



Decision Making and Writing Practice Statement

Purpose

The Fitness to Teach Rules (the “Rules”) provide that notice of a Panel’s decision or final disposal (together with the reasons for it) as well as details of any right of appeal must be served on the Teacher. The notice must be served as soon as reasonably practicable after the decision was made. In practice, this means that a letter will be sent to the Teacher (normally by email) attaching the written decision.

Where all or part of the hearing has taken place in public, the written decision will also be made available to the public in accordance with GTCS’s Fitness to Teach Publication Policy. If the Teacher is known to be employed as a teacher in an educational establishment then the employer will also be advised of any such decision.

The purpose of this Practice Statement is to outline the role of the decision making and writing process, what a written decision should include, the style of drafting, how decisions should be announced/issued and a further explanation of the need for reasons to be provided. However, firstly, the role of the Legal Assessor and Servicing Officer in the process will be outlined.

Role of Legal Assessor/Servicing Officer in the Decision-Making and Writing process

The Legal Assessor (LA) and Servicing Officer (SO) are not decision makers. The LA provides independent legal advice to the Panel and is not an employee of GTCS. The LA is not a decision-maker, unlike Legally Qualified Chairs in other regulatory bodies, who are decision-makers. The SO is an employee of GTCS and plays a fundamental role in providing advice throughout the fitness to teach process (including Panel hearings and meetings) on GTCS’s rules, policies and practice statements. This is an important role since the investigation of the fitness to teach of individuals is a function of GTCS. It is also the SO’s role to ensure that there is a fair process and, generally, that hearings run smoothly. The GTCS’s SO role may be markedly different to the role of “clerks” in other regulatory bodies. Either the LA or SO will draft the written decision, or they may do so in collaboration.

Given that neither the LA nor the SO are decision-makers, they must exercise caution when giving advice to Panel Members by avoiding expressing their views on matters requiring a Panel decision, beyond the advice that they require to give. However, whilst LAs and SOs are not decision makers, they have an important function during Panel deliberations. Accordingly, the LA and SO should be present during any such deliberations. Rule 1.2.1 of the GTC Scotland Fitness to Teach Rules 2017 makes clear that “in private” means:-

“in the context of the deliberations of a Panel as part of hearing proceedings, in the presence of the members of the Panel, the Servicing Officer and any appointed Legal Assessor”.

Given the key role that SOs and LAs play in ensuring compliance with the law and the various GTCS policies and procedures, Panel members must allow them to intervene in order to provide advice where the SO or LA feels this is relevant. If advice is given but not followed by a Panel then this must be outlined in the written decision. The LA and SO can also intervene where clarification is required by the Panel regarding legal/procedural matters or regarding the process of decision making. In addition, the LA and SO may intervene in order to seek clarity from the Panel regarding its decision and reasons. The LA and SO both play a key role in ensuring that the written decision of the Panel reflects the Panel discussion.

The Process of Making Decisions

In making any decision, the Panel should bear in mind the following principles of good regulation:

- Legality;
- Natural Justice / Fairness;

- Transparency;
- Proportionality; and
- Rationale.

The Panel must give written reasons for decisions that it makes covering each stage of the decision-making process. These should appropriately reference the relevant practice statements that have been applied and explain:

- The interests and factors that the Panel took into consideration in reaching its decision;
- The weight that the Panel attached to the interests and factors considered; and
- How the balancing of those interests and factors led the Panel to its decision.

Making decisions and decision writing are fundamental stages of fitness to teach hearings and meetings. Panels must bear in mind that written decisions are principally for the Teacher, the public and the teaching profession to read. Accordingly, any individual must be reasonably able to read and understand the decision along with the reasons for it, without having reference to any other material.

Panels should also bear in mind the fact that a decision may be appealed to the Court of Session or may be subject to review. An appeal court (or similar) will only have regard to the written decision, the documentary evidence and, potentially, the hearing recordings/transcripts. The appeal court will consider whether the Panel made an error in fact or law and whether the decision was sufficiently reasoned. It will take account of any apparent failure of the Panel in considering material and relevant evidence. Accordingly, in the process of making a decision, a Panel must carefully consider all of the oral and documentary evidence placed before it, which is relevant to that decision. A Panel must comment on contradictory evidence and consider which evidence it prefers. The criticism made by the Court of Session in the case of *Janet Garner v Disciplinary Sub-Committee of GTCS* was that there had been no recognition in the decision of contradictions between witnesses' oral evidence and documentary evidence and, accordingly, which the Panel preferred.

