [1996] AC 563 while rejecting the nostrum "the more serious the allegation, the more cogent the evidence needed to prove it", which had become commonplace but was a misinterpretation of what Lord Nicholls had in fact said".  

The application of the civil standard of proof was considered by the House of Lords in the case of In re Doherty [2008] UKHL 33. Lord Carswell stated:  
“…in some contexts a court or tribunal has to look at the facts more critically or more anxiously than in others before it can be satisfied to the requisite standard. The standard itself is, however, finite and unvarying. Situations which make such heightened examination necessary may be the inherent unlikelihood of the occurrence taking place..., the seriousness of the allegation to be proved or, in some cases, the consequences which could follow from the acceptance of proof of the relevant fact. The seriousness of the allegation requires no elaboration: a tribunal of fact will look closely into the facts grounding an allegation of fraud before accepting that it has been established. The seriousness of consequences is another facet of the same proposition: if it is alleged that a bank manager has committed a minor

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1 Where the Registrant is a business Registrant, the Committee must judge whether there is misconduct by the business Registrant or one of its directors, or whether there were practices or patterns of behaviour occurring of which the Registrant knew or ought reasonably to have known, which amount to misconduct or deficient professional performance.

2 In the case of business Registrants, the judgement to be made is whether the Registrant’s fitness to carry on business as an optometrist or dispensing optician is impaired. For student Registrants, the judgement is whether the student’s fitness to undertake training is impaired.
peculation, that could entail very serious consequences for his career, so making it less likely that he would risk doing such a thing. These are all matters of ordinary experience, requiring the application of good sense on the part of those who have to decide such issues. They do not require a different standard of proof or a specially cogent standard of evidence, merely appropriately careful consideration by the tribunal before it is satisfied of the matter which has to be established."

When considering whether something is more likely than not to have occurred, the Committee should bear in mind that there is no necessary connection between the seriousness of what is alleged and inherent probability. Lord Hoffman said (In Re B, approved in S-B Children) "It would be absurd to suggest that the tribunal must in all cases assume that serious conduct is unlikely to have occurred. In many cases, the other evidence will show that it was all too likely"

Considering the potential consequences for the Registrant during the fact finding stage does not mean that the Committee makes a decision on sanction at this stage. The potential consequences for the Registrant are simply a corollary of the seriousness of the allegations presented to the Committee. Any final decision in relation to sanction can only be taken by the Committee at the final stage of the process once both parties have had an opportunity to make further submissions on the appropriate outcome.

**Decision-making**

**Giving reasons in determinations.** In the judgment on the Registrant appeal against the GOC decision in the case of Threlfall it was held that there are obligations at common law and pursuant to Article 6 of the European Convention on Human Rights for a Disciplinary Committee, in any case in which a decision is made to impose a disciplinary order, to give adequate reasons in good time. The Judge stated: “There is a further practical reason why disciplinary committees should give adequate reasons for their decisions, and that is to enable the Council for the Regulation of Health Care Professionals to consider whether to exercise its powers under section 29 of the 2002 Act”.

Generally, failings in this regard tend to fall into four main areas:

a. Failure to explain what the allegations are in sufficient detail to enable the reader to understand the seriousness of the allegation;

b. Failure to explain why allegations have or have not been found proved;

c. Failure to explain why, in light of any mitigation, the Registrant is or is not found to be impaired;

d. Failure to explain why the committee feel that a particular sanction is the most appropriate sanction for them to apply.

**How detailed does a determination have to be?** The amount of detail will depend on the complexity of the case. The determination should clearly set
out what the facts of the case are with sufficient detail to enable the reader to understand the nature and seriousness of the allegations.

**Findings of fact.** If a decision turns on the credibility of one witness as opposed to another, then the reasons for the decision might be brief depending on the circumstances of a case. In cases where a finding may appear to be inexplicable in relation to the evidence received by the Fitness to Practise Committee, then there would be a compelling need for detailed reasons. The Courts have clarified that in 'exceptional' cases, eg where the factual background is complex or the evidence does not all go one way, more is required by way of explanation. In particular, the reasons why a witness is or is not found to be credible must be given where the witness evidence has been inconsistent, and where the Committee considers a witness has been dishonest in the evidence they have given, this must be stated clearly and reasons given. (Southall v General Medical Council [2010] EWCA Civ 407 and Casey v General Medical Council [2011] NIQB 95 and Yaacoub v General Medical Council [2012] EWHC 2779 (Admin)).

**What makes a good determination?** The Fitness to Practise Committee should explain fully why they have come to the decision that has been reached and why that outcome is more appropriate than any other possible outcomes. The Committee should consider the following before making a determination and a full explanation should always cover:

a. A description of the allegations (a reference to the Code of Conduct may be made);

b. An explanation of why each factual allegation was or was not found proved;

c. An explanation of any important background facts which led the Committee to reach its conclusion;

e. Confirmation or otherwise that you have accepted any legal advice you have been given by the Legal Adviser (it is particularly important to give a full explanation of your position in relation to any advice you have not accepted);

f. Your conclusions on the main submissions made to you by the parties or their representatives;

g. Whether, on the basis of the facts found proved, the Registrant’s actions amount to misconduct, deficient professional performance or that he or she has adverse physical or mental health, and why ;

h. Whether the fitness to practise of a Registrant is currently impaired, and if so, why and, if not, why not;

i. Why and what sanctions are being imposed and how the sanction imposed protects the public;

j. Why you rejected the other sanctions available;

k. The Professional Standards Authority also recommends that the Committee should consider the sanction immediately above that
which they are minded to impose, and give reasons why the more severe sanction is not required.

l. Make mention of any details of good character that have been submitted;

m. In a case where the Registrant is suspended or has conditions placed on registration, whether or not a review hearing should be held, with reasons, and if there will be a review, an explanation of the sort of evidence the Registrant would be expected to provide at the review hearing and the issues the review panel may wish to consider;

n. Where conditions or a suspension has been imposed and the Committee has not directed a review hearing, reasons why and what factors led the Committee to decide that the Registrant will be fit to return to unrestricted practice when the conditions or suspension lapse;

o. Whether or not to make an order for immediate conditions or suspension, with reasons, and if so, which of the grounds in Section 13I (1) or (2) the Committee is relying on;

p. A review hearing determination should include details of the initial allegations against the Registrant, a brief summary of the initial findings and the actions taken by the Registrant since the last hearing; it should also include any decisions made by the Committee as to any directions or orders made and its reasons for them, and where the registrant is considered fit to return to unrestricted practise, the reasons why;

q. Where a matter has been adjourned and an interim order imposed, quote the powers under which the order has been made.

