



## Panel Consideration Practice Statement

### Introduction

This document has been produced to:

- Support the consistent consideration of fitness to teach conduct cases by Panels in line with the GTCS Fitness to Teach Rules 2017 (the Rules).
- Allow a teacher (and others) involved in the process to understand how decisions will be made and the factors that will be taken into account by Panels.
- Demonstrate openness and transparency in GTCS' regulatory work, allowing the profession and wider public to understand it.

### Purpose

When a Teacher has been referred to GTCS and an investigation has been completed, a Panel will meet to consider the case in order to decide what should happen next (as provided for by rule 2.3).

The purpose of the Panel consideration meeting is to consider all of the information that has been gathered through the investigation process and decide what action it is necessary and proportionate to take next in the case. The purpose of the Panel's consideration of the case in this way is not to resolve any substantive conflicts in the evidence gathered (this would require to be resolved at a full hearing), it is to apply the guidance set out in this Practice Statement with a view to helping ensure that our fitness to teach resource is appropriately targeted.

### Procedure

Panel consideration meetings take place in private and are a paper-based exercise. A Panel of three (two GTCS Registered teachers and one lay person) will participate and be supported by a GTCS Servicing Officer and an independent Legal Assessor. The Servicing Officer and Legal Assessor provide advice to Panels on the relevant law, rules and procedures but take no part in the decision making process.

Panels will only consider cases that have been fully investigated and prepared. In general, the following documentation will be provided to the Panel:

- An Investigation Report prepared by the Investigating Officer who has investigated the case – **note that the investigation process is approached neutrally with a view to finding out what happened, not to build a case for or against the teacher.** The Report will usually detail:
  - The allegation(s) to be considered by the Panel
  - A summary of the investigation carried out
  - The evidence gathered
  - Any information available about the Teacher's response to the allegation(s)
  - Any information available about the Teacher's own assessment of his/her conduct with reference to the standards that GTCS expects
  - Any information about the Teacher's views on his/her current fitness to teach
  - Any evidence gathered regarding any circumstances surrounding the conduct or any explanation provided by the Teacher for the conduct

- Any evidence gathered regarding the Teacher's actions before or since the time of the allegation(s), including any remedial steps taken, details of continued/subsequent employment or previous fitness to teach history
- Where possible, a recommended case outcome based on what the information gathered indicates, including specifying any conditions that may be suitable where a conditional registration consent order is indicated

The teacher will be encouraged to play an active role in the investigation and provide input in order that the Investigation Report provides all of the relevant information about the case.

- Any additional material provided by the Teacher subsequent to completion of the Investigation Report.

### **Approach to Decision Making**

This guidance and the indicating factors referred to are not exhaustive and each Panel must exercise its own judgement on a case-by-case basis with due regard to:

- The general objective of the Rules
- The GTCS Fitness to Teach Threshold Policy
- The public interest as described in the GTCS Fitness to Teach Conduct Cases – Indicative Outcomes Guidance (the IOG)
- Best regulatory practice, including:
  - Being proportionate, accountable, transparent and consistent
  - Being targeted and taking action only where action is needed

### **Considering a Case on the Papers**

A Panel's role at this stage in the process is not to determine whether the allegation(s) is/are proved. If the allegation(s) is/are not admitted, the case must be referred on for a full hearing.

Where the allegation(s) is/are admitted in full, a Panel will have to carefully assess all of the evidence provided in order to determine (a) whether a current impairment exists and (b) what consent order it may be appropriate to issue. This process is distinct from making findings in fact and involves a holistic consideration of a range of factors.

In assessing the evidence for this purpose, a Panel may find the following questions helpful as a starting point:

- Is there a general consistency in the evidence?
 

For example, if statements have been provided regarding the Teacher's conduct since the allegation(s) are the accounts similar on the key points?
- Are there any significant conflicts in the evidence that impact on the Panel's assessment of the Teacher's current fitness to teach or what consent order is appropriate?
- Has key information been verified by the Investigating Officer or can such verification be obtained?
 

For example, if the Teacher has stated he/she has completed a course to remedy his/her conduct, is confirmation of this available from the course provider? Has it been evidenced that the Teacher has learned appropriately from this course?
- Who has provided the evidence and what knowledge does he/she have about the matter?

For example, if positive statements are provided, do the individuals providing the statements know about the allegations?

- Does the Panel accept as genuine any insight or remorse shown by the Teacher?
  - Is the Teacher's account consistent and in his/her own words?
  - When did the Teacher first acknowledge the conduct?
  - Has the Teacher's view changed at any point and is any change explained?
  - Has the teacher taken any action to demonstrate his/her insight or sought to remedy the conduct?