During decision making, Panels must discuss the evidence and submissions, the relevant rules and practice statements. The Panel must identify the appropriate factors to be taken into account. Decisions must be made by the Panel based only upon the evidence placed before it and with no regard to outside influences, including any press coverage. Any contradictory evidence must be addressed and decisions made on what evidence is preferred. Such discussions will be led by the Convener, with the Panel taking advice as appropriate from the SO and LA, as outlined above. Each Panel member must be given the opportunity to provide his/her views and thereafter confirm his/her decision and the reasons for it. It is for the Convener to ensure that each Panel member is given this opportunity and that all relevant guidance material is considered. The LA/SO must be clear on the decision of the Panel and the reasons for it prior to undertaking decision writing and, as described above, should obtain clarity on this from the Panel if required. Once a draft of the decision has been produced by the LA/SO, each Panel member is to provide any feedback/amendments on that draft as well as confirm that any summary of evidence reflects his/her recollection of the evidence and that the reasoning is accurately recorded. It is the responsibility of the Panel to ensure that the written decision is an accurate record of the evidence, decision and reasons and so great care must be taken in reviewing and reflecting on the written decision.

All Panel decisions are made by majority. However, given that Panels are bound by the principle of collective responsibility, Panel written decisions should simply state the decision and not whether or not it was by majority. Dissenting opinions should not be included within a Panel's written decision.

When finalising written decisions, Panel members should bear in mind that the Teacher requires to be informed of the decision as soon as reasonably practicable (as noted above) and generally be within 28 days.

In more lengthy, multiple day hearings, hearing days will be scheduled (where possible) to facilitate the writing up of the written decision.

Precedent

The GTCS fitness to teach process does not operate under the principle that a decision made in one case then means that all similar subsequent cases must follow that decision. Each and every case is considered individually on its particular facts and circumstances and a decision is ultimately made as is seen fit in light of those particular facts and circumstances.

Announcing/Issuing Decisions

The fitness to teach process is formal in nature and so Panel decisions should be issued with that in mind. Accordingly, it is the Panel that should issue its decision, preferably by way of its written decision, although, in a hearing context, some decisions may be issued orally. Panels, as opposed to GTCS staff, should issue decisions to ensure that (a) the formality of proceedings is acknowledged (b) its decision is accurately communicated and (c) recognition is given to the impact of Panel decisions on other participants in the process. On this last point, whilst it is recognised that there can be an understandable desire to inform the teacher of the Panel's decision as soon as possible (particularly when it is good news), Panels should bear in mind that there are a number of interested parties in a case. Accordingly, there are reputational consequences for GTCS of a teacher being informed of a decision orally at a hearing but other interested parties e.g. the referrer, witnesses, employers not knowing until the written decision is issued.

Panel decisions should not be issued to parties by telephone. Only in exceptional circumstances should they be communicated to parties by email without the written decision attached, for example if a hearing is imminent and it is not possible for the decision to be written and communicated to the parties in time.

In line with the above, in a hearing context, a Panel should issue its decision by way of its written decision, as opposed to orally, because decisions should be issued with full reasons. It is important that there is consistency in this respect between different types of hearings and cases and so the same procedure should be applied throughout hearings. The only exception relates to when a decision requires to be announced in order to inform parties whether or not the hearing will require to move on to the next stage. For example, at a conduct full hearing, a Panel should issue its decision orally in relation to stages 1 and 2. This is to (a) avoid the need for parties to wait for lengthy periods of time whilst the Panel drafts its written decision in respect of each stage and (b) to ensure that Panels are not pressured into making decisions whilst parties are waiting. In terms of announcing findings in fact, the Panel should simply announce whether each allegation has been found proved. However, there may, on occasion, be a requirement for the Panel to announce, for the sake of clarity, the context in which it has found particular allegation proved e.g. not finding a sexual motivation to conduct.

What will the Written Decision Include?

- 1 Names of: the parties; representatives; Panel Members; LA; SO.
- 2 A note of any preliminary issues raised and decisions made in that respect, along with reasons
- 3 A list of witnesses led and documents lodged
- 4 Summary of evidence (of which the format and detail will vary from case to case)
- 5 In a conduct case, the facts found proved regarding the allegation, the facts found proved regarding fitness to teach, any disposal decision and reasons
- 6 Details regarding any right of appeal or review

Style of Drafting

The length and detail of written decisions will vary according to the nature and complexity of the case. However, it is important that there is a consistent approach taken to the style of writing decisions. Although the decisions to be made in a case are purely for the Panel to make, the written decisions are made in the name of GTCS and so the final decision on style and grammar lies with GTCS. The attached Style Guide (Appendix B) sets out the style that must be followed in any GTCS written decisions.

