

Guidance on convictions, cautions, determinations and other methods of disposal

Purpose

- 1 The purpose of this guidance is to assist decision makers when dealing with cases involving:
 - convictions
 - cautions
 - overseas determinations
 - police cases which do not result in a conviction, and
 - informal disposals for minor offending.
- 2 The guidance also provides an overview for doctors, legal representatives and other interested parties of how these types of cases are considered in our fitness to practise procedures.

Definitions

- 3 'Convictions', 'cautions' and 'determinations' are defined in Section 35C(2) of the [Medical Act 1983](#) (as amended) ('the 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.'

Convictions

Overview

- 4 The [General Medical Council \(Fitness to Practise\) Rules 2004](#) ('the rules') contain specific provisions for the management of cases which result from a conviction, police caution or a determination from another regulatory body¹.
- 5 The Registrar is required to refer all convictions resulting in a custodial sentence, whether immediate or suspended, directly to a medical practitioners tribunal ('MPT')². As soon as we receive information about such a conviction, we will consider whether the matter should also be referred to an interim orders tribunal ('IOT'). The IOT will consider whether imposing an interim order is necessary, applying the test set out in the [Imposing interim orders guidance](#).
- 6 The Registrar has a discretion to refer a non-custodial conviction, caution or determination to a medical and a lay Case Examiner ('CE') for consideration³ as an alternative to referring it directly to a MPT. In determining when to exercise their discretion, the Registrar will consider the following criteria:
 - a the type and nature of the offence,
 - b the seriousness of the offence,
 - c whether there is a significant risk to members of the public of serious harm caused by the doctor committing further offences,
 - d the type of sentence imposed, and
 - e any other information available.
- 7 A certificate of conviction will be obtained in all cases. Although we don't have to prove the facts behind a conviction at a MPT, we will usually obtain a full summary of

¹ In accordance with rule 5.

² In accordance with rule 5(1).

³ In accordance with rule 5(2) and subject to rule 4(5), the Registrar shall refer any other allegation falling within section 35C(2)(c) or (e) of the Act 1983.

the circumstances of the offence and, in some cases, the judge's sentencing remarks and other evidence such as witness statements. This will help the MPT assess whether the doctor's fitness to practise is impaired by their conviction and, if so, the appropriate sanction.

- 8** There is presumption that cases involving a conviction or caution should proceed to a MPT. However, there may be cases involving minor convictions or cautions that do not require referral to a MPT and may instead be dealt with by the issuing of a formal warning or, depending on the factors involved, by concluding a case with no action.
- 9** Upon receipt of all the requested investigation information and before writing to the doctor at the end of the investigation⁴, an Investigation Officer ('IO') may seek advice from the CEs on whether they would be minded to conclude the case by issuing the doctor with a formal warning. The CEs will consider the individual circumstances of each case and whether there are any aggravating factors.

Convictions for motoring offences

- 10** Motoring offences which result in a charge or summons to appear before a criminal court are required to be disclosed to us. We do not investigate speeding offences unless there are specific aggravating features which raise a question about the doctor's fitness to practise.
- 11** There are a limited number of minor motoring offences resulting in a Fixed Penalty Notice ('FPN') being issued that can be concluded by the Registrar. These include, but are not limited to, speeding, traffic light offences, talking on a mobile phone while driving, not wearing a seatbelt and careless driving (which is distinct from dangerous driving). These minor motoring offences will generally not be investigated regardless of whether they resulted in a conviction or another method of disposal by the Police. However, discretion can be used by the Registrar to open an investigation if there are any exceptional aggravating factors requiring investigation.

Convictions for driving under the influence of alcohol/drugs

- 12** Driving whilst under the influence of alcohol or drugs may result in a criminal conviction.
- 13** When considering such convictions, we invite a doctor to undergo an assessment of their health. This also applies to convictions where the doctor has failed to provide a specimen for analysis.

⁴ In accordance with rule 7.

- 14** Upon receipt of health assessment reports and any other requested investigation information, the CEs will decide whether it is appropriate to conclude the case by issuing the doctor with a warning, offering undertakings or refer the case to a MPT.

