

## The Realistic Prospect Test

1. The “realistic prospect” test will apply to both the factual allegations and the question whether, if established, the facts would demonstrate that the practitioner’s fitness to practise is impaired to a degree justifying action on registration. It will reflect a genuine (not remote or fanciful) possibility. It is in no-one’s interest for cases to be referred to a FTP panel when they are bound to fail. On the other hand, cases which raise a genuine issue of impaired fitness to practise justifying action on registration are for the FTP panel to decide.

2. In performing their task, the case examiners and members of the Investigation Committee:

a. should bear in mind that the FTP Panel is required to be persuaded that the facts are more likely than not to be true: the facts need to be proven ‘on the balance of probabilities’. The standard of proof applicable in any proceedings is that applicable to civil proceedings.

b. are entitled to assess the weight of the evidence;

c. should not, however, normally seek to resolve substantial conflicts of evidence;

d. should proceed with caution (given that, among other considerations, the case examiners are working from documents alone and the evidence before them may be untested);

e. should proceed with particular caution in reaching a decision to halt a complaint where the decision may be perceived as inconsistent with a decision made by another public body with medical personnel or input (for instance, an NHS body, a Coroner or an Ombudsman) in relation to the same or substantially the same facts and, if the case examiners/ Investigation Committee does reach such a decision, should give reasons for any apparent inconsistency;

f. should be slower to halt a complaint against a practitioner who continues to practise than against one who does not;

g. if in doubt, should consider whether any further investigation is appropriate and in any event should lean in favour of allowing the complaint to proceed to a FTP panel;

h. should bear in mind that whilst there is a public interest in medical practitioners not being harassed by unfounded complaints, there is also a public interest in the ventilation before a FTP panel in public of complaints which do have a realistic prospect of establishing impaired fitness to practise;

i. in considering whether to issue a warning should bear in mind that the standard of proof is that applicable to civil proceedings.