



## Registration Council of Clinical Physiologists

### Assessment Committee Decisions

This guidance has been issued by the RCCP for FtP Panels and to assist those appearing before them.

1. The Assessment Committee will consider a complaint to determine whether there is any evidence to suggest that there has been a breach of the RCCP standards of conduct, performance and ethics and or Standards of Proficiency, which may result in a Registrant's fitness to practise being impaired.
2. A Registrant's fitness to practise can be impaired for a number of reasons and these include:
  - 2.1 Misconduct
  - 2.2 Deficient Professional Performance
  - 2.3 Adverse physical or mental health
  - 2.4 An adverse determination by another professional regulatory body
  - 2.5 A criminal conviction or caution in the UK for a criminal offence, or a conviction elsewhere for an offence which, if committed in the UK could constitute a criminal offence
3. In coming to its decision, the Assessment Committee will apply the 'Realistic Prospect Test'. The realistic prospect test is commonly used in healthcare regulation and is intended to ensure that regulators focus on public safety and only act when action is justified and necessary.
4. The Assessment Committee will apply the realistic prospect test to the whole complaint. This will include assessing whether there is a realistic prospect that a Professional Conduct Committee or Health Review Panel, on the balance of probabilities, will find the facts of the alleged conduct proven, and there is a realistic prospect of those facts being found to impair the Registrant's fitness to practise to a degree that justifies action on their registration.
5. The Assessment Committee will consider the wider public interest, including protection of the public and public confidence in both the regulatory process and the Clinical Physiology profession. Fitness to practise action must be appropriate and

proportionate in order to protect the public and therefore it must be in the public interest to proceed with the action.

6. The Assessment Committee needs to be satisfied that there is a real or genuine possibility as opposed to a remote or fanciful one that the RCCP will be able to establish its case. The burden of proof lies with the RCCP and not with the Registrant.
7. The Assessment Committee will decide how to proceed and compile a report.
8. The Assessment Committee may;
  - Close the case without any action, where the realistic prospect test has not been met;
  - Issue a formal Warning or Letter of Advice to the Registrant;
  - Refer the matter to a Professional Conduct Committee where there is a realistic prospect of the facts being substantiated and those facts amounting to impairment of fitness to practise. (Bearing in mind the public interest considerations stated above.)
  - Refer the matter for Consensual Disposal where the allegations may be dealt with by an alternative outcome, rather than direct referral to a Professional Conduct Committee or Health Review Panel.
  - Refer the matter to a Health Review Panel where the Registrant's fitness to practise may be impaired by adverse physical or mental health.

#### **Warning/Letter of Advice issued by the RCCP**

8. A Warning or a Letter of Advice issued by the Assessment Committee is a record of their concern, which does not require referral to a Professional Conduct Committee, but nevertheless is potentially significant. A Warning or Letter of Advice is not shown on the public facing RCCP Register, but it is recorded against the Registrant's entry internally.
9. The Assessment Committee may issue a Letter of Advice to the Registrant which may include advice to carry out further training, CPD and feedback pertinent to the complaint in the context of adherence to the RCCP's standards of conduct, performance and ethics and Standards of Proficiency.
10. Warnings will only be issued by the Assessment Committee once the Registrant has been given an opportunity to make further written representations. The Assessment Committee must consider any representations made by the Registrant.

11. If the RCCP were to receive a further concern or complaint, a previous Warning or Letter of Advice will be taken into regard when considering the further concerns.

## **A Letter of Advice**

### **What is a Letter of Advice?**

12. A letter of advice issued by the Assessment Committee is a record of their concern, which does not reach the threshold of finding impairment of fitness to practice and does not require referral to a Professional Conduct Committee, but nevertheless is potentially significant.
13. The Assessment Committee may issue a Letter of Advice to the Registrant which may include advice to carry out further training, CPD and feedback pertinent to the complaint in the context of adherence to the RCCP's standards of conduct performance and ethics and/or Standards of Proficiency.
14. A letter of advice is tailored advice at the end of an assessment committee investigation, as part of the RCCP's wider regulatory role in maintaining and upholding standards in the profession.
15. A Letter of Advice is not shown on the public facing RCCP Register, but it is recorded against the Registrant's entry internally.
16. Advice should provide guidance for future practice and is not an admonition in relation to past actions.
17. The assessment committee may wish to include advice to the registrant to discuss the investigation at their annual appraisal and provide the RCCP with evidence of this discussion and any annual objectives agreed with their line manager in relation to the investigation.
18. Where an admonition is more appropriate, the assessment committee may wish to consider a warning should be issued.

### **When is a Letter of Advice appropriate?**

19. The circumstances in which a letter of advice may be appropriate and the factors to include when giving advice at the end of an assessment committee investigation may include advice that is intended to address a departure from the RCCP's standards of conduct performance and ethics or standards or proficiency, which does not reach the threshold for a warning or impairment of fitness to practise.
20. The assessment committee should consider giving advice when the registrant has made appropriate steps to remediate and has indicated the facts of the alleged conduct do not remain in dispute, and they are satisfied that the registrant's fitness to practise is not impaired in respect of the alleged conduct.

