

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 medical practitioners tribunal 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 medical practitioners tribunal to decide.

- 2** In performing their task, the case examiners and members of the Investigation Committee:
 - a** should bear in mind that the medical practitioners tribunal 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 medical practitioners tribunal;

- 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 medical practitioners tribunal 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.