

## **Guidance regarding warnings issued by Case Examiners and the Investigation Committee under the provisions of the General Optical Council (Fitness to Practise) Rules 2013**

### **Introduction**

1. The General Optical Council (Fitness to Practise) Rules Order of Council 2013 (“the Rules”) make provision for case examiners and the Investigation Committee to consider allegations of impairment of fitness to practise against a registrant and to make a number of decisions, one of which is to give a warning to the registrant.
2. This guidance aims to assist the GOC’s investigatory decision makers (case examiners and the Investigation Committee) to determine when it is appropriate to issue a warning. The purpose of the guidance is to encourage consistent and appropriate decision making, whilst recognising that each case must be decided on its own facts.
3. This document should be considered in the context of the main guidance for case examiners, the Investigation Committee and the Indicative Sanctions Guidance for the Fitness to Practise Committee (FTPC).
4. Warnings are available at both the investigation stage and the adjudication stage of the fitness to practice procedures. At the investigation stage, warnings can *only* be imposed where it has been decided that the matter should not be referred to the FTPC. At the adjudication stage, they can only be imposed when there has been a finding that the registrant’s fitness to practice is *not* impaired.
5. When considering a complaint about a registrant's Fitness to Practise, the decision makers have a number of options. They can refer the registrant to the Fitness to Practise (“FTP”) Committee for a formal hearing into the allegations; they can invite the registrant to undergo a Performance Assessment or a Health Assessment; they can direct that no action be taken; they can issue a warning; or they can adjourn pending further investigations.

## When will a warning be considered?

6. A warning will be considered when the decision makers are satisfied that the alleged conduct or performance falls short of the threshold for the realistic prospect test for referral to the FTPC. However, there is evidence to suggest that his or her conduct or performance has fallen below the standard expected and to the extent that a formal response from the GOC is warranted.

Examples of where the issuing of a warning may be considered appropriate include (but are not restricted to):

- Where the matters complained of would, if proved, demonstrate a significant failure to meet the GOC core competencies or to follow the GOC Codes of Conduct or the guidance published by the professional bodies, but where a restriction on the registrant's registration would not be necessary;
- Where the matters complained of would not amount, if proved, to an impairment of fitness to practise but if repeated may do so;
- Where there is a significant cause for concern following a performance assessment, but a restriction on the registrant's registration is not necessary;
- Where the registrant accepts that she or he has acted improperly but can demonstrate that this is unlikely to occur again;
- Where the registrant accepts that his or her standards have fallen below an acceptable level but can demonstrate that this is unlikely to happen again,

Whether to issue a warning is a decision that will be taken on the merits of each individual case.

7. A warning is unlikely to be suitable where there is a substantial dispute as to the facts. This is because the decision makers must not resolve conflicts of evidence. This issue will not arise where the facts are not in dispute, or where the registrant has accepted a police caution (and therefore admitted the underlying offence) or the allegation is based on a criminal conviction.

8. In cases where the evidence, if proved, would suggest an on-going risk of harm to patients, the issuing of a warning will not be appropriate. Nor will a warning be appropriate in a case solely relating to the alleged ill-health of a registrant. While warnings may be appropriate in cases where the registrant accepts that he or she has acted improperly or below a relevant standard, such an admission is not a bar to the Investigation Committee referring the matter to the Fitness to Practise Committee.
9. Once the decision makers are satisfied that the concerns raised are sufficiently serious to require a formal response by way of a warning, they must also have regard to the public interest.
10. If the decision makers decide that a warning is not required, they may issue advice to a registrant when the case is closed. Such advice has no formal status, it is simply advice. Advice may relate to (but is not limited to) future conduct, including advice about the appropriate handling of dissatisfied patients. In such situations the decision makers should draft the advice carefully so as to be clear that they are not issuing a warning. A warning is a formal response from the GOC to an allegation under Section 13D of the Opticians Act which is recorded against a registrant's entry in the register, whereas advice is an informal comment on the matter from the case examiners. Clear wording will also prevent any misinterpretation of the decision by a third party who is unfamiliar with the GOC's procedures. Where appropriate, the decision makers may also include positive comments in their advice.

### **What is the purpose of a warning?**

11. Warnings allow the GOC to indicate to a registrant that certain behaviour, conduct or practice represents a departure from the standards expected of its registrants and should not be repeated. They should be viewed as a formal and serious response.

12. It alerts the registrant to steps that he or she can appropriately take to reduce the risk of being the subject of a complaint or of FTP action in the future, whether by improving their professional standards or avoiding certain behaviour.
13. It allows the GOC to monitor any patterns of complaint that may emerge in respect of a registrant. The GOC has a statutory duty to protect the health and safety of the public and must be aware of patterns of behaviour that might put the public at risk, or undermine the reputation of the optical professions, especially when there may be lapses of time between incidents.
14. Further, they highlight to the wider profession that certain behaviour or conduct is unacceptable.

### **What happens when a warning is issued?**

15. Before a warning can be issued by the decision makers, the registrant will be given the opportunity to make further written representations to them, having been advised of the nature of the warning being considered. These representations must be received within 28 days of the date they are written to. The decision makers must consider any representation made by a registrant and decide whether or not to give a warning in the particular circumstances.
16. If, having considered the registrant's representations, the decision makers decide to issue a warning, the registrant will be given this warning in writing. The letter will explain the matters that gave rise to the concern. The letter may include advice from the decision makers as to future conduct, training or standards of performance. These will be recommendations only and the GOC will not monitor them or seek to enforce compliance.
17. The fact that a warning has been issued will be confirmed to the initial complainant. Warnings will not be publicised and nor will their existence be disclosed to enquirers.

### **Giving reasons when a warning is issued**

18. As required under Rule 12 (2) and Rule 14 of the GOC Fitness to Practise Rules (2013) the decision makers must give reasons for their decision for both imposing or for **not** imposing a warning.

19. The decision makers should *bear in mind*:

- A warning can only fulfil its function if the reasons given communicate to the registrant why the warning is considered necessary, and in particular what conduct on his or her part has been found wanting.
- if, having considered the matter carefully the decision makers have concluded that the case is one where there is no marked evidential dispute and there is a proper, rational basis for them to accept one version of events and reject another, they must explain why any dispute has been resolved against the registrant (if that is the case).
- The registrant must be told with some precision, however briefly, what it is that has been identified in the registrant's conduct that requires to be addressed and why it is thought necessary for him or her to address such matters as a result of the allegation.
- The registrant must be told clearly why his or her conduct or practice has been held to be deficient so that the steps required to be taken by him or her to address the deficiencies in question can be understood and seen to be justified.

#### **What happens if there is another complaint against the registrant?**

20. Warnings will be in force for four years from the date that they are issued. Should the registrant be the subject of a further complaint of a similar nature within that period, the decision makers will take the original complaint into account in determining what action, if any, to take in respect of the new complaint. The registrant will be invited to provide representations on the relevance of the earlier warning in the context of the new complaint.

21. When considering a new allegation alongside the circumstances of an earlier warning, it is open to the decision makers to review the decision not to refer the earlier complaint to *the* FTPC. Again, this is a matter on which the registrant will be given the opportunity to make representations.

#### **How long is a warning in place for?**

22. A warning is in force for four years from the date that it is issued. It will expire after those four years have passed. This means that the warning will be recorded against the registrant's entry in the relevant register for four years from the date of the warning letter (this warning will not be

displayed on the public register).

23. Once a warning has expired, the decision makers will not be entitled to take into account its previous existence.