21. Examples of cases where advice may be appropriate include where there has been a minor breach of professional standards for example, where a registrant had been discourteous towards a patient, or found to have failed to keep a contemporaneous record of a consultation (but where there is no wider pattern of poor record keeping).
22. If the evidence suggests that the registrant's conduct involves a breach of our guidance which, if the breach were repeated, would be serious enough to suggest impairment then the assessment committee should consider whether a warning is indicated.
23. Advice will not be appropriate where there are concerns about the management of a registrant's health.
24. Advice must be relevant to the registrant's future practice and tailored in a way to address the issues identified as a result of the assessment committee investigation.
25. When drafting advice, this advice should include:
  - Addressing the concerns raised about the registrant
  - Making clear why the deficiencies in the registrant's practice are not serious enough to satisfy the realistic prospect test (RPT)
  - Highlighting the area(s) of the registrant's practice which have fallen short of the standards of conduct performance and ethics and/or standards of proficiency
  - Referring to any relevant RCCP guidance
26. Advice should follow a format adopted in the advice template at Annex B. This is to ensure consistency with what is recorded on the registrant's fitness to practise history and to make it clear which deficiencies the RCCP has asked the registrant to reflect upon as part of their annual appraisal or equivalent professional development plan.
27. A letter of Advice is recorded on the registrant's internal RCCP record and the issues which gave rise to the advice being issued may be taken into consideration if the RCCP receives future concerns which suggest a pattern of poor performance, conduct or behaviour.
28. Advice may also be disclosed to employers and interested parties on the case, including the complainant or referrer. Advice will not be published on the RCCP register or disclosed in response to enquirers.

## **A Warning**

### **What is a Warning?**

29. Warnings are intended to indicate the RCCP's concern about significant departures from the standards of conduct performance and ethics and/or standards of proficiency which are just below the threshold for impairment of fitness to practise.
30. A warnings will only be issued by the Assessment Committee once the Registrant has been given an opportunity to make further written representations. The Assessment Committee must consider any representations made by the Registrant.
31. If the RCCP were to receive a further concern or complaint, a previous Warning or Letter of Advice will be taken into regard when considering the further concerns.

### **When is a warning appropriate?**

32. A Warning is a record of the Assessment Committee's concern, which does not reach the threshold of finding impairment of fitness to practice and does not require referral to a Professional Conduct Committee, but nevertheless is potentially significant.
33. A warning is not appropriate when the concerns about a registrant relate solely to their physical or mental health.

## Annex A

<b>Letter of Advice</b>	<b>Written warning</b>
The concerns involve a departure from the standards of conduct, performance and ethics and/or standards of proficiency (the standards) that does not meet the threshold for issuing a warning or a finding of impairment	The concerns amount to a significant departure from the standards but fall just below the threshold for a finding of impaired fitness to practice
Appropriate advice to the registrant about future practice to avoid repetition of the departure from the standards.	Need to indicate to the registrant that their conduct, practice or behaviour represents a significant departure from the standards expected of members of the profession and should not be repeated.
Patient care, public confidence in the profession or the reputation of the profession are <b>not</b> impacted by the departure from the standards.	The evidence suggests that the registrant's conduct involves a breach of our standards which, if the breach were repeated, would be serious enough to suggest impairment, and result in action on the registrant's registration

## Annex B

'The case is closed. We advise this registrant \*\*\*to [insert area for reflection/improvement]

That will ensure his future conduct complies with [insert name of relevant RCCP or other relevant guidance and quote relevant paragraphs].'

An example of advice might therefore be:

'The case is closed. We advise this registrant to keep up to date with relevant audiology techniques and to keep full and accurate records.

That will ensure his/her future conduct complies with the guidance in paragraphs \*\*, \*\* and \* of the standards.

Standard 1: Be able to practise safely and effectively within their scope of practice.

Standard 9: 10 Be able to maintain records appropriately.

Standard 12: Be able to assure the quality of their practice

## Consensual disposal

### What is consensual disposal?

34. Consensual disposal is an alternative outcome by which the Registrant and the RCCP agree that a complaint will be resolved without the need for a contested hearing.

### When is consensual disposal appropriate?

35. The Assessment Committee may offer the route of consensual disposal to a Registrant where they are of the opinion, that it may be a satisfactory resolution to a complaint and the Registrant accepts responsibility for the concern(s) raised.
36. Where the Assessment Committee refers a case to the Professional Conduct Committee or Health Review Panel, the Registrant will have to formally agree with the RCCP to follow the consensual disposal procedure.
37. The procedure will only apply where the Registrant accepts the facts of the allegation and that their current fitness to practise is impaired.
38. The consensual disposal process will require the Registrant to provide a written statement to the RCCP to progress the complaint by consensual disposal. The written statement will include the relevant facts, admission(s) and insight into their conduct.
39. The documents will be referred to a Professional Conduct Committee/Health Review Panel but without the need for the parties to attend a full contested hearing.
40. The Professional Conduct Committee/Health Review Panel will consider the matter on papers and will also consider the agreement between the RCCP and Registrant as to sanction.
41. The Professional Conduct Committee/Health Review Panel will have the full sanctions available to them, as they would in a full fitness to practise hearing and will make the final decision as to sanction.
42. The Professional Conduct Committee/Health Review Panel can refer the matter to a full hearing if they believe consensual disposal is not the appropriate method for dealing with the complaint.
43. The Registrant will be notified of the sanction that the Professional Conduct Committee/Health Review Panel decide and will have the opportunity to review the agreement and accept the sanction.

44. The Professional Conduct Committee/Health Review Panel will need to be satisfied that following the consensual disposal process is not contrary to the public interest.
45. Once the Registrant has agreed the sanction and Consensual Disposal Agreement the RCCP will publish the outcome on their website. Any information in relation to health will be redacted from publication.
46. The Complainants view will be taken when considering the consensual disposal route, but the Professional Conduct Committee/Health Review Panel will not need the Complainant's consent.

### **Documentation Version Control**

<b>Version</b>	<b>Date</b>	<b>Author</b>
<b>1</b>	<b>06.01.2020</b>	<b>Kelly St. Pier</b>