Cautions

- 15** Cautions are given for minor crimes, eg theft, disorderly conduct or possession of cannabis. A caution requires an admission of guilt and an agreement to be cautioned. Where an offender refuses to admit the offence or doesn't agree to the imposition of a caution, they may be charged with the substantive offence.
- 16** Cautions are a ground for impairment⁵. The Registrar can refer the case directly to a MPT or, following investigation of the allegations, can refer to the CEs for decision⁶. In making this decision, the Registrar will have regard to the criteria listed in the [Convictions overview sub-section](#) of this guidance.
- 17** If a doctor is referred to a MPT hearing on the basis of a caution, the factual allegation the doctor will face is impairment by reason of a caution.
- 18** Unlike a conviction, there is no provision in the rules which states that evidence of a caution being accepted is conclusive evidence of the offence having been committed, therefore, it falls upon us to prove the facts of the case. In these circumstances, it is necessary for us to obtain background information in relation to the surrounding circumstances.
- 19** The CEs will assess the strength of the evidence and whether there is a realistic prospect of establishing that the doctor's fitness to practise is impaired to a degree requiring action on their registration. This is known as the realistic prospect test. This will be completed prior to issuing a formal letter under rule 7.

Fines and conditional/absolute discharges

Fines

- 20** Any criminal conviction resulting in the imposition of a fine needs to be disclosed to us. The Registrar will decide whether the conviction, which resulted in the imposition of the fine, ought to be referred to CEs as set out in the [Convictions overview sub-section](#) of this guidance⁷.

⁵ See s35(2)(C) of the Act.

⁶ In accordance with rule 5(2).

⁷ In accordance with rule 5(2).

Conditional and absolute discharges

- 21** A conditional or absolute discharge may not be considered as a conviction for the purposes of our fitness to practise procedures. Consideration will be given to whether the doctor's fitness to practise is impaired because of misconduct and we will obtain any relevant available evidence to investigate.

Bind overs

- 22** A bind over is not a criminal conviction in and of itself, though an individual may be bound over by the court on being convicted of an offence. A bind over is a civil promise before a criminal court to keep the peace and not to engage in any activity which may result in a further breach of the peace and/or commit any criminal offences within a fixed period. The defendant agrees to be bound over in a sum fixed by the court. Any criminal behaviour within the specified time would result in a forfeit of the specified amount as well as prosecution for the new offence.
- 23** Bind overs, in the absence of a conviction, will be treated as a misconduct case.

Convictions and other methods of criminal disposal that can be concluded by the Registrar

- 24** We do not investigate the offence of urinating in public. However, the Registrar can open an investigation if there are any exceptional aggravating factors that raise an issue about the doctor's fitness to practise.

Penalty Notices for Disorder

- 25** We do not investigate offences for which a Penalty Notice for Disorder⁸ ('PND') was issued at the lower tier unless the circumstances of the offence give rise to specific concerns about the doctor's fitness to practise.
- 26** The Registrar will exercise their discretion in deciding whether to open an investigation into [upper tier PNDs](#) issued for offences not listed at [Annex A](#) if there are any aggravating factors. Doctors are required to report all [upper tier PNDs](#) to us.

Overseas convictions

- 27** If a doctor is convicted of an offence outside the United Kingdom (UK), we must establish whether it would constitute a criminal offence, if committed in England and Wales⁹. We will seek legal advice on this issue if there is any doubt. If the offence would constitute a criminal offence if committed in England and Wales, the overseas

⁸ In Northern Ireland Penalty Notices ('PN') are issued – see s59-60 in Justice Act (Northern Ireland) 2011.

⁹ As set out by s35C(2)(C) of the Medical Act 1983.

conviction can be considered in the same way as a conviction which took place in the UK.

- 28** Overseas convictions for an offence which wouldn't constitute a criminal offence if committed in England and Wales will be treated in the same way as non-criminal cases and investigated, where appropriate, as an allegation of misconduct.

Determinations

- 29** Where there is a determination by a regulatory body in the UK or elsewhere to the effect that a practitioner's fitness to practise is impaired, the Registrar may refer the case directly to a MPT¹⁰ or to the CEs for a decision. In making their decision, the Registrar will have regard to the following criteria:
- the type and nature of the matters giving rise to a determination
 - the age of the determination
 - the seriousness of the underlying events giving rise to the determination
 - whether the doctor poses a significant risk to patients and/or is likely to repeat the behaviour which led to the determination
 - the type of sanction imposed, and
 - any other information available.
- 30** We will request formal confirmation of the determination from the issuing body, together with a copy of the regulatory authority's statement of case and any other relevant documentation.

Criminal investigations which do not result in a conviction or caution

- 31** Where a criminal investigation or criminal court proceedings conclude without a conviction, we will consider whether the circumstances of the alleged criminal conduct at the centre of the case raise a question about the doctor's fitness to practise.

