

1 Purpose

- 1.1 This document provides guidance to set out the purpose of and support the rational and consistent consideration of case cancellation applications within the GTC Scotland Fitness to Teach process.
- 1.2 The purpose of a case cancellation application is to enable a party to a Fitness to Teach case which has been referred for a full hearing to request that a Fitness to Teach Panel considers the disposing of the case by way of cancellation, for reasons set out in the Case Cancellation Application. The Case Cancellation process ensures that, following referral of a case for a full hearing, any developments or material issues arising which a party considers should lead to the cancellation of the case can be appropriately and fairly addressed.
- 1.3 It is important to note that GTC Scotland's Fitness to Teach process does not operate under precedence (that a decision made in one case then means that all similar subsequent cases must follow that decision). Each and every Case Cancellation Application will be 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.

2 When to use Case Cancellation?

- 2.1 An application for cancellation of a case can be made either in a conduct or competence case.
- 2.2 For conduct cases the relevant rule is 2.10.9 of the GTC Scotland Fitness to Teach Rules ("the Rules") and states that:

"A Panel may at any time following the referral of a case to it for a hearing decide to cancel a case (and dispose of it on that basis). Before making any such decision, a Panel must have heard from the parties on the matter and be satisfied that it is in accordance with the general objective and in the public interest to do so."

A similar rule exists for competence cases at rule 3.8.8.

- 2.3 As outlined in the relevant rules, such an application may only be submitted once a case has been referred for a hearing. In that respect, in a conduct case, a Case Cancellation Application is the appropriate route in which to seek closure of the case following a decision made at the Panel Consideration stage to refer to the case for a full hearing.
- 2.4 There is no prescribed list of circumstances in which cancellation of a case may be sought. However, the following outlines some situations in which parties may wish to consider making such an application:
 - In a conduct case, there is insufficient evidence to proceed with the case and it is therefore considered that the possibility of a panel finding facts proved to be so low that it would not be fair or proportionate to proceed with the case;
 - The allegations, if proved, cannot reasonably be said to amount to current impairment;
 - The health of the Teacher is so poor and the prognosis is such that the Teacher's Fitness to Teach case should not proceed. If such an application is to be made the party making the application should refer to the provisions within the [Health Matters and Medical Evidence Practice Statement](#). It is envisaged that, in order to satisfy a Panel that it is in the public interest to cancel a case purely on the basis of the Teacher's health, the prognosis, as evidenced by a report provided by a medical practitioner, would require to be so serious that the Teacher is unlikely to ever be able to resume their teaching career. Such a prognosis would always require to be considered alongside other factors such as the seriousness of the allegations.

Where the prognosis is not at that level of seriousness, health may be one factor amongst others which may justify a case to be cancelled;

- A serious procedural irregularity or error of law is deemed to have had a material effect on the case and there is no other option to remedy it (**note:** if such irregularity or error can be remedied in another way throughout case management, ahead of or at the start of a full hearing, a Case Cancellation Application would not be considered to be proportionate or appropriate); or
- Any other matter which has had or could have a material and profound effect on the fair running of the case, where there is no other option available to remedy the matter (as above).

Note: A Case Cancellation application should not be used as a means by which a party seeks to re-run the Panel Consideration stage and a Panel should be mindful of the guidance in this Practice Statement when addressing such applications. At Panel Consideration stage, the Panel will have taken into account the evidence available to it, including any response provided by the Teacher, and made a decision that a full hearing is required.

3 Use of Case Cancellation Application

3.1 Prior to Panel Consideration

- 3.1.1 As noted above, a case cancellation application can only competently be made after a case has been referred for a full hearing. Accordingly, any concerns in relation to the procedure, fairness or merits of a case ahead of Panel Consideration should be dealt with by way of written response to the investigation report provided to the Teacher, and these will be considered by a Panel at Panel Consideration.

3.2 Following Panel Consideration

- 3.2.1 Once a case has been considered by a Panel at Panel Consideration, and if the Panel decides to refer the case on for hearing proceedings, the case enters the adjudication stage. This means that the investigation process has completed, the case has been considered at Panel Consideration and referred to a full hearing.
- 3.2.2 Should parties consider that there has been a serious, material procedural, or other, irregularity which cannot be cured by consideration of the case at the full hearing, this should be dealt with by way of a Case Cancellation Application. A case should not return to be reconsidered by a Panel at Panel Consideration. This is to ensure that all Fitness to Teach cases continue to progress through the process and avoid any unnecessary delay in dealing with any such issues identified. Further, there is no provision in the Rules to allow for a case to return to the Panel Consideration stage, and the appropriate way to remedy any concerns that may be raised relating to an earlier stage in the proceedings that cannot be remedied at the full hearing would be to seek cancellation of the Fitness to Teach case.

3.3 No Case to Answer Submissions in conduct cases

- 3.3.1 GTC Scotland's Fitness to Teach process does not recognise "no case to answer" submissions at any stage in the conduct process, but particularly in the adjudication stage, and there is no specific provision within the Rules to allow for the consideration of such submissions. GTC Scotland considers that 'no case to answer' submissions do not support the Rules' general objective to deal with cases fairly and justly. Further, GTC Scotland considers that 'no case to answer' submissions do not support GTC Scotland's aim to ensure fair and proportionate Fitness to Teach proceedings and to avoid delay. Should a party to a Fitness to Teach case consider that there is insufficient evidence to prove the allegations, a Case Cancellation Application should be made by that party, at the earliest point, to ensure that a case is dealt with fairly, justly and, importantly, expeditiously.
- 3.3.2 As a result of this, "no case to answer submissions" should not be accepted at any stage in the GTC Scotland Fitness to Teach process. Instead, should either party consider that a case, which

has reached adjudication stage, ought not proceed further they should submit a Case Cancellation Application, following the procedural steps set out below.