There are many reasons that the Committee could provide and it will aid all interested parties to understand the decision. Additionally, a committee that feels obliged to give reasons is more likely to come to a reasonable outcome and it is in the Committee’s own interest to produce a well reasoned decision as it is far less likely to result in the PSA asking for additional information unless the decision appears to be clearly inappropriate (this applies to both substantive and interim order hearings). Giving clear reasons will also avoid adverse inferences being drawn, for example by the Professional Standards Authority or the Courts, that matters were not considered or that there was no reasonable basis for the decision.

In summary, whatever the Fitness to Practise Committee decides in a case, it needs to explain its reasons. The Committee needs to explain why it has or has not found allegations proved and why it has or has not imposed a sanction. The public, witnesses and the parties will be able to see why a particular course has been taken, even if they disagree with the outcome. The Registrant and, as mentioned previously, the PSA may have the right to appeal against the Committee’s decision. A complainant might also wish to apply for leave for judicial review of the decision. A full explanation of the
reasons for the Committee’s decision will help them decide whether to exercise that right and will help the Court which has to consider any appeal.

**Interim Order Review determinations**

A determination of an interim order review hearing must contain as much detail as possible and in such a way that the reader may understand the details of the review hearing in isolation of previous determinations. A brief history of the case assists the reader to understand the background to the matter. A Committee’s determination should include:

- Details of the initial allegations against the Registrant;
- A brief summary of the initial findings;
- Any actions taken by the Registrant since the last hearing.
- Any decisions reached by the Committee and its reasons for them.

(For further information on original interim order determinations, please see the section below on Interim Orders).

**Mitigation**

**What counts as mitigation and when to take it into account**

Mitigation evidence can include evidence about the circumstances leading up to the incidents in question as well as evidence about the Registrant’s previous good character and history. It may include evidence about the time lapse since the incidents occurred and evidence of actions taken to apologise for and/or address the concerns which resulted in the proceedings being brought. A demonstration of insight of those concerns coupled with actions taken to avoid repetition of them may also be regarded as mitigating factors. Whether a factor is a mitigating circumstance or not is entirely a matter for the Committee to determine. In each case, the Committee must consider both mitigating and aggravating features as set out in the evidence they have heard. They should also take into account any representations about these matters made on behalf of the Council and the Registrant; but bearing in mind always that representations are not evidence.

**Generic Mitigating and Aggravating features**

- Impact on victim – to include both harm and potential harm
- Whether offence at work or outside work
- Whether the actions involved an abuse of trust
- Whether or not the Registrant has shown insight and remorse (taking into account, where relevant, their attitude and behaviour at the hearing)
- Whether or not the Registrant has taken steps to remedy their actions, to prevent recurrence or to make reparation
- Whether the incident was premeditated or spontaneous
- Whether the conduct was a one off or repeated
- Whether the Registrant attempts to cover up wrongdoing
• Whether the incident has occurred in the light of previous warnings
• Whether Registrant has complied with any previous assessment or conditions

Absence of evidence
The Fitness to Practise Committee should only take account of evidence (for example testimonials) that is put before it and should not draw inferences from an absence of such evidence, because

• there may be cultural or other reasons why a Registrant would not or could not solicit testimonials from colleagues or patients, and
• in any event, such inferences would be likely to be influenced by the Committee’s assumptions about the sort of references that might have been produced, assumptions which are untested.

Personal mitigation and testimonials
The Fitness to Practise Committee should consider testimonials in the light of the factual findings that have been made. Testimonials prepared in advance of a hearing need to be evaluated in the light of the factual findings made at the hearing. The Committee should consider whether the authors of the testimonials were aware of the events leading to the hearing and what weight, if any, to give to them.

The Fitness to Practise Committee should consider the relevance of testimonials, mitigating circumstances, remorse and apologies in relation to the primary issue of fitness to practise. If a Registrant’s conduct shows they are fundamentally unsuited for registration as a health care professional, no amount of remorse or apologies – or indeed positive personal qualities in other respects – can “mitigate” the seriousness of that conclusion and its impact on registration. Persuasive evidence of rehabilitation and a credible commitment to high standards in the future will be directly relevant to the question of fitness to practise, to the Registrant’s credit, even though there may have been a lapse in the past, possibly a serious one.

The relevance of mitigating circumstances
Evidence of mitigating circumstances surrounding proven misconduct can be helpful in forming a picture of how a Registrant has responded to stresses in life and professional practice, which may be significant in relation to the question of fitness to practise. Evidence that lapses have been associated with extreme circumstances which no longer exist may give some degree of reassurance. But the risk of recurrence of stressful circumstances may be relevant to the evaluation of risk (and hence to your choice of sanction).

At what stage should the Committee receive personal mitigation and testimonials?
The Committee will need to consider what is the appropriate stage for them to take account of personal mitigation and testimonials.
Where there is an allegation of dishonesty, it may be appropriate for them to take into account testimonials as to a Registrant’s good character at the fact-finding stage, when deciding the issue of dishonesty. This is because such evidence, while not a defence in itself, may be relevant to the Registrant’s credibility and propensity to do what is alleged ([Donkin v The Law Society [2007] EWHC 414 (Admin) and Wisson v Health Professions Council [2013] EWHC 1036 (Admin))]

Letters of testimonial or other evidence which attests to the steps taken by the Registrant to remedy the conduct which led to the hearing (for example from professional colleagues) and evidence of the Registrant’s current fitness to practise will be relevant at the point when the Committee is considering the issue of impairment. Such evidence should not be left to the sanction stage. As Mr Justice McCombe said in Azzam v General Medical Council [2008] EWHC 2711:

“It must behave a FTP Panel to consider facts material to the practitioner’s fitness to practise looking forward, and for that purpose to take into account evidence as to his present skills or lack of them and any steps taken, since the conduct criticised, to remedy any defects in skill. I accept … that some elements of reputation and character may well be matters of pure mitigation, not to be taken into account at the “impairment” stage. However, the line is a fine one and it is clear to me that evidence of a [practitioner’s] overall ability is relevant to the question of fitness to practise”
Fitness to Practise Committee

Interim Orders (s13L)

The Fitness to Practise Committee may feel that the public interest requires that an interim order be made.

The circumstances which may lead the Committee to the view that interim measures are necessary are likely to involve allegations which show a real present or likely future risk to a member or members of the public. The public interest may also require that the practitioner themselves be protected from future practice and the Committee may consider that ground as sufficient to make either order. There may be other relevant matters which you must consider bearing in mind the interests of the practitioner and weighing the Committee's obligation to protect the public and to uphold the good name of the profession of optician.