A Panel should also have regard to any analysis provided by the Investigating Officer in his/her report, noting that the Investigating Officer's role is to investigate the case neutrally with a view to providing the Panel with all relevant information to support it in the decision making process.

Where a Panel does not feel able to make an assessment of any aspect of the case on the basis of the evidence available, it may seek additional information or refer the case for a full hearing with reference to the guidance set out at options 3 and 6 below.

### **Possible Outcomes**

Rule 2.3.2 provides a Panel with 6 possible options. A Panel should generally approach its decision making as set out in the flowchart in Appendix 1 and provide reasons at each decision point.

#### **Options 1 and 2**

- To dispose of the case in accordance with rule 2.1.4 on the basis that it was not eligible for investigation because:
  - (a) It is not Relevant Conduct<sup>1</sup>;
  - (b) It relates to events that occurred 5 years or more before the date of the most recent event (or events) referred to and it is not in the public interest for it to be investigated;
  - (c) The referral has already been received and considered by GTCS (and no new evidence or information has been received which means re-consideration of it is necessary in the public interest);
  - (d) It is frivolous or vexatious; or
  - (e) it has been made anonymously, or by a person who fails to co-operate in the investigation process (or similar), and the matter cannot be verified or the teacher concerned is not identifiable.
- To dismiss the case because there is insufficient evidence to prove the facts alleged or the referral is malicious.

A case will already have been carefully considered by GTCS Officers in terms of all of the factors above before it reaches a Panel. Where any of these factors is identified, a case should be closed by Officers and not reach the Panel stage. This means that it is unlikely that a Panel would ever identify any such factor in a case but they are options that a Panel should be aware of in any exceptional case or circumstance that might arise.

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<sup>1</sup> "Relevant Conduct" means –

- (i) a criminal offence, or
- (ii) misconduct (including having fraudulently sought or procured an entry to the GTCS Register),

and there is, on the face of it, a real prospect of a Panel finding that the Teacher's fitness to teach is impaired on that basis.

### **Option 3**

- To refer the case on for a full hearing.

Referral for a full hearing will be necessary where a Panel is not satisfied that the Teacher admits the allegation(s) **in full**.

The allegation(s) will have been refined and continually assessed throughout the course of the investigation by the Investigating Officer based on all of the evidence gathered, including from the Teacher. The Investigating Officer will also have considered the Teacher's response to the allegation(s) in his/her recommended case outcome and will indicate that a referral for a full hearing is necessary where the allegation(s) are not admitted.

In this scenario, it would be inappropriate to conduct an assessment of the Teacher's current fitness to teach or indicate the appropriate disposal option so the Panel should not proceed to consider the case further.

In exceptional circumstances, a Panel may conclude that a full hearing is required even where the allegation(s) is/are admitted by the Teacher. However, consideration should first be given to whether additional information could be sought in order to allow a Panel to reach a conclusion without the need for a hearing. If a Panel decides that further information would not assist it, then, in considering whether to refer a case for a full hearing where the allegation(s) have been admitted in full, a Panel should have proportionate regard to the following factors:

- The seriousness of the allegations
- The public interest
- Transparency
- Fairness to the Teacher and any potential impact of a full hearing on him/her
- The cost and resource associated with a full hearing
- The need to avoid delay

In referring a case for a full hearing, a Panel should refer the entirety of the case. It is generally not appropriate for a Panel to compartmentalise the allegations and conclude that no further action should be taken or a consent order be issued in relation to part of a case and refer the remainder on to a full hearing. Doing so would undermine the decision making of the full hearing panel and is unlikely to be in the public interest. The entirety of the case should be referred so that the full hearing panel can consider the case as a "complete picture". This will assist it:

- Identify patterns of conduct or multiple/repeat breaches of the standards expected
- Understand the extent and seriousness of shortfalls, including any cumulative or aggravating effects
- Consider the likelihood of reoccurrence and consequent risk of harm
- Assess the public interest from an appropriately informed perspective

### **Options 4 and 5**

- To direct that no further action be taken or to issue a consent order to the Teacher in accordance with rule 2.7.

A Panel should carry out an assessment of the Teacher's Fitness to Teach as described in Part A of the IOG.

Having carried out that assessment, if a Panel concludes that a teacher is not currently impaired, it must direct that no further action be taken.

If a Panel concludes that a Teacher is currently unfit to teach, it may only issue a removal consent order or, if that is unlikely to be accepted by the Teacher (e.g. where the Teacher is not engaging in the process), refer the case for a full hearing.