Article 8 of the Public Services Reform (General Teaching for Scotland) Order 2011 ("the Order") requires that GTCS carries out its functions in a transparent manner. Accordingly, the decision should be written in a form that enables the reader to understand the issues before the Panel, its findings and decision and the reasons for them, without the need to refer to any other materials.

Reasons

The right to a fair hearing (Article 6 of the European Convention on Human Rights) has been held to include the right to a reasoned judgment. In addition, the Order states that GTCS must act in a manner which is transparent. The Rules provide that decision reasons may be provided orally at a hearing or may be reserved to be given in writing. In practice, the latter approach is taken in the majority of cases. As outlined above, where possible, decisions should be issued in writing in any event, along with the reasons.

What is meant by providing sufficient reasons will depend very much on the particular circumstances of the case. Although it is not necessary to outline every factor taken into account by a Panel, the written decision must make sense to the average reader and must enable an appeal court to understand why the decision was reached. Those factors which were crucial to the decision must be outlined and the view taken by a Panel of any conflicting evidence of crucial matters must be narrated.

The *Garner* case is an important appeal court decision in this respect. The court upheld the appeal on the basis that the summary of evidence was surprisingly short and did not appear to take account of inconsistencies in the evidence. The reasons for the decision did not allow the court to conclude that proper consideration had been given to the matters relied upon in relation to controversial and potentially significant issues. The court noted that, although there was no general duty to give reasons for a decision on matters of fact, particularly where the decision depends essentially on resolving questions of credibility of witnesses, there may be cases where the principle of fairness would require reasons even on matters of fact.

The case of *Derek Sturridge v GTCS* makes it clear that (a) decisions must be self-explanatory; and (b) that sufficient reasons must be provided in order to comply with GTCS's obligation to perform its functions in a transparent manner.

Summaries of the *Garner* and *Sturridge* cases are provided below (Appendix A).

Summary of Particularly Relevant Cases

Note: there are a significant number of case authorities on the requirement to give (and the adequacy of) reasons: the below summarises just a handful of cases that are of particularly close relevance to GTCS.

Janet Garner v Disciplinary Sub-Committee of GTCS [2012] CSIH 39

Mrs Garner brought an appeal against a decision of the disciplinary sub-committee (predecessor to the Fitness to Teach Panel), which was heard before the Inner House of the Court of Session. The sub-committee had heard evidence over a period of fourteen days.

Mrs Garner submitted that there had been a substantial number of errors of law. The court summarised them into categories, which were (a) that the sub-committee had failed to provide the reasons for the direction, as required by law; (b) that the sub-committee had demonstrated bias against Mrs Garner; and (c) there were procedural breakdowns in her case when it became apparent that her employers were dissatisfied with her professional performance. In support of point (a), Mrs Garner noted that, despite significant oral evidence, the summary of evidence only extended to four pages. Further, there was little reference to documentary evidence. There also appeared to be no recognition of the contradictions between the testimony of GTCS' witnesses and documentary evidence. For instance, in one witness' oral evidence, the witness stated that she had observed Mrs Garner's teaching in circumstances where it was evident from the documentation that she could not have done. Mrs Garner went on to state that a number of witnesses provided inconsistent testimony. In addition, many of the parental complaints founded upon at the disciplinary stage had been found to be invalid. It appeared from the decision that the sub-committee made nothing of these aspects of the case.

The court noted that point (b) appeared to be a criticism that the sub-committee had ignored evidence in favour of Mrs Garner and had preferred oral evidence critical of her, which was contradicted by documentary evidence. For example, Mrs Garner had submitted a considerable volume of evidence regarding pupil attainment, much of which pointed to excellent attainment by her pupils. However, there was no finding in that respect and the only reference to the evidence submitted by Mrs Garner was regarding its existence. In addition, Mrs Garner criticised the fact that there was no evidence relating to attainment of classes prior to being taught by her.

In response, the GTCS submitted that the evidence was fully and properly reflected in the findings such as to make the basis of its decision clear. The sub-committee had given an indication of the conclusions it had reached regarding credibility and reliability of witnesses. Counsel for GTCS stated that after such a lengthy hearing, the account of evidence was "somewhat attenuated". However, although light, the reasoning was adequate. Any inconsistencies in the evidence had to be considered in the wider context of other concurring evidence. Counsel argued that it would have been surprising if no inconsistencies had been present in the evidence given the period of time between the relevant events and the hearing. There were an unprecedented number of pupil/parental complaints and it was clear from the transcripts that the sub-committee had engaged with the evidence in this respect.