These orders may be made without the Registrant present; in such a case the Committee should bear in mind that the Registrant has not been present to defend his or her position and you should be careful to make such an order only where there is clear evidence of real risk to the public and/or to the Registrant or some other strong public interest requires the action in question.

Where the Fitness to Practise Committee is satisfied that it is necessary for the protection of the public or is otherwise in the public interest or is in the interests of the Registrant, for his/her registration to be suspended or made subject to conditions, or an entry relating to a speciality or proficiency to be removed temporarily or made subject to conditions, you may make the following orders:

a. Suspension of registration;

b. Temporary removal of an entry relating to a speciality or proficiency for a specified period not exceeding eighteen months (an interim suspension order); or

c. The Registrant's registration or the entry relating to a speciality or proficiency made conditional on the Registrant's compliance for a specified period not exceeding eighteen months with such requirements as the Committee think fit to impose (an order for interim conditional registration).

The High Court has considered the three “limbs” of the grounds on which an interim order may be made, (ie public protection, public interest and interests of the Registrant), and has considered whether a Registrant can only be suspended on public interest grounds if this was “necessary”. The High Court indicated that while the legislation allows an interim order on public protection grounds only if this is “necessary”, there is no such qualification to the public interest limb (Sandler v General Medical Council [2010] EWHC 1029).

However, care must be taken to explain how an order intended to safeguard public confidence is proportionate, bearing in mind the interim nature of the relief as the public interest considerations could be fairly reflected by an appropriate decision at the final hearing. (Sosanya v General Medical Council
When deciding whether to impose an interim order, the Committee must take into account the following:

a. The effect which any order might have on the Registrant. The Committee must balance the need for an order against the consequences which an order would have for the Registrant and satisfy themselves that the consequences are not disproportionate to the risk from which they are seeking to protect the public (Madan v General Medical Council [2001] EWHC Admin 57 and Scholten v General Medical Council [2013] EWHC 173 (Admin)).

b. When considering an Interim Order, the Committee is not making findings of fact nor making findings as to whether the allegations are or are not established. The Committee can receive evidence from the Registrant that an allegation is manifestly unfounded or manifestly exaggerated but the Committee should not decide on credibility or the merits of a disputed allegation; that is a matter for the substantive hearing. It is sufficient for the Committee to act, if they take the view that there is a prima facie case and that the prima facie case, having regard to such material as is put before them by the Registrant, requires that the public be protected by an Interim Order (R (George) v General Medical Council [2003] EWHC 1124 paragraph 42; Perry v Nursing and Midwifery Council [2013] EWCA Civ 145).

c. As regards the amount of evidence before the Committee, the High Court has indicated that it would expect the allegation to have been made or confirmed in writing, although it may not yet have been reduced to a formal witness statement. The Committee will need to consider the source of the allegation and its potential seriousness. An allegation that is trivial or clearly misconceived should not be given weight (General Medical Council v Sheill [2006] EWHC 3025).

d. The High Court has also indicated that, where a Registrant has been charged with a criminal offence, the Committee will not always be obliged to hear evidence or submissions as to any alleged weaknesses in the criminal case. The Committee can proceed on the basis that the Crown Prosecution Service has concluded there was sufficient substance in the matter to justify charges being brought (Fallon v Horse Racing Regulatory Authority [2006] EWHC 2030).

e. The primary purpose of an Interim Order is to protect members of the public. It will be relatively rare for an Interim Order to be made only on the ground that it is in the public interest (for example, to maintain public confidence in the profession) (see R (Shiekh) v General Dental Council [2007] EWHC 2972).

An Interim Order determination does not need to be lengthy but it should identify any of the relevant factors as listed above and clearly explain the proportionality of any or no interim action in respect of the identified risks (and the degree of potential harm) posed by the Registrant in the specific circumstances of the case.
When setting the length of an interim suspension or conditional registration order, the Committee should bear in mind the length of time the Council requires to bring the matter to a final substantive hearing which can, in some cases, be over 12 months. If a substantive hearing in the matter cannot be held before 18 months expires from the setting of the interim order (or before the expiry of an order that is imposed for less than 18 months), the Council will be required to apply to the High Court for an extension. The maximum period should not be specified as a default, and the period must be justified on the individual facts of the case (Harry v General Medical Council [2012] EWHC 2762).

Where an order is to be made, the Committee should ensure that a date for a 6-month review is always included in the determination.

**Revocation of Interim Orders**

Any existing interim order will not automatically lapse on the making of a subsequent substantive order. The Committee must therefore revoke any interim order immediately after it has determined the allegation (Section 13L (11) of the Opticians Act 1989).

**Fitness to practise not impaired (warning) (s13F(5))**

A warning may be given in a case where the fitness to practise of a Registrant is found not to be impaired. When issuing a warning, the Fitness to Practise Committee will need to consider whether a date of expiry of the warning should be set. A warning does not directly affect a Registrant’s ability to practise or undertake training but is published on the Council’s website and disclosed if anyone enquires about the Registrant’s fitness to practise history.

It should be borne in mind that a warning has no direct effect on practice rights. This might be appropriate if the Registrant’s character and circumstances are such that, whatever the history, you are confident that there is no risk to the public or to patients which require practice rights to be restricted.

A warning may be appropriate where concerns raised by the case are sufficiently serious to require a formal response, but do not reach the threshold for impairment. Care should be taken to explain why a formal response is required in the light of the finding of ‘no impairment’ and the mitigating factors that may therefore be present.

Factors when a warning may be appropriate:

- Evidence that the behaviour of the Registrant would not have caused patient harm;
- Early admission of facts alleged and/or:
  - insight into failings;
  - isolated incident which was not deliberate;
  - genuine expression of regret/apology.
- Acting under duress;
• Previous good history;
• No repetition of behaviour since incident;
• Appropriate rehabilitative/corrective steps have been taken; and
• Relevant and appropriate references and testimonials.

Impaired fitness to practise or undertake training

This guidance is designed to inform your consideration of the available options. The paragraphs which follow are therefore relevant when there has been a finding that the Registrant’s current fitness to practise is impaired and the issue is what to do about that. Where you conclude that the Registrant remains fit to practise and does not require any restriction on his or her registration, none of the rest of this document will be relevant to your discussions and the decision of the Fitness to Practise Committee will be to take no further action but reasons will have to be given by the Committee in its determination.

