

Guidance for Case Examiners on police cases resulting in acquittal/decision not to proceed to trial

Purpose of this Guidance

- 1 The purpose of this guidance is to assist Case Examiners to determine whether the realistic prospect test is satisfied in respect of specific charges against a doctor which in substance are the same as criminal charges which have resulted in an acquittal at trial, or which could have formed the basis of a criminal charge but have not proceeded to trial for any reason (including as a result of a police decision to take no further action or a decision not to prosecute, to withdraw or discontinue proceedings, or to offer no evidence at trial). This document is to be read in conjunction with the CE Decision-making guidance and annexes.

General principles

- 2 Case law has clearly established that:
 - There is no bar to the bringing of disciplinary proceedings in respect of the same conduct that has resulted in an acquittal at trial, because the 'double jeopardy' rule (by which no one should be put at risk of being convicted twice in a court of competent jurisdiction) has no application to disciplinary proceedings; and
 - It is not inherently unfair or abusive to pursue disciplinary charges in respect of the same conduct that has resulted in an acquittal at trial.*
- 3 There are a number of reasons for this.
 - i. First, disciplinary proceedings and criminal proceedings serve different purposes. The purpose of disciplinary proceedings is not to punish a doctor for wrongdoing, but to: (a) protect, promote and maintain the health, safety

* R (Redgrave) v Commissioner of the Metropolis [2003] 1 WLR 1136; R (Phillips) v General Medical Council [2004] EWHC 1858; Sacha –v- General Medical Council [2009] EWHC 302; R (Sinha) v General Medical Council [2009] EWCA Civ 80; Bhatt v General Medical Council [2011] EWHC 783; Ashraf v General Dental Council [2014] EWHC 2618.

and well-being of the public; (b) promote and maintain public confidence in the medical profession; and (c) to promote and maintain proper professional standards and conduct for members of that profession.*

- ii. Second, the material before a disciplinary tribunal may be different to that in a criminal court, because different rules of evidence apply, and different approaches may be taken to the question of admissibility (likely to be applied more strictly in a criminal context given that the defendant's liberty is at stake).
- iii. Third, the standards of proof are different. In the criminal courts a jury has to be satisfied "beyond reasonable doubt". GMC cases are decided on a "balance of probabilities". Because different standards of proof apply, there is no logical incompatibility in seeking to prove a disciplinary matter to the civil standard where there has been an acquittal on the criminal standard of proof.

- 4 The same principles apply to matters which could have formed the basis of a criminal charge but which have not proceeded to trial for whatever reason.

The relevance and impact of an acquittal or decision not to proceed

- 5 The central issue for Case Examiners at the Rule 8 stage is to consider whether there is a realistic prospect of establishing that a practitioner's fitness to practise is currently impaired to a degree justifying action on their registration. The fact that the doctor has been acquitted at trial in respect of the same conduct (or that the matter has not proceeded to trial) is a relevant factor to which the Case Examiners must have regard when considering whether particular charges against a doctor satisfy the realistic prospect test.
- 6 In each case, the Case Examiners will need to consider carefully the basis and reasons for the acquittal or the decision not to proceed to trial. This will require careful analysis of the police file or, where a matter has proceeded to trial, the prosecution file and any transcripts and the trial judge's summing up and directions to the jury. An acquittal or decision not to proceed does not necessarily indicate an absence of fitness to practise concerns. Where the acquittal or decision not to proceed is reached on technical or procedural grounds, it may have little bearing on

* Section 1(1B) Medical Act 1983

the prospects of success before the Medical Practitioners Tribunal. Where, however, police decide not to prosecute because they consider the allegations lack substance, or the prosecution evidence discloses no case to answer, or the doctor is acquitted after full consideration of the evidence at trial, such an outcome may well affect the prospects of success before the Medical Practitioners Tribunal.

- 7** In each case, Case Examiners should consider the evidence relied upon in each forum, and whether the GMC is proposing to rely on the same evidence as that relied on in the criminal proceedings.
 - If so, the Case Examiners will need to assess the quality of that evidence and determine whether there is still an evidential basis to support the allegation. Where, for example, the transcripts and the judge's summing up indicate that the credibility of one or more key witnesses has been significantly undermined then that is likely to affect whether the realistic prospect test is satisfied. Where, however, the evidential basis to support the charge remains relatively intact, the Case Examiners may consider that the allegation is capable of being proved to the civil standard of proof, even if it was not proved to the criminal standard.
 - If the GMC is able to rely on additional evidence that was not previously available to police or prosecutors (for example, where a key witness was unwilling or unable to give evidence in the criminal proceedings but they are willing or able attend a hearing before the Medical Practitioners Tribunal, or the GMC has obtained new expert evidence that indicates that the doctor's conduct was not clinically indicated and may have been sexually motivated), then that may well impact on whether the realistic prospect test is satisfied.

- 8** Case Examiners should also consider the nature and seriousness of the allegation. The more serious the allegation, the greater the public interest in taking forward disciplinary proceedings, notwithstanding the failure of any underlying criminal prosecution. There are likely to be stronger grounds for proceeding where the allegation, if proven, would amount to such a serious failure to meet the standards

required of doctors, that there would be a presumption of impaired fitness to practise.*

- 9 However, the seriousness of the case will also have an impact upon the cogency of the evidence required to prove the case on the balance of probabilities: the more serious the allegation and the greater the consequences for the doctor, the greater the strength and quality of the evidence required in order to prove the case to the balance of probabilities. Provided that no evidential, technical or procedural grounds caused a serious criminal allegation to fail at trial (for example, rape or sexual assault), and if no additional regulatory concerns have been raised, then the Case Examiners may consider that a disciplinary allegation which is identical to that considered in a criminal trial, if based on identical evidence, would be likely to fail again before a Medical Practitioners Tribunal. The disciplinary case is likely to fail, notwithstanding the lower standard of proof, because the seriousness of the allegation and therefore the significant consequences for the doctor will require cogent evidence in order to prove it. Therefore the evidence required to prove the allegation to the balance of probabilities will, in effect, be the same.

Wider professional concerns

- 10 In some cases, a criminal offence, for example sexual assault, may be linked to wider professional concerns in respect of a failure to obtain consent, offer a chaperone or privacy, or to record an examination in the patient's medical records. An acquittal or decision not to proceed in relation to the criminal offence is likely to have little or no bearing on whether the realistic prospect test is satisfied in respect of charges addressing wider professional concerns.

* Paragraph 24 of ['Making decisions on cases at the end of the investigation stage: Guidance for the Investigation Committee and case examiners'](#) identifies these as being: (a) sexual assault or indecency; (b) violence; (c) improper sexual/emotional relationships; (d) knowingly practising without a licence; (e) unlawfully discriminating in relation to characteristics protected by law; (f) dishonesty; (g) gross negligence or recklessness about a risk of serious harm to patients.