

Guidance for decision makers on closing criminal cases at triage

Introduction

- 1 The purpose of this guidance is to provide advice to staff on the factors to be taken into account when closing criminal cases at triage. Although a limited number of criminal matters can be closed at triage, the Assistant Registrar (AR) retains discretion to open an investigation if there are aggravating factors which raise a question about the doctor's fitness to practise.
- 2 The initial threshold for investigation of a doctor's fitness to practise is set out in section 35C(2) Medical Act 1983 ('the Act') which states:

35C. Functions of the Investigation Committee

(1) This section applies where an allegation is made to the General Council against -
(a) a fully registered person; or
(b) a person who is provisionally registered,

that his fitness to practise is impaired.

(2) A person's fitness to practise shall be regarded as "impaired" for the purposes of this Act by reason only of -

- (a) misconduct;*
- (b) deficient professional performance;*
- (c) a conviction or caution in the British Islands for a criminal offence, or a conviction elsewhere for an offence which, if committed in England and Wales, would constitute a criminal offence;*
- (d) adverse physical or mental health;*
- (da) not having the necessary knowledge of English (but see section 2(4));*
- (e) 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.*

The test to be applied at the triage stage is 'whether the allegation appears to raise a question as to whether fitness to practise is impaired.'

- 3 A doctor's fitness to practise can be impaired by reason of 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." Rule 5 of the General Medical Council (Fitness to Practise) Rules 2004 contains specific provisions for the management of cases which result from a conviction, police caution or a determination from another regulatory body. Under Rule 5(1), any conviction resulting in a custodial sentence (whether suspended or not) is referred directly to a Medical Practitioners Tribunal (MPT). Although Rule 5(1) allows for any conviction to be referred directly to an MPT, in practice we will refer all non-custodial convictions to the case examiners for a decision under rule 8 once the necessary investigation information has been obtained. This is done under Rule 5(2).
- 4 Our [reporting guidance](#) also requires doctors to notify us of the following in addition to criminal charges, convictions and cautions:
 - Fixed Penalty Notices at the upper tier
 - Public Notices for Disorder
 - Bind overs
 - Community resolutions
 - Discretionary disposals
 - Formal adult warnings
 - Cannabis warning
 - Anti-Social behaviour orders
- 5 The matters listed above are investigated as an allegation of misconduct against the doctor under Section 35(2)(a) of the Act as they are alternative methods of disposal by the police for low level offences.

Criminal cases which can be closed at triage

- 6 With the exception of the matters detailed in paragraph 7 below, all convictions, cautions and other methods of police disposal are promoted to full investigations.
- 7 The following criminal matters are considered incapable of amounting to an allegation of impairment and are closed at triage with no further action:
 - Any road traffic offence for which a Fixed Penalty Notice (FPN) was issued.
 - Offences solely relating to speeding where there are no aggravating circumstances
 - Minor motoring offences where there are no aggravating circumstances, including traffic light offences, talking on a mobile phone while driving, not wearing a seatbelt and careless driving (which is distinct from dangerous driving). There is not currently a definitive list of "minor motoring offences" and Assistant Registrars will need to use their discretion as to whether an offence falls into this category.
 - All penalty notices for disorder (PND) at the lower tier penalty level

- Any penalty notices for disorder (PND) at the upper tier which are not on the list of specified offences at annex A (which will continue to be investigated). However, doctors are still required to report these to us under our guidance [Reporting criminal and regulatory proceedings within and outside the UK](#). This will enable the AR to consider if there are any aggravating factors requiring an investigation to be opened.
 - Any conviction, caution or other method of police disposal for the offence solely of urinating in public unless there are aggravating factors requiring an investigation to be opened.
- 8** As our policy is to close a range of minor offences at triage unless there are aggravating circumstances, this guidance is intended to help Assistant Registrars assess if there are aggravating factors which require an investigation to be opened even if the underlying matter has been approved for closure.