Definition of impaired fitness to practise (s13D(2-3))

Registered individuals (including students)

A finding of impaired fitness to practise against a registered individual can be based on any of the following:

a. Misconduct;

b. Deficient professional performance (not in the case of a registered student);

c. A conviction or caution in the British Islands for a criminal offence, or a conviction elsewhere for an offence which, if committed in England and Wales, would constitute a criminal offence;

d. The Registrant having accepted a conditional offer under section 302 of the Criminal Procedure (Scotland) Act 1995 (fixed penalty: conditional offer by procurator fiscal) or agreed to pay a penalty under section 115A of the Social Security Administration Act 1992 (penalty as alternative to prosecution);

e. The Registrant, in proceedings in Scotland for an offence, having been the subject or an order under section 246(2) or (3) of the Criminal Procedure (Scotland) Act 1995 discharging him absolutely;

f. Adverse physical or mental health; or

g. A determination by any other UK health regulatory body that fitness to practise is impaired (or a determination by a regulatory body elsewhere to the same effect).
Business Registrants

A finding of impaired fitness to practise against a business Registrant can be based on any of the following:

a. Misconduct (by the business Registrant or a director);

b. Practices or patterns of behaviour occurring within the business which:
   - The Registrant knew or ought reasonably to have known of; and
   - Amount to misconduct or deficient professional performance.

c. The instigations by the business Registrant of practices or patterns of behaviour within the business where that practice or behaviour amounts, or would if implemented amount, to misconduct or deficient professional performance;

d. A conviction or caution in the British Islands of the business Registrant or one of its directors for a criminal offence, or a conviction elsewhere for an offence which, if committed in England and Wales, would constitute a criminal offence;

e. The Registrant or one of its directors having accepted a conditional offer under section 302 of the Criminal Procedure (Scotland) Act 1995 or agreed to pay a penalty under section 115A of the Social Security Administration Act 1992;

f. The Registrant or one of its directors, in proceedings in Scotland for an offence, having been the subject or an order under section 246(2) or (3) of the Criminal Procedure (Scotland) Act 1995 discharging it or him absolutely;

g. A determination by any other UK health regulatory body that:
   - The business Registrant’s fitness to carry on business as a member of that profession is impaired; or
   - The fitness of a director of the business Registrant to practise that profession is impaired (or a determination by a regulatory body elsewhere to the same effect).

There is no statutory definition of impairment of fitness to practise. It is clear from case law that the decision on impairment should be a separate decision from the decision on whether what has been found proved amounts to misconduct, deficient professional performance or adverse physical or mental health, etc. Having made that decision, the Committee must go on to determine whether, as a result, fitness to practise is impaired. It may be that despite a Registrant having been guilty of misconduct, for example, a Committee may decide that his or her fitness to practise is not impaired.

In determining impairment, relevant factors for the Committee to take into account include whether the conduct which led to the allegation is remediable,
whether it has been remedied and whether it is likely to be repeated. Certain types of misconduct (for example cases involving clinical issues) may be more capable of being remedied than others.

In coming to a conclusion on impairment, the Committee must look forward, not back. It may be that what the Registrant has done is so bad, that looking forward the Committee is persuaded that the Registrant is simply not fit to practise without restrictions or maybe at all. On the other hand, what the Registrant has done may be such that, in the context of an otherwise unblemished career, and taking into account remedial steps taken by the Registrant, the Committee may conclude that looking forward, fitness to practise is not impaired despite the misconduct. When reaching a decision that fitness to practise is not impaired, the Committee must make clear what remedial steps have been taken into account and why these mitigate against recurrence of the particular issues in question in the case.

When considering impairment of fitness to practise, the Committee must have regard to public interest considerations. In CHRE v Nursing and Midwifery Council (Grant) [2011] EWHC 927, the High Court said that, in deciding whether fitness to practise is impaired, the Committee should ask themselves "Not only whether the Registrant continued to present a risk to members of the public, but whether the need to uphold proper professional standards and public confidence in the Registrant and in the profession would be undermined if a finding of impairment of fitness to practise were not made in the circumstances of this case."


**Available Sanctions (s13F(3) (a)-(c) and s13H)**

Where fitness to practise is found to be impaired, the Fitness to Practise Committee may impose a sanction. The purpose of any sanction is not to punish the Registrant but to protect patients and the wider public interest (See section on the Public Interest above).

The sanctions available to the Committee in ascending order starting at the least severe are:

- Financial penalty (except in a health case)
- Conditions (ordinarily to be followed by a review) for up to 3 years
- Suspension (ordinarily to be followed by a review) for up to 12 months
- Erasure (except in a health case)

Where impairment is found on the ground of deficient professional performance, and the deficiency relates to the performance of a specialty or proficiency particulars of which are entered in the register, the Committee may
direct that the entry relating to that specialty or proficiency be subject to conditions (for up to 3 years, removed temporarily (for up to 12 months) or removed (s13F(4)).

Proportionality

The sanction should be proportionate. This means that the sanction must be appropriate bearing in mind the interests of the public and the interests of the Registrant and the seriousness of the allegations found proven against the Registrant. Whatever sanction you decide on should be reached after considering all of the facts of the particular case. This includes taking account of any aggravating and mitigating features of the allegation, together with any personal mitigation put forward by the Registrant. In deciding what sanction is appropriate, the Committee should consider them in ascending order, starting with the least severe. The Professional Standards Authority also recommends that the Committee should consider the sanction immediately above that which they are minded to impose, and give reasons why the more severe sanction is not required.

The Sanctions

The following section of this guidance sets out the basis of each of the sanctions in turn.

Financial penalty orders (s13H)

The Fitness to Practise Committee has the power to impose a financial penalty order of any sum not exceeding £50,000. The order may be made in addition to, or instead of an erasure order, suspension or conditional registration order. However, for a case where the events occurred before 1 July 2005, the penalty must not exceed £1600 (this being the maximum financial penalty available to the Disciplinary Committee prior to the inception of the amended Act).

When making a financial penalty order the Committee must specify the period or date within which the sum is to be paid.

Where the Committee is considering making such an award against an individual Registrant, the Registrant’s ability to pay should be taken into account.

Conditional registration (maximum three years)

Consider: Will imposing conditions be sufficient to protect patients and the public interest?

The primary purpose of conditions should be to protect the public. This means that the conditions should normally impose a requirement for the Registrant to be under strict supervision in either his practice or other places of work. It should also be taken into consideration that the Registrant may change his field of practice so the conditions placed upon him should not be restricted to just his current field of practice or rely on him being currently employed (Perry v Nursing and Midwifery Council [2012] EWHC 2275).
Conditions might be most appropriate in cases involving a Registrant’s health, performance, or where there is evidence of shortcomings in a specific area or areas of the Registrant’s practice.