In its decision, the Inner House noted that whilst a body's governing legislation may only require that reasons for the direction be stated, the law may require that a fuller statement of the reasons may be necessary for a sound decision. The Inner House noted the case of *Gupta v General Medical Council* [2001] UKPC 61; [2002] 1 WLR 1691, in which it was held that there is no general duty to give reasons for a decision on matters of fact, particularly where the decision depends essentially on resolving questions of credibility of witnesses. However, there may be cases where the principle of fairness would require reasons even on matters of fact. It was acknowledged that the first instance body is in a better position to judge credibility and reliability than the appeal court albeit that in *Thomas v Thomas*, it was stated that "the appellate court, either because the reasons given by the trial judge are not satisfactory, or because it unmistakably so appears from the evidence, may be satisfied that he has not taken proper advantage of his having seen and heard the witnesses, and the matter will then become at large for the appellate court".

The Inner House found that there was no indication that the sub-committee gave any consideration to the attainment evidence lodged by Mrs Garner other than to note its existence. It appeared that some of the documentary evidence suggested respectable attainment, which directly conflicted with some oral evidence from GTCS' witnesses. There was no indication that the sub-committee perceived the existence of such a conflict, or how it might be resolved. There lacked the reasoning which would be essential to a fair and rational decision.

With respect to pupil/parental complaints, the Inner House stated that it was obvious that some complaints were misconceived, some were misdirected at Mrs Garner and others were without validity. However, the decision

appears to rely only on the number of complaints made. In addition, Mrs Garner had spent a lot of time in cross-examination identifying conflicts and inconsistencies between oral testimony and contemporaneous records. However, there was no reference of those records in the “very brief account of the evidence of those witnesses”. The decision did not state whether inconsistencies were taken into account or how, or if, they were resolved. The appeal court found it surprising that, in view of the length and complexity of the hearing of evidence, the decision was only six pages long.

The court concluded that the sub-committee had failed to deal with several controversial and potentially significant issues. The reasons provided did not allow the court to conclude that proper consideration had been given to the matters relied upon in relation to those issues.

Derek Sturridge v GTCS [2014] CSIH 16

This was an appeal brought against a decision by GTCS to refuse to register Mr Sturridge. Mr Sturridge held a Higher National Diploma in Science (Chemistry) (1987) and a graduateship of the Royal Society of Chemistry (1989). The decision letter stated:-

“you do not hold a United Kingdom degree or a degree which is equivalent to a United Kingdom degree that has followed a period of higher education at a university or equivalent institution of at least three years’ duration. The GRSC is at the same academic level as a Bachelor of Science but does not constitute the award of a degree by a recognised Higher Education Institute.....”

The appeal centred around the interpretation of the relevant provisions contained within the Public Services Reform (General Teaching Council for Scotland) Order 2011 (“the Order”), the relevant rules and principles and as to whether Mr Sturridge held a “degree”. The Inner House held GTCS was entitled to come to a view as to whether or not a qualification amounted to a “degree”. However, some explanation must be given for its decision. The court did not regard the decision letter in this respect as being “self-explanatory”. In addition, the court referred to article 8 of the Order headed “Best regulatory practice”, which provides that GTCS must perform its functions in a way which is proportionate, accountable, transparent and consistent. In failing to provide comprehensible reasons for its decision, GTCS failed to perform its functions in a transparent manner.

Gupta v General Medical Council [2001] UKPC 61

Dr Gupta and her husband were both registered medical practitioners in a practice in London. In 1996, Dr Gupta’s husband was erased from the register and in 2001, Dr Gupta herself appeared before the Professional Conduct Committee of the GMC on four charges that, following her husband’s erasure from the register, she had been aware of, permitted or failed to prevent him from practising in her surgery. The committee held that three of the four charges were proved and that Dr Gupta’s name should be erased from the register.

The appeal was heard by the Privy Council and the grounds for the appeal were that the committee failed to give reasons for its findings on the charge, the appeal court should take account of the criticisms of the evidence led in support of the heads of charge not admitted by her or that, if those findings were properly made, the sanction imposed was excessive.

When addressing the appellant on its decision regarding the charges, the committee simply stated which parts of the charge were admitted, found proved or not proved. The only other reasoning provided by the committee was to state “your evidence to this committee was inconsistent and by reason of our determination untruthful in many respects”.