4 Making a Case Cancellation Application

4.1 A Case Cancellation Application can be made at any point before a full hearing starts or during a hearing should matters arise which means that a party considers that such an application should be made, taking account of the guidance outlined in this practice statement. A Case Cancellation Application will be considered as a procedural matter under rule 2.5.1(c) for conduct cases and rule 3.4.1(c) for competence cases. The following procedure applies (subject to timescales and the stage at which the application is made):

- (a) A Case Cancellation Application should be made in writing by the party seeking the case to be cancelled to the Servicing Officer at the earliest point. In order to reduce delay, the application should be sent via email where possible directly to gtcs@gtcs.org.uk

A Case Cancellation Application must set out clearly why cancellation is sought and should be accompanied by all relevant supporting evidence.

- (b) Where there is another party, the Servicing Officer will provide the Case Cancellation Application (together with any supporting evidence) to that other party (via email) with case management directions setting out a deadline for responding. The other party should provide written representations in response, by the deadline stated, along with all relevant supporting evidence.
- (c) Once both parties have had the opportunity to provide written representations, the application will be considered at the next available Panel Meeting. Unless either party requests a procedural hearing, a Case Cancellation Application will be decided upon solely on the written representations made by the parties in compliance with the case management directions set for this purpose.
- (d) The Panel will carefully consider the Case Cancellation Application with reference to the provisions set out in the Rules and the guidance included below. The Panel's written decision (which will include full reasons) will be shared (via email) with the parties by the Servicing Officer as soon as reasonably practicable. At the Panel Meeting, the Panel may consider that a hearing is necessary in the particular circumstances. A Panel should only seek a hearing where it considers that this is necessary to obtain further information/clarification from the parties and where necessary to fully and properly consider the application.

4.2 Parties should not find themselves in a position in which they are raising a Case Cancellation Application at the beginning of a full hearing unless there has been a significant, late development in the case which justifies the application being made at that point. Parties should make the Servicing Officer aware of an intention to raise a Case Cancellation Application at the earliest point. However, if there is no alternative but to raise a Case Cancellation Application at this late stage, the party wishing to seek case cancellation should do so at the outset of the full hearing, where possible, as a preliminary matter to be considered by the Panel.

4.3 As with any procedural application, if a party has sought case cancellation which has been unsuccessful, that party cannot again seek case cancellation for the same reason, unless there has been a material change in circumstances which would merit reconsideration by a Panel.

4.4 **Note:** Particularly where a full hearing has been scheduled or where an application is made at the beginning of a hearing, parties should always be ready to proceed as planned with the full hearing in the event that the case cancellation application is not granted.

5 Considering and Determining a Case Cancellation Application

5.1 If the Case Cancellation Application is being considered at a hearing, the parties should be given the opportunity to make any further submissions to the Panel and then the Panel should be given

the opportunity to ask any questions it considers relevant to determine the outcome of the Case Cancellation Application.

- 5.2 The Panel must discuss the case in private in order to determine the outcome of the Case Cancellation Application. When considering whether the application should be granted or refused, a Panel must consider:

- The representations that have been made, together with any relevant evidence submitted;
- The relevant section of the Rules (rule 2.10.9 for conduct cases and rule 3.8.8 for competence cases) along with this practice statement and any other relevant practice statement (for example, the Health Matters and Medical Evidence Practice Statement);
- Whether, in the particular circumstances of the case, it is satisfied that it is in accordance with the general objective and in the public interest to cancel the case.

As indicated above, the Panel must consider the general objective of the Rules, set out at rule 1.3.7, which states:-

“These Rules have the general objective of enabling GTC Scotland, Conveners and Panels, with the assistance of the parties, to deal with cases fairly and justly.”

Rule 1.3.8. goes on to state:-

“Dealing with a case fairly and justly includes, so far as practicable, dealing with it in ways which:
(a) are proportionate to the complexity of the issues;
(b) seek informality and flexibility in proceedings;
(c) ensure that parties are able to participate fully in proceedings; and
(d) avoid delay, so far as compatible with the proper consideration of the issues.”

- 5.3 In addition to the general objective, the Panel must be satisfied that agreeing to the cancellation of the case is in accordance with the public interest, which will involve consideration of the following:

- The protection of members of the public (in particular, children and young people), both in terms of the teaching setting and beyond;
- The maintenance of the public's confidence in registrants and in the integrity of the teaching profession;
- The maintenance of the public's confidence in GTC Scotland as a professional regulator;
- The need to declare and uphold proper teaching standards; and
- The deterrent effect that the case may have upon other GTC Scotland registrants.

- 5.4 Once the Panel has made a determination on the Case Cancellation Application, the Panel must provide a full written decision setting out the reasons for making the determination it has made.

- 5.5 As stated above, it is important to note that GTC Scotland's Fitness to Teach process does not operate under precedence (that a decision made in one case then means that all similar subsequent cases must follow that decision). Each and every Case Cancellation Application will be 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.

- 5.6 As such, any written decisions in other cases which have been lodged by either party to a case for consideration by a Panel should be considered with extreme caution. A Panel in a previous case will not have had the benefit of considering all of the evidence put before a Panel in a different case or hearing submissions and each case must be dealt with on its own facts and circumstances.