Conditions on the Registrant’s registration may be imposed up to a maximum of three years. Conditional registration allows a Registrant to return to practice under certain conditions – no longer being able to carry out certain procedures, for example. In some cases, the Committee may decide that further training, in addition to conditional registration, is required and which may assist in rectifying the problem.

Where the Fitness to Practise Committee has identified that there are significant shortcomings in the Registrant’s practice or evidence of incompetence exists, the Committee should satisfy itself that the Registrant would respond positively to retraining which would thus allow the Registrant to remedy any deficiencies in practice whilst protecting patients. When assessing the potential of using conditions, the Committee would need to consider objective evidence submitted on behalf of the Registrant or such evidence that is available to them about the Registrant’s practice.

The objectives of any conditions placed on the Registrant must be relevant to the conduct in question and any risk it presents, and should be made clear so that when a review hearing takes place the Committee will be able to ascertain the original shortcomings and the exact proposals for their correction; with these established it will be easier to evaluate whether the aims have been achieved. Any conditions should be appropriate, proportionate, workable and measurable and should be discussed fully by the Committee before imposing them.

In drafting conditions, the Committee should place the onus of complying with them on the Registrant; the Committee should not draft conditions which require a third party (including the Council) to undertake specific tasks, since the Committee has no jurisdiction over those third parties.

A bank of conditions which can be considered by a committee is shown in Annex A to this section.

This sanction may be appropriate when most 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 Registrant’s practice in need of assessment or retraining.
- Evidence that Registrant has insight into any health problems and is prepared to agree to abide by conditions on medical condition, treatment and supervision.
- No evidence of general incompetence.
- Potential and willingness to respond positively to retraining.
- Patients will not be put in danger either directly or indirectly as a result of conditional registration itself.
- The conditions will protect patients during the period they are in force.
• It is possible to formulate appropriate and practical conditions to impose on registration and make provision as to how conditions will be monitored.

**Conditions - educational**

Before imposing educational conditions the panel should satisfy itself that:

- The problem is amenable to improvement through education.
- The objectives of the conditions are clear.
- A future committee will be readily able to determine whether the educational objective has been achieved and whether patients will or will not be avoidably at risk.

When imposing conditional registration it is also normally appropriate to direct a review hearing (see section below on Review Hearings).

If the Committee directs conditional registration, (or in cases based on deficient professional performance, a direction that an entry relating to a specialty or proficiency be made conditional) it should also consider whether the conditions should take effect immediately, and give reasons for its decision (see section below on Immediate orders for conditions or suspension (where direction made for conditional registration, suspension or erasure) (s13I)).

**Suspension (maximum 12 months) (s13F)**

**Consider: Does the seriousness of the case require temporary removal from the register? Will a period of suspension be sufficient to protect patients and the public interest?**

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

- A serious instance of misconduct but where a lesser sanction is not sufficient.
- Not fundamentally incompatible with continuing to be a registered professional.
- No evidence of harmful deep-seated personality or attitudinal problems.
- No evidence of repetition of behaviour since incident.
- Panel is satisfied the Registrant has insight and does not pose a significant risk of repeating behaviour.
- In cases where the only issue relates to the Registrant’s health, there is a risk to patient safety if the Registrant was allowed to continue to practise even under conditions.
- When imposing a period of suspension it is also normally appropriate to direct a review hearing (see section below on Review Hearings).

If the Committee directs a period of suspension, (or in cases based on deficient professional performance, temporary removal of an entry relating to
a specialty or proficiency) it should also consider whether the suspension should take effect immediately, and give reasons for its decision (see section above on Immediate orders for conditions or suspension (where direction made for conditional registration, suspension or erasure) (s13I)).

Review hearing
The Fitness to Practise Committee should direct that there be a review of an interim order.

The Committee should also normally direct that there be a review of a conditional order or a suspension order before they expire. This is because before a suspension or conditions are lifted, the Fitness to Practise Committee will need to be reassured that the Registrant is fit to resume practice either unrestricted or with conditions or further conditions. Also, where conditions have been imposed, the Registrant must demonstrate to the Committee that they have satisfied the conditions imposed at the previous hearing (*Bangbelu v General Dental Council [2013] EWHC 1169*).

The Committee will also need to satisfy itself that the Registrant has fully appreciated the gravity of the offence, has not re-offended and has maintained his or her skills and knowledge and that the Registrant’s patients will not be placed at risk by resumption of practice or by the imposition of conditional registration.

The Committee should consider whether the Registrant has produced any information or objective evidence regarding these matters. At a review hearing, where a Registrant has not shown tenacity in pursuing targets for attendance at relevant courses in connection with conditional registration and where the training institutions have offered to provide further tutorials to the Registrant, the Committee should always consider elevating those recommendations into conditions.

At a review hearing, if the Committee considers that the Registrant will not improve his/her performance through existing conditions without further supervision, the Committee should always consider imposing further educational or training conditions.

Where the Committee has made a decision not to direct a review hearing, it should explain why and detail the factors which led it to decide that the Registrant would be fit to resume unrestricted practice when the suspension or conditions expire

Where it directs a review hearing, the Committee may wish to give guidance, or clarify its expectations regarding the evidence or matters the review panel may find useful to take into account in reconsidering the case. This is non-binding and cannot form the basis of an appeal against the decision, but may assist the Registrant and the future Committee (*Ferguson v NMC [2011] EWHC 1456* and *Levy v GMC [2011] EWHC 2351 (Admin)*).

A substantive review hearing will always be treated as a substantive hearing and will commence at the impairment stage.
The Committee should bear in mind that, as at the original hearing, orders for conditional registration (or orders varying conditions), suspension and erasure (including orders regarding entries relating to a speciality or proficiency) will not take effect until the end of the appeal period or, if an appeal has been made, before the appeal has been concluded (Section 23H). Where such orders are made at a review hearing, the Committee will therefore need to consider the need to protect the public until those orders can take effect.

**Erasure (s13F)**

Consider: Is erasure the only sanction which will be sufficient to protect patients and the public interest? Is the seriousness of the case compatible with ongoing registration? Can public confidence in the profession be sustained if this Registrant is not removed from the register?

Erasure from the register is appropriate where this is the only means of protecting patients and/or maintaining public confidence in the optical profession. The Privy Council (*Bijl v GMC (Privy Council Appeal No. 78 of 2000)*), however, has emphasised that a committee should not feel it necessary to remove:

“...an otherwise competent and useful [Registrant] who presents no danger to the public in order to satisfy [public] demand for blame and punishment.”