If a Panel concludes that a Teacher's fitness to teach is impaired, it needs to decide what action it is appropriate to take in light of this impairment and issue the appropriate consent order. Panels should refer to Part B of the IOG in deciding what outcome it would be appropriate to reflect in a consent order. A Panel should approach the decision-making exercise in the same way that it would approach this in the context of a full hearing in line with the IOG – it has exactly the same outcomes available to it.

### **Option 6**

- To request that further information be obtained.

A Panel may seek further information from any source provided that the information is relevant and it is fair to seek such additional information.

In deciding to seek further information a Panel should be mindful that, where the allegation(s) is (are) in dispute, the case has been fully investigated by an Investigating Officer and its role is not to seek to resolve factual disputes; fact-finding may only take place at a full hearing. Where a Panel is seeking further information, it should therefore relate to its assessment of fitness to teach and the appropriate disposal with reference to the guidance set out against Options 4 and 5 above.

A Panel should consider how the additional information will assist it in deciding on the Teacher's fitness to teach or on the appropriate consent order to issue. If the additional information will not make a material difference to these aspects of the decision making process, then it is unlikely to be needed and any delay caused by obtaining the information is likely to be disproportionate and unfair.

Panels should not seek to pursue lines of enquiry outwith the scope of the allegation(s) and should not request information or evidence from any source where it is clear that an attempt to obtain such information has already been made (including from the Teacher) unless there are exceptional circumstances in favour of such a request.

Panels should also be mindful of the potential danger in seeking additional information from the Teacher about insight or remediation when a position has already been provided that demonstrates limited insight into the conduct or a lack of willingness to remedy the conduct.

Where a Panel wishes to seek additional information, the purpose of the additional information should be clearly stated. A Panel should provide a list of targeted and specific questions it seeks answers to and from whom, or list what documentary evidence is required. Whilst the following list is not exhaustive, it serves to illustrate the kind of information that it is envisaged may be sought:

- Clarification of the Teacher's response to any element of the allegation or his/her willingness to engage with a consent order
- An update regarding ongoing management of any health conditions (or similar)
- Expert evidence about any issue which it is outwith the expertise of the Panel (e.g. specialist medical evidence or evidence regarding best practice in a particular specialist context)
- Additional policy documentation relevant to the setting in which the allegation(s) took place
- Verification by GTCS of any information provided by the Teacher
- Evidence to support any assertion made by the Teacher such as a certificate confirming completion of a course

Where additional information is obtained, the Teacher will be provided with 28 days to consider it and, if wished, provide a response.

In order to avoid delay and make best use of Panel member time, following receipt of additional information, it should be noted that a case may be considered again by the same Panel or by a different Panel depending on the particular circumstances of the case and Panel member availability.

## **Conveners**

Conveners may issue consent orders independently of a Panel. The circumstances in which this is likely to be appropriate are limited to the following scenarios:

### **1 Serious allegations and removal**

Where a case relates to a conviction or an admitted allegation that represents a significant shortfall from the standards expected, a Convener may issue a removal with consent order without the case being considered by a Panel.

### **2 Failure to accept a consent order in time**

Where a Teacher has failed to return a consent order issued by a Panel within the required time period and contacts GTCS regarding the issue, a Convener may direct that a new order be issued to the Teacher provided it does not undermine the decision reached by a Panel in the first instance. This may mean issuing the same order again or, for example, issuing a removal with consent order where the Teacher has indicated he/she does not wish to comply with the conditional registration consent order imposed and wishes to be removed instead.

### **3 Investigating Officer recommendation**

A Convener may issue a consent order consistent with any recommendation made by an Investigating Officer if he/she considers it appropriate to do so in the particular circumstances of the case and provided that any such order does not undermine any decision taken by a Panel.

## **Decisions**

In accordance with rule 1.5, all Panel decisions are determined by majority. Panels must give written reasons for decisions that it makes covering each stage of the decision making process. These should make appropriate reference to this guidance and be issued as soon as possible after the conclusion of the meeting.

## **Consent Order Procedure**

If a consent order is issued, a Teacher will have 28 days to consider whether or not to accept it.

A consent order seeks confirmation that the Teacher:

- Has had the opportunity to seek advice from an independent legal representative on the terms and content of the consent order
- Admits the allegation(s) in full
- Waives his/her right to further adjudication proceedings
- Agrees to the imposition of the disposal option specified in the consent order

If a Panel issues a consent order and it is accepted by the teacher, the order and Panel's decision and reasons for issuing that order will be made available publically on the GTCS website in accordance with the GTCS Fitness to Teach Publication Policy.

If a Panel issues a consent order and it is not accepted by the Teacher, the adjudication procedure will continue.