Aggravating Factors

- 9** Before closing any of the matters listed at paragraph 7 above, the AR should consider if there are any known aggravating factors underpinning the offence. These will only be relevant if those aggravating factors raise a question about the doctor's fitness to practise which is sufficiently serious to amount (if proven) to impairment.
- 10** The list below provides examples of aggravating factors that could raise a question about a doctor's fitness to practise although this is not exhaustive:
- Alcohol or illegal drugs were a factor in the criminal behaviour. If this is the case, further information may need to be sought to establish if the doctor may have an underlying addiction. Specialist health advice can be obtained as part of a provisional enquiry under rule 4(4) which will help determine if a full investigation is necessary.
 - There was a religious or racial motivation behind the underlying criminal conduct. For example, if a doctor received a FPN or PND for urinating in public but had urinated on a sensitive religious or cultural site. Although urinating in public has been approved for closure at triage, the aggravating circumstances of the offence may make it appropriate for an investigation to be opened or further enquiries undertaken under rule 4(4). This is likely to be a very rare scenario as the doctor would usually be charged with a more serious offence such as racially or religiously aggravated disorder.
 - The underlying circumstances of the offence raise a safeguarding concern suggesting the doctor may pose a risk of harm to children and/or vulnerable adults. For example, an upper tier PND can be issued for the offence of buying or attempting to buy alcohol for a person under 18. Further information is likely to be required to establish whether the circumstances of the offence raise a question about the doctor's fitness to practise. Enquiries should be made under rule 4(4) in

the first instance so a decision can be made about whether the threshold for a full investigation is met.

- There has been negative media coverage of the offence to the extent that public confidence in doctors generally might be undermined if we did not investigate.

Seeking further information

- 11** It will not be necessary to routinely seek further information about a criminal matter that has been approved for closure in order to verify that there are no aggravating features. This would involve disproportionate effort and resources in view of the minor nature of the offences approved for closure. However, where we already have information suggesting the underlying circumstances may raise a fitness to practise concern, we must consider whether an investigation should be opened or additional evidence obtained under rule 4(4).

Annex A– Penalty Notices for Disorder (PND) and Fixed Penalty Notices (FPN) which the Registrar will not have discretion to close at triage and will be promoted to an investigation

Upper Tier - £90 for 16 year olds and over (£40 for 10-15 year olds)	
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

List of offences set out in Part 11 of the Anti-Social Behaviour etc. (Scotland) Act 2004 that will require investigation:

- (1) For the purposes of this Part “fixed penalty offence” means—
- an offence under an enactment mentioned in the first column in Part 1 of the following table and described, in general terms, in the second column in that Part;
 - an offence created in subordinate legislation made under an enactment mentioned in the first column in Part 2 of the table which is of the general description mentioned in the second column in that Part; and
 - a common law offence mentioned in Part 3 of the table.

PART 1	
Enactment	Description of offence
Section 78 of the Licensing (Scotland) Act 1976 (c. 66)	Riotous behaviour while drunk in licensed premises
Section 79 of the Licensing (Scotland) Act 1976 (c. 66)	Refusing to leave licensed premises on being requested to do so
Section 50(1) of the Civic Government	Being drunk and incapable in a public place

(Scotland) Act 1982 (c. 45)	
Section 50(2) of the Civic Government (Scotland) Act 1982 (c. 45)	Being drunk in a public place in charge of a child
Section 54(1) of the Civic Government (Scotland) Act 1982 (c. 45)	Persisting, to annoyance of others, in playing musical instruments, singing, playing radios etc. on being required to stop
Section 52(1) of the Criminal Law (Consolidation) (Scotland) Act 1995 (c. 39)	Vandalism
PART 2	
Enactment	Description of offence
Sections 201 and 203 of the Local Government (Scotland) Act 1973 (c. 65)	Consuming alcoholic liquor in a public place
PART 3	
Common law offence. Breach of the peace. Malicious mischief.	