But this should be weighed against the words of Lord Bingham (*Bolton v Law Society, adopted by the Privy Council in the case of Dr Gupta [2001]*):

“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.”

The same judgement emphasised the Committee’s role in maintaining confidence in the profession and in particular that erasure was appropriate where, despite a practitioner presenting no risk:

“...the appellant’s behaviour had 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.”

This sanction is likely to be appropriate when the behaviour is fundamentally incompatible with being a registered professional and involves any of the following (this list is not exhaustive):

- Serious departure from the relevant professional standards as set out in the code of conduct for Registrants and business Registrants.
- Doing serious harm to individuals (patients or otherwise), either deliberately or through incompetence and particularly where there is a continuing risk to patients.
- Abuse of position/trust (particularly involving vulnerable patients) or violation of the rights of patients.
- Offences of a sexual nature, including involvement in child pornography.
- Offences involving violence.
- Dishonesty (especially where persistent and covered up).
- Persistent lack of insight into seriousness of actions or consequences.

If the Committee directs erasure (or in cases based on deficient professional performance, removal of an entry relating to a specialty or proficiency), it should also consider whether erasure or removal should take effect immediately, and give reasons for its decision (see section above on Immediate orders for conditions or suspension (where direction made for conditional registration, suspension or erasure))(s13I))

**Sexual misconduct.** A wide range of conduct is encompassed in this category from criminal convictions for sexual assault, sexual abuse of children (including child pornography) to sexual misconduct with patients, patients’ relatives or colleagues. The risk to patients is vitally important and the misconduct is particularly serious where there is an abuse of the Registrant’s special position of trust or where a Registrant has been registered as a sex offender. In such cases erasure has been judged appropriate:

“The public and in particular...patients, must have confidence in the [optical] profession whatever their state of health might be. The conduct as found proved...undoubtedly undermines such confidence and a severe sanction was inevitable. Their Lordships are satisfied that [removal from the register] was neither unreasonable, excessive or disproportionate but necessary in the public interest.”

**Cases involving child pornography.** In most cases where a committee has not imposed the most severe sanction, the CHRE has had concerns that the committee has failed to investigate the case sufficiently. It may well be that there is a natural reluctance to wish to know the full details in light of the distressing nature of the evidence. However, offences of this sort vary considerably according to the sort of material possessed and the Committee need to know exactly what the Registrant did possess. There is considerable difference between possession of pictures at the different levels of the Oliver scale (R v (1) Oliver (2) Hartrey (3) Baldwin - [2003] EWCA Crim 2766) and the committee should know how many pictures would be classified at each level (graded from 1 (lowest level) to 5 (highest level)).

In the *Fleischmann* case the judge ruled that the sanction of 12 months suspension in a matter involving a conviction for possession of a large collection of child pornography at varying levels, including some at the highest levels, was unduly lenient; he felt that erasure was the only appropriate sanction in this case. The judge felt that the Committee had failed to appreciate the significance of the sentence imposed by the Crown Court. The judge went on to say 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.

The judge also expressed concern about the Committee taking account of the Registrant’s defence that he was suffering from depression at the time of the offences. He said that the gravity of such offending is not reduced by the
asserted motivation. In short, other people who have suffered from depression have not resorted to such criminal behaviour.

Dishonesty. The Council’s code of conduct for individual Registrants states that the Registrant must ‘be honest and trustworthy’. Dishonesty is particularly serious as it may undermine trust in the profession. Examples of dishonesty are:

- Defrauding an employer, a colleague or an insurance company;
- *Defrauding the NHS;
- Improperly amending or changing the detail on patient records;
- Submitting or providing false references and information on a CV;
- Research misconduct;
- Failure to disclose to the Council or employer or PCT criminal convictions and cautions.

The term ‘research misconduct’ is used to describe a range of misconduct from presenting misleading information in publications to dishonesty in clinical trials. Such behaviour can undermine the trust that the public and the profession have in optometry as a science regardless of whether this leads to direct harm of the patient and because it has the potential to have far reaching consequences, this type of dishonesty is particularly serious.

* The Privy Council in Dr Shiv Prasad Dey-v-GMC (Privy Council Appeal No. 19 of 2001) has emphasised that:

‘…Health 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.’

The question of whether or not a registrant's conduct is dishonest will be decided by the Committee at the fact-finding stage, at which stage consideration will need to be given to: the nature of the alleged conduct and the evidence to suggest it took place; and the registrant's state of mind and evidence of this. (Recent cases relating to dishonesty include Fish v General Medical Council [2012] EWHC 1269, Fabiyi v Nursing and Midwifery Council [2012] EWHC 1441, Uddin v General Medical Council [2012] EWHC 2669 (Admin),).

There is no blanket rule or presumption that erasure is the appropriate sanction in all cases of dishonesty. The Committee must balance all the relevant issues in a proportionate manner whilst putting proper emphasis on the effect a finding of dishonesty has on public confidence in the profession (R (on the application of Hassan) v General Optical Council [2013] EWHC 1887 (Admin and Siddiqui v General Medical Council [2013] EWHC 1883).

Failing to provide an acceptable level of patient care and persistent clinical failure. Matters in this category are where the Registrant has not acted in the patient’s best interests and has failed to provide an adequate level of care, falling well below the professional standards expected of a
registered optometrist or dispensing optician and where a persistent failure to provide clinical care is apparent.

A particularly important consideration in such cases is whether or not a Registrant has (or has the potential to develop) insight into these failures. Where this is not evident, it is likely that conditions on registration or suspension may not be appropriate or sufficient (Dr Purabi Ghosh-v-GMC (Privy Council Appeal No. 69 of 2000) and Dr John Garfoot-v-GMC (Privy Council Appeal No. 81 of 2001).

**Immediate orders (where direction made for conditional registration, suspension or erasure) (s13I)**

Financial penalties, conditional registration, suspension and erasure orders cannot take effect until the end of the appeal period or, if an appeal has been made, before the appeal has been concluded. In practice therefore, if a Registrant appeals, the sanction imposed may not come into force for some months. However, the Fitness to Practise Committee has the power to impose immediate suspension or conditional registration to cover the appeal period.

If the Fitness to Practise Committee has made a conditional registration order, it should consider whether there are reasons for imposing immediate conditions. Before doing so the Committee must be satisfied that to do so is necessary for the protection of members of the public, otherwise in the public interest or in the best interests of the Registrant.

If the Committee has made a direction for suspension or erasure (or removal of an entry relating to a speciality or proficiency) it should consider whether there are reasons for ordering immediate suspension. Before doing so the Committee must be satisfied that to do so is necessary for the protection of members of the public, otherwise in the public interest or in the best interests of the Registrant.