¹⁰ In accordance with rule 5(2).

- 32** Where a decision is made to open an investigation, the case will proceed as a misconduct case and it is likely that we will need to request disclosure of the police investigation file.
- 33** When we have concluded our investigation, the case will be referred to the CEs to make a decision¹¹.

Warnings for possession of cannabis and Anti-Social Behaviour Orders

Cannabis warnings

- 34** A warning for possession of Class B drugs can be issued by the police where an individual admits possession of a small quantity of the drug for personal use and where there is no evidence of an intention to supply to others. Such a warning can only be given on one occasion and doesn't constitute a criminal record against the individual. On that basis, these matters will be dealt with as misconduct cases.
- 35** A cannabis warning is likely to call into question the doctor's fitness to practise and in such cases, we will direct an assessment of the doctor's health.

Anti-Social Behavioural Orders

- 36** An Anti-Social Behavioural Order ('ASBO') is a civil court order made against a person who has been shown to have engaged in anti-social behaviour. The imposition of an ASBO may raise questions about a doctor's fitness to practise.
- 37** ASBOs are generally issued by a Magistrates' Court, or Sheriff Court in Scotland, and will last for a minimum of two years. An ASBO doesn't constitute a criminal conviction and will be dealt with as a misconduct case.
- 38** An ASBO will usually be sought by the police or by a local authority. In certain cases, a Court may issue an ASBO following a criminal conviction. In those cases, there is a presumption the case will be referred directly to a MPT¹², unless the Registrar is of the opinion that it ought to be referred to CEs for consideration.
- 39** Breach of an ASBO is a criminal offence punishable by a fine or up to five years in prison. Convictions for such offences will be dealt with in the usual way and in accordance with guidance outlined above.

¹¹ In accordance with rule 8.

¹² In accordance with rule 5(2).

Community Protection Notices and Civil Injunctions

- 40** Anti-Social Behaviour Orders have been replaced in England and Wales with Community Protection Notices ('CPNs') and Civil Injunctions. They do not constitute criminal convictions and will be investigated as a misconduct case.

Community Protection Notices

- 41** CPNs are typically issued by council officers and the police but can also be issued by social landlords, where designated by the relevant council. They are aimed at preventing a person committing anti-social behaviour.
- 42** The factors taken into account when issuing a CPN include whether the person's behaviour is having a detrimental impact on the quality of life of those in the locality, is unreasonable and is of a persistent nature.
- 43** A breach of a CPN is a criminal offence punishable by a fine. Convictions for such offences will be dealt with in accordance with the guidance outlined above.

Civil Injunctions

- 44** The purpose of a Civil Injunction is to place a sanction on an individual to prevent the reoccurrence of their behaviour and to demand positive action from them to address the cause of their behaviour.
- 45** A breach of a Civil Injunction is not a criminal offence.

Community Resolution, discretionary disposals, fiscal fines, diversionary options and formal adult warnings

- 46** Community Resolutions ('CR') and discretionary disposals¹³ are 'direct measures' (alternatives to prosecution) which are used to ensure low-level crimes are dealt with proportionately and recorded on local systems. They both involve an admission of guilt and an agreement by the offender to make reparation. CRs and discretionary disposals do not result in a formal criminal record but can be disclosed as police information if relevant to an enhanced criminal record certificate ('ECRC') and barring service report.
- 47** The Public Prosecution Service may offer an informed warning as a diversionary option in Northern Ireland as an alternative to prosecution only if the evidential test is met for prosecution and the offender accepts it, ie there is an admission of guilt. Informed warnings are recorded for 12 months and do not result in a formal criminal

¹³ Discretionary disposals are used in Northern Ireland only.

record but can be disclosed by AccessNI¹⁴ on standard and enhanced criminal record certificates.