The Privy Council noted that although it had the power to reconsider matters of fact, given that appeals are conducted on the basis of the transcript of the hearing and that, unless exceptionally, witnesses are not recalled, appeal courts recognise that they should be slow to interfere with decisions on matters of fact taken by the first instance body. This is on the basis that “if the first instance body has observed the witnesses and weighed their evidence, its decision on such matters is more likely to be correct than any decision of a court which cannot deploy those factors when assessing the position”. The court found that “to insist in virtually all cases raising issues of credibility and reliability the committee should formally indicate which witnesses it accepted and which it rejected would be to require it to perform an essentially sterile exercise”. The court found that “there is no general duty on [a] committee to give reasons for its decisions on matters of fact and, more particularly, that there is no duty to do so in a case like the present where.....its decision depended essentially on resolving questions of the credibility of the witnesses led before it”. However, a committee can always give reasons if it considers appropriate to do so in a particular case and there may be cases where the principle of fairness may require the committee to give reasons for their decision even on matters of fact. However, the Privy Council decided not to provide further guidance on this point, given that it was not necessary in the present case.

The other two grounds of appeal were rejected. However, helpfully, the Privy Council commented that “since [a] professional body is not primarily concerned with matters of punishment, considerations which would normally weigh in mitigation of punishment have less effect on the exercise of this kind of jurisdiction” as in the case of *Bolton v Law Society* [1994] 1 WLR 512. Accordingly, even if there are very serious personal consequences of a sanction, that is not a relevant consideration.

Style Guide

- 1 Try to use clear and concise language, easy-speak/plain English, to ensure accessibility
- 2 Use short paragraphs and keep sentences brief
- 3 Bullet points should be used where appropriate in order to break down the text:
 - if the bullet points are preceded by the start of a sentence (using a colon), ensure that a full stop is placed at the end of the last bullet point
 - if semi-colons are used after each bullet point, ensure that the penultimate bullet point is followed by a semi-colon and 'and' or 'or'
 - if the bullet point is a continuation of the previous sentence, the first letter should be lower case.
- 4 Dates should be written e.g. 13 March 2014 (not 13th March 14 or 13th March '14) and should not be preceded by the word 'the'
- 5 Use digits for a period of time, i.e. it took him 6 months to recover from his operation
- 6 Use am or pm rather than writing o'clock. Leave a space between the abbreviation and the numeral, for example write 10.30 am rather than 10.30am
- 7 When writing 1 to 9 use words, *except* for periods of time, e.g. 1 year, 2 hours, 6 weeks. When writing 10 and above use numbers
- 8 Use numbers for ages
- 9 Capital letters should be used for specific job titles, for example, 'Kenneth Muir, Chief Executive and Registrar'. For more general references to jobs, capital letters should not be used, for example 'speak to your headteacher' and not 'speak to your Head Teacher'.
- 10 When referring to qualifications in general use initial capitals e.g. Standard Grade but do not use initial capitals for core skills, e.g. mathematics
- 11 Do not use acronyms e.g. GTCS unless the full term has been used in its first appearance in the document e.g. the General Teaching Council for Scotland (GTCS) or it is included in the defined terms at the start of the document. A plural of an abbreviation should be followed by a small 's'.
- 12 Use the preferred abbreviation of GTCS (not 'the GTCS')
- 13 Other than when following standard grammatical rules, only capitalise defined words
- 14 If a word has been defined, ensure that the defined term is used throughout the decision
- 15 Write in the past tense (so long as it is appropriate)
- 16 Use 'and' rather than ampersand '&' in subject names like 'Art and Design' and 'Health and Wellbeing'
- 17 Numbers should always be used consistently in either of following formats:
 - 1 (a)(i)
 - (a)(ii)
 - (b)(i)
 - 1
 - 1.1
 - 1.1.1
 - 1.1.2
 - 1.2
- 18 Make sure that bullet point indentations are the same throughout
- 19 A GTCS logo should appear at the top left of the first page of any document to be viewed externally
- 20 Headings should be in bold, preceded by two line spaces, followed by one line space. Key words should be capitalised.
- 21 Sub-headings should be underlined, preceded by one line space and followed by one line space
- 22 All documents should be in Arial 11 and single-line spacing
- 23 Use single quotation ('.....') marks to denote words spoken
- 24 The Code of Professionalism and Conduct should be abbreviated to COPAC
- 25 Fitness to Teach should be abbreviated to FtT and not FTT