If the Committee thinks there may be grounds for immediate conditions or suspension, it must inform the Registrant of these concerns and invite representations on this issue from both the Presenting Officer and the Registrant/Registrant's representative (where present). The Fitness to Practise Committee must then decide whether or not to impose an Immediate Order and give its reasons in the usual way. The Committee must always make clear in its determination that it has considered whether to make an Immediate Order and give its reasons, even if it decides that an Immediate Order is not necessary.

**Cases involving a Conviction, Caution or Determination by another regulatory body**

Impairment of fitness to practise may be found by reason of a conviction or caution in the British Islands for a criminal offence, or a conviction elsewhere for an offence which, if committed in England and Wales, would constitute a criminal offence. This can include a conviction by a Court Martial. If a
Registrant has accepted a police caution, the Registrant will have admitted committing the offence.

Impairment may also be based on a determination by a body in the United Kingdom responsible under legislation for the regulation of a health or social care profession, to the effect that the Registrant's fitness to practise is impaired, and includes a determination by a regulatory body elsewhere to the same effect.

In cases involving convictions, cautions or determinations by another regulatory body, the purpose of the hearing is not to punish the Registrant a second time for the offences committed. 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.

The Committee should bear in mind that the sentence imposed by a Criminal Court, or sanction imposed by another regulatory body, is not always an accurate guide to the seriousness of the offence. There may have been particular circumstances which led that court or regulatory body to be lenient. For example, because it was anticipated that the Registrant would be dealt with firmly by his/her regulatory body. Similarly, in the case of determinations by other regulatory bodies, the range of sanctions and how they are applied may vary significantly.

Some people may consider that a caution is a lower sanction than a criminal conviction, and when accepting it, the Registrant may not have realised how seriously it might affect his/her professional career. However, a caution is as much a possible ground for impairment as a criminal conviction, and the Committee must judge each individual case on the evidence before it.

**No further action.** Where a Registrant's fitness to practise is impaired the Fitness to Practise Committee would usually take action in order to protect the public interest (protection of patients, maintenance of public confidence in the profession and declaring and upholding proper standards of conduct and behaviour).

There may, however, be exceptional circumstances in which a Committee might be justified in taking no action. Such cases are likely to be very rare. In order to be 'exceptional', circumstances must not be routinely or normally encountered (*R –v- Kelly (Edward) [2000] QB 198*) and reasons must be given as to what the relevant circumstances are, why they are considered exceptional and why they mitigate against action being taken.

No action might be appropriate in cases where the Registrant has demonstrated considerable insight into his/her behaviour and has already embarked on, and completed, any remedial action the Committee would otherwise require him/her to undertake. The Committee may wish to see evidence to show that the Registrant has taken steps to mitigate his/her actions.
In such cases it is particularly important that the Committee’s determination sets out very clearly the reasons why it considered it appropriate to take no action notwithstanding the fact that the Registrant’s fitness to practise was found to be impaired.

Costs and expenses

The Fitness to Practise Committee has the power to summarily assess the costs of any party to the proceedings and order any party (the GOC or the Registrant) to pay all or part of the costs or expenses of any other party.

Where the Committee is considering making such an award against an individual Registrant, the Registrant’s ability to pay should be taken into account. It is incumbent on the Registrant to adduce all relevant evidence and to make appropriate submissions in respect of their ability to pay any such order (Solicitors Regulation Authority v Davis and McGlinchey [2011] EWHC 232 (Admin) and Sharma v Solicitors Regulation Authority [2012] EWHC 3176).

Before making an order for costs against the Council, the Fitness to Practise Committee should take into account the following:

- A professional regulatory body such as the Council is in a wholly different position from an ordinary litigant and the general rule in litigation that “costs follow the event” has no direct application;
- Unless the complaint is improperly brought, or, for example, proceeds, as a “shambles from start to finish”, an order for costs should not ordinarily be made against [the Regulator] on the basis that costs follow the event;
- The “event” is a factor to consider but is not the starting point;
- The Council brings proceedings in the public interest and to maintain proper professional standards. “For [a Regulator] to be exposed to the risk of an adverse costs order simply because properly brought proceedings were unsuccessful might have a chilling effect on the exercise of its regulatory obligations, to the public disadvantage”.

### Conditional Registration - Bank of Conditions

<table>
<thead>
<tr>
<th>A1</th>
<th>Standard conditions (you should consider including each of these conditions in any conditions determination)</th>
</tr>
</thead>
<tbody>
<tr>
<td>A1.1</td>
<td>You must place yourself and remain under the supervision of a specified workplace/learning supervisor, with the agreement of the GOC and who would be prepared to monitor your conditions [if appropriate, the FTP Committee to set frequency of contact between supervisor and registrant] and provide reports to the Registrar every [six] [three] months providing details of any progression or regression in the specified areas (the Committee must specify exactly what areas the supervisor must report on). You must advise the Registrar of the nominated supervisor’s contact details within 21 days of the hearing and of any change to the specified workplace/learning supervisor.³</td>
</tr>
<tr>
<td>A1.2</td>
<td>If the condition (above) cannot be complied with due to you being a sole practitioner or locum across multiple practices, you must furnish the Registrar with the full contact details within 21 days of the hearing of a professional colleague who would be prepared to monitor your conditions and provide reports to the Registrar every [six] [three] months providing details of any progression or regression in the specified areas (the Committee must specify exactly what areas the nominated professional colleague must report on).</td>
</tr>
<tr>
<td>A1.3</td>
<td>The GOC will enter these conditions against your name in the register save any conditions which relate to your health. You must allow the Registrar to share any information, including confidential information, with any employer, supervisor, professional colleague or any organisation for which you provide ophthalmic services for the duration of your conditional registration. You must also allow the Registrar to share this information with other regulatory bodies and the Department of Health.</td>
</tr>
<tr>
<td>A1.4</td>
<td>You must notify the Registrar within 14 days of commencement of any professional appointment you accept whilst you are subject to these conditions (this includes any teaching posts) and provide contact details of your employer and if providing NHS ophthalmic services, the NHS Body on whose ophthalmic performer or contractor list you will be included (this includes any equivalent employer in the EC).</td>
</tr>
<tr>
<td>A1.5</td>
<td>You must inform the Registrar within 14 days of any criminal convictions, police cautions or formal disciplinary proceedings taken against you from the date of this determination.</td>
</tr>
</tbody>
</table>

³ A supervisor appointed for this purpose may already be carrying out a similar rote in relation to that student’s pre-registration supervision. The objectives of a condition imposed by the Fitness to Practise Committee are different and are to enable the Committee to satisfy itself as to the registrant’s fitness to practise or train.
A1.6 You must inform the Registrar:
   a. If you cease working;
   b. If your work takes you out of the UK for a significant period of time; or
   c. Of any employment you apply for outside of the UK (and in which countries)
as conditions of registration only apply to practice undertaken in the UK (you must consider whether your time out of work or out of the UK will allow you to fulfil the conditions during the period of conditional registration). The Registrar may inform the relevant competent authorities in that country of your current conditions of UK registration.

