

Guidance on Convictions, Cautions, and Determinations.

1. Rule 5 of the Fitness to Practise Rules contains specific provisions for the management of cases which result from a conviction, police caution or a determination from another regulatory body concerning a doctor's fitness to practise. This guidance is intended to help investigation staff and case examiners manage these cases in an appropriate and consistent way.
2. Rule 5 of the Fitness to Practise rules states:
 - 5.— (1) Subject to rule 4(5), the Registrar shall refer an allegation falling within section 35C(2)(c) of the Act relating to a conviction resulting in the imposition of a custodial sentence, whether immediate or suspended, directly to a FTP Panel.
 - (2) Subject to rule 4(5), the Registrar shall refer any other allegation falling within section 35C(2)(c) or (e) of the Act directly to a FTP Panel, unless he is of the opinion that it ought to be referred to a medical and a lay Case Examiner for consideration under rule 8.
3. This guidance focuses particularly on:
 - a. the types of convictions and cautions which should be referred directly to a Fitness to Practise panel by investigation staff.
 - b. managing convictions and cases of police caution which are referred to case examiners for consideration under rule 8.

Definitions

4. 'Convictions' 'cautions' and 'determinations' are defined in Section 35C of the Medical Act.

Convictions and cautions

"a conviction or caution in the British Islands for a criminal offence, or a conviction elsewhere for an offence which, if committed in England or Wales, would constitute a criminal offence"

Determinations

"a determination by a body in the United Kingdom responsible under any enactment for the regulation of a health or social care profession to the effect that his fitness to practise as a member of that profession is impaired, or a determination by a regulatory body elsewhere to the same effect."

Managing conviction cases.

Convictions resulting in a custodial sentence.

5. Rule 5(1) provides that all convictions which result in a custodial sentence, whether immediate or suspended, must be referred directly to a Fitness to Practise Panel. There are no exceptions to this. Accordingly, any cases falling within these criteria must be referred directly to a FTP panel in line with operational guidance.

Other conviction cases.

6. Under Rule 5(2) there is a presumption that the Registrar shall refer any other conviction and caution cases directly to a FTP panel, unless he thinks that it should be referred to a medical and lay case examiner for consideration under rule 8.

7. There are certain categories of cases where the presumption that the matter should be referred directly to a Fitness to Practise panel should apply. These will be cases where the offences are serious but a custodial sentence was not imposed. Convictions for the following offences should normally be referred directly to a Fitness to Practise panel for determination regardless of whether a custodial sentence was imposed. There is a presumption that the nature of these convictions means that the case will automatically reach the investigation stage test.

- a. Serious arrestable offences (see paragraph 8 below)
- b. Any convictions for offences with a racial motivation
- c. Any convictions involving child pornography
- d. Any convictions under the Misuse of Drugs Act 1971 (as amended)
- e. Any convictions involving an element of dishonesty

8. Certain offences are defined in section 116 of the Police and Criminal Evidence Act 1984 as serious arrestable offences:

- a. Treason, murder, manslaughter, rape, kidnapping, incest or intercourse with a girl under 13, buggery with a boy under 16 or a person who has not consented, indecent assault constituting gross indecency, causing an explosion likely to endanger life or property, certain offences under the *Firearms Act 1968*, causing death by dangerous driving, hostage taking, torture and many drug-related offences, ship hijacking and Channel Tunnel train hijacking, taking indecent photographs of children, publication of obscene matter.
- b. Any other arrestable offence if its commission has led or is intended to, is likely or threatened to lead to any of the following consequences: serious harm to the security of the State or to public order, serious interference with the administration of justice or with the investigation of offences, the death or serious injury - including disease and impairment - of any person, or a

substantial financial gain or serious financial loss to any person.

Convictions where action which should normally be referred to a medical and lay case examiner for consideration

9. Where the conviction does not fall within any of the categories at paragraphs 5 and 7 above, and is not one of the minor motoring offences (see below) which can be concluded by the Registrar, the case should normally be referred to a medical and lay case examiner for consideration under Rule 8.

10. Where conviction and caution cases are referred to case examiners, the following outcomes will be available:

- a. Conclude the case with no further action;
- b. Issue a warning;
- c. Refer the case to a Fitness to Practise panel;
- d. Agree undertakings following a health examination or a performance assessment

11. The case examiners will need to apply the investigation stage test to determine whether to refer a case to a FTP panel:

'The Investigation Committee or Case Examiner must have in mind the GMC's duty to act in the public interest which includes the protection of patients and maintaining public confidence in the profession, in considering whether there is a realistic prospect of establishing that a doctor's fitness to practise is impaired to a degree justifying action on registration'.

12. The case examiners will need to consider the seriousness of the case in order to determine the appropriate outcome. In all cases, the case examiners are entitled to consider the doctor's fitness to practise in the round, and there may be other factors to take into account in addition to the conviction or caution. In terms of convictions and cautions, case examiners should follow the standard guidance and apply the 'realistic prospect' test to determine whether the case should be referred to a Fitness to Practise panel.

13. Where there has been an assessment of the doctor's health (for example, following a conviction for drink driving) the case examiners may agree undertakings with the doctor. However, where there is a realistic prospect of erasure, the case must be referred to a Fitness to Practise panel. (See separate guidance on undertakings at Annex E).

Convictions that can be concluded by the Registrar

14. The following types of conviction can (unless there are any exceptional aggravating factors) normally be concluded by the Registrar – as they are extremely unlikely to raise any issues which might impact on the doctor's registration:

- a. Any offence committed in the UK which is a fixed penalty offence for the purposes of the Road Traffic Offenders Act 1988 or any statutory modification or replacement thereof for the time being in force.
- b. An offence committed in the UK or abroad which is dealt with by a procedure substantially similar to that applicable to such a fixed penalty offence.
- c. An offence the main ingredient of which is the unlawful parking of a motor vehicle.

15. The Registrar will only conclude these cases where there are no other matters requiring investigation.