- 48** Formal adult warnings are issued in Scotland by police forces in consultation with the local Procurator Fiscal. If a person accepts a warning no further action will be taken, although this doesn't constitute an admission of guilt. If the warning is not accepted, then the police may refer the case back to the Procurator Fiscal.
- 49** A fiscal fine is a form of deferred prosecution agreement in Scotland¹⁵, issued by a Procurator Fiscal for certain summary offences as an alternative to prosecution.
- 50** CR, discretionary disposals, fiscal fines, informed warnings and formal adult warnings may be issued for the same low-level offending for which PNDs, FPNs and ASBOs are issued. We will not generally investigate CR, discretionary disposals, fiscal fines, informed warnings and formal adult warnings issued for offences which are disposed of by way of [lower tier PNDs](#) in England and Wales. However, the Registrar can use their discretion to open an investigation if there are aggravating factors or specific concerns are raised about the doctor's fitness to practise. If an investigation is opened this will be dealt with as a misconduct case.
- 51** If a CR, discretionary disposal, fiscal fine, informed warning or formal adult warning has been issued for a drug or alcohol related offence, advice will be sought from CEs as to whether an assessment of the doctor's health is indicated.
- 52** If a doctor is referred to a MPT hearing on the basis of these disposals, the factual allegation the doctor will face is impairment by reason of misconduct.
- 53** Unlike a conviction, there is no provision in the rules which states that evidence of any of these methods of disposal being accepted is conclusive evidence of the offence having been committed, therefore, it falls upon us to prove the facts of the case. In these circumstances, it is necessary for us to obtain background information in relation to the surrounding circumstances.

Contractual Disclosure Facility (CDF) agreement

- 54** A CDF agreement is a voluntary admission of tax fraud and a contract to pay all taxes, duties, interest and penalties due. Entering into an agreement means the HMRC will not criminally investigate and prosecute. No formal criminal record results from entering into a CDF agreement.

¹⁴ The criminal record check body for Northern Ireland.

¹⁵ See [s302 of the Criminal Procedure \(Scotland\) Act 1995](#) as amended by s50 Criminal Proceedings etc. (Reform) (Scotland) Act 2007.

55 Disclosures of CDF agreements will be dealt with as a misconduct case.

Deferred Prosecution Agreements (DPAs)

56 Under a DPA a prosecutor charges a company with a criminal offence but proceedings are automatically suspended. The company agrees to conditions, such as paying a financial penalty, paying compensation and co-operating with future prosecutions of individuals. If the company doesn't honour the conditions, the prosecution may resume.

57 A DPA may raise issues of probity relating to a doctor either:

- a** where a doctor acts as part of a management team of an organisation subject to a DPA, or
- b** where a doctor's conduct directly contributes to an organisation becoming subject to a DPA.

58 In these circumstances a DPA will be dealt with as a misconduct case, in relation to the doctor's involvement in the conduct that led to the DPA.

This was last updated in October 2019.

Annex A

Penalty Notices for Disorder at the lower tier penalty level

Lower Tier - £60 for 16 year olds and over	
Offence	Notice
Trespass on a railway	S 55, British Transport Commission Act 1949
Throwing stones/matter/thing at a train	S 56, British Transport Commission Act 1949
Drunk in highway	S 12, Licensing Act 1872
Consume alcohol in designated public place, contrary to requirement by constable not to do so.	S12, Criminal Justice & Police Act 2001
Depositing and leave litter	s87(1) and (5) of the Environmental Protection Act 1990
Allowing consumption of alcohol by a person under 18 on relevant premises	*s150(2) of the Licensing Act 2003
Buying or attempting to buy alcohol by a person under 18.	Section 149(1) of the Licensing Act 2003 (c.17)
Consume alcohol in designated public place, contrary to requirement by constable not to do so	S12 Criminal Justice & Police Act 2001
Drop/leave litter/refuse except in a receptacle provided for the purpose in a Royal Park or other open space	Regulation 3(3) of the Royal Parks and Other Open Spaces Regulations 1997
Use pedal cycle/skates/blade/board/foot-propelled device in a Royal Park or other open space	Regulation 3(4) of the Royal Parks and Other Open Spaces Regulations 1997
Unless the person is registered blind, failing to immediately remove animal faeces from a Royal Park or other open space	Regulation 3(6) of the Royal Parks and Other Open Spaces Regulations 1997
Possession of a controlled drug of class C (May only be given on one occasion)	S5(2) and Schedule 4 Misuse of Drugs Act 1971

Annex B

Penalty Notices for Disorder at the upper tier penalty level

Upper Tier - £90 for 16 year olds and over	
Offence	Notice
Wasting police time or giving false report	s5(2) of the Criminal Law Act 1967
Disorderly behaviour while drunk in a public place	s91 of the Criminal Justice Act 1967
Possession of a controlled drug of Class B – cannabis/cannabis resin or Khat (may only be given on one occasion)	S5(2) and Schedule 2 of Misuse of Drugs Act 1971
Theft (under £200 retail/commercial only)	s1 of the Theft Act 1968
Destroying or damaging property (limited to damage under £500)	s1(1) of the Criminal Damage Act 1971
Words/behaviour likely to cause harassment, alarm or distress	s5 of the Public Order Act 1986