A1.7 You must continue to fulfil the CET requirements under the GOC CET scheme to secure appropriate points for continued inclusion on the GOC register.

A1.8 You must inform the following parties that your registration is subject to conditional registration:
   a. Any organisation or person employing or contracting with you to undertake ophthalmic services (to include any locum agency);
   b. Any prospective employer (whether within the UK or EC);
   c. Chairman of the Local Optometric Committee;
   d. The NHS Body in whose ophthalmic performer or contractor list you are included or seeking inclusion.

A1.9 You must ensure that your GOC registration is renewed by [15 March annually (for optometrists and dispensing opticians)] [31 August annually (for student registrants)] while you are subject to the GOC FTP conditional registration procedures. Should you fail to renew your registration a review hearing will be arranged immediately.

A2 Health Issues (impairment by reason of ill-health)

A2.1 [Mental health issues only] You must place yourself under the medical supervision of a consultant psychiatrist (details to be passed to the Registrar), attend upon him regularly, follow his advice and comply with his recommended treatment and permit him to report to the Registrar [annually] [six] [three] months.

A2.2 You must register and remain under the care of a general practitioner (name and contact details to be passed to the Registrar and your consultant psychiatrist) and inform that GP that you are subject to supervision and conditions under the GOC FTP procedures. Your GP and anyone else who is responsible for your care and treatment should also be informed about your impairing condition.

A2.3 You must allow the Registrar to exchange information with your consultant psychiatrist on your progress under medical supervision, your fitness to practise and your compliance with these conditions and also allow the Registrar to exchange information about your health and any treatment you are receiving, with your GP and any other
<table>
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<tr>
<th>Section</th>
<th>Description</th>
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<tr>
<td>A2.4</td>
<td>You must keep your professional commitments under review and limit your ophthalmic practice in accordance with your medical supervisor’s advice.</td>
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<tr>
<td>A2.5</td>
<td>You must cease work immediately on the orders of your consultant psychiatrist, GP or any individual who is responsible for your medical supervision and inform the Registrar within 24 hours while under the GOC FTP conditional registration procedures.</td>
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<tr>
<td>A3</td>
<td><strong>Conditions for inclusion in all determinations of alcohol and/or drug abuse</strong></td>
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<tr>
<td>A3.1</td>
<td>You must abstain immediately from the [consumption of all forms of alcohol] [taking of illegal substances].</td>
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<td>A3.2</td>
<td>You must establish and continue support involvement with [Alcoholics] [Narcotics] Anonymous throughout the period of conditional registration evidenced by a register of attendance counter signed by an Officer or organiser of [AA] [NA]. The register to be brought to your review hearing as evidence of continued attendance.</td>
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<tr>
<td>A3.3</td>
<td>You must register with the relevant regional Drugs Action Team (DAT) (<a href="http://www.drugs.gov.uk/dat/directory/">www.drugs.gov.uk/dat/directory/</a>) for [alcohol abuse (via requested referral from your GP)] [substance misuse] to obtain appropriate treatment and forward three monthly reports from the service provider to the Registrar within 7 days of receiving the report.</td>
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<tr>
<td>A3.4</td>
<td>On a monthly basis, by the end of each calendar month, you must undertake a programme of random [alcohol] [drug] tests by the relevant regional Drugs Action Team (DAT) while under the GOC FTP conditional registration procedures. Such evidence must be provided to the Registrar within 7 days of the test.</td>
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<tr>
<td><strong>Personal drug misuse</strong></td>
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<tr>
<td>A3.5</td>
<td>You may only take drugs which have been prescribed for you by your medical supervisor or your GP (you should be cautious regarding non-prescription, over the counter drugs and the possibility of these affecting your testing under A3.4 above and seek appropriate advice from your GP in this respect).</td>
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<tr>
<td>A3.6</td>
<td>You must not possess any drugs listed in Schedules 1-3 of the Misuse of Drugs Regulations 2001 (as amended from time to time).</td>
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<tr>
<td><strong>A4 General conditions of practice (any one or more can be combined with those listed in A1-A3 as appropriate)</strong></td>
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</tbody>
</table>
| A4.1 | You must work with your nominated supervisor to formulate a personal development plan, specifically designed to address the deficiencies in the following areas of your practise:  
   a. [name of area of concern]  
   b. [name of area of concern] |
| A4.2 | You must submit a copy of your personal development plan to the Registrar for approval within [number] of weeks of the date of this hearing. |
| A4.3 | You must meet with your nominated supervisor on a [weekly] [monthly] basis to discuss progression of your personal development plan. |
| A4.4 | You must allow the Registrar to exchange information regarding progress towards achieving the aims set out in your plan. |
| A4.5 | While in daily practice you must:  
  a. Not carry out [name of procedure] unless directly supervised;  
  b. Maintain a log detailing every case where you have undertaken [name of procedure] which must be signed by the supervisor; and  
  c. Provide a copy of the log to the Registrar on a [monthly] [three monthly] [six monthly] basis or confirm that there have been no cases where such procedures have been necessary. |
| A4.6 | You must attend a [name of procedure] clinic in a hospital eye department as an observer for [number] sessions. Where an opportunity presents itself, you should discuss the procedure with the [hospital optometrist] [medical practitioner]. A record of attendances is to be maintained and a progress report from the [consultant optometrist] [medical practitioner] to be submitted to the Registrar on completion of the [number] attendances. |
| A4.7 | You must attend a university optometry department for [number] x [number] hour sessions of one-to-one tuition in clinical skills including [name of procedure(s)]. A report from the [consultant optometrist] [medical practitioner] to be submitted to the GOC on completion of the [number] attendances. |
| A4.8 | You must consult with the Chairman of your local optometric committee (not applicable to students) to nominate an independent assessor who will review a random selection of [number] of your patient records. A report from the independent assessor to be submitted to the Registrar following scrutiny of the random selection of patient records. |
| A4.9 | You must not undertake any locum work in any form unless advised to do so by your supervisor and with prior agreement of